

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TROY GRANGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0103

Case Type: PA

DECISION NO. 39012-A

Appearances:

Leslie Freehill, Attorney, Pines Bach, 122 West Washington Avenue, Suite 900, Madison, Wisconsin, appearing on behalf of Troy Granger.

Nicole Rute, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On September 8, 2021, Troy Granger filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Health Services (DHS) discharged him without just cause. On September 17, 2021, DHS filed a motion to dismiss the appeal on the grounds that Granger's complaint/grievance challenging his discharge was untimely filed with DHS. Granger filed a response opposing the motion on October 1, 2021, whereupon the matter became ripe for Commission consideration. On October 27, 2021, the Commission issued a Decision and Order Denying Motion to Dismiss pending hearing on relevant factual matters. That hearing was held November 5, 2021. The parties thereafter filed written argument on November 9, 2021.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is

ORDERED

The motion to dismiss is granted and the appeal is dismissed.

Issued at Madison, Wisconsin, this 19th day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

Wisconsin Stat. § 230.445 (3)(a)1. provides that to challenge an adverse employment decision, “an employee shall file a complaint with the employee’s appointing authority . . . no later than 14 days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint.”

Wisconsin Stat. § 230.445 (2) specifies that if an employee does not timely file such a complaint, “the employee waives his or her right to appeal the adverse employment decision”

Wisconsin Stat. § 230.445 (3)(c)1. provides in pertinent part “If a procedural requirement was not met by the employee . . . the commission shall dismiss the appeal.”

Based on the clear and stringent legislative intent expressed above, the Commission has consistently dismissed appeals where the employee did not themselves timely file a complaint with the appointing authority. In *Maxwell v. DOC*, Dec. No. 38799 (WERC, 2/21), the employee timely but wrongly filed with the Department of Administration, Division of Personnel Management (DPM) instead of the Department of Corrections (DOC)-the employee’s “appointing authority”. DPM timely advised the employee of the error. The employee did not check her email to learn of the need to correct her error until after the 14-day period for timely filing had expired. In *Guillonta v. DOC*, Dec. No. 37939 (WERC, 5/19), the employee timely but wrongly filed with DPM instead of DOC and DPM timely advised the employee of her error. An untimely appeal was ultimately filed with DOC. In both instances, DOC filed a motion raising the timeliness issue and the appeals were dismissed

In this case, Granger was notified of his discharge by phone on July 2, 2021. On that date, HR Director Christine Ahrens (with IT Director Kevin Scott as a witness) read Granger’s discharge letter to him in its entirety. A copy of the discharge letter was sent to Granger by email that same day. The discharge letter contained clear instructions on his appeal rights, the 14-day time limit for filing a complaint, and specified he should file any complaint with DHS using the listed DHS email address.

Despite these clear instructions, Granger did not submit a complaint to DHS but instead emailed it to DPM on July 6, 2021. That same day, DPM responded by email specifically advising Granger that he needed to file with DHS and advising him how to do so. However, Granger did not read the DPM response until after the July 16 deadline for timely filing had passed.

Granger testified that he generally checks his email daily either on his phone or at the local public library. He did not provide any persuasive explanation as to why he did not timely review the July 6 email advising him of his filing error and how to correct it.

Granger makes a related argument to the effect that he spoke with HR Director Ahrens on July 9, 2021 and mentioned in that call that he had filed a grievance challenging his discharge. He contends that because DHS knew on July 6 that he had wrongly filed with DPM, Ahrens had an

obligation to tell him of his error. While it is disputed as to whether Granger mentioned to Ahrens that he had filed a grievance, it is clear that on July 9 Ahrens did not independently know whether Granger had filed a grievance and did not become aware that he had wrongly filed with DPM until a subsequent July 19 interaction with Granger. Thus, the Commission is satisfied that Ahrens did not mislead Granger in any way on July 9 and indeed had no reason to believe that if Granger had filed a grievance, that he had done so with the wrong entity.

More broadly, Granger argues that DPM and DHS had an obligation to directly forward Granger's misfiled grievance to the proper location. The Commission continues to believe that would be a "best practice" but not a statutory obligation. The decision by DPM and DHS not to do so is consistent with a literal interpretation of the statutory language indicating "the employee shall file a complaint with the employee's appointing authority"¹

Granger received clear instructions as to how to file a complaint with DHS and a timely email advising him that he had not done so correctly. He had the opportunity to timely learn of his error and to correct it. His failure to do so warrants the granting of the motion to dismiss his appeal.

Issued at Madison, Wisconsin, this 19th day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ When Ahrens learned on July 19 from Granger that he had not correctly filed his grievance, she instructed him on how to do so correctly. Granger asked that she file it for him, and she did so. This courteous act at Granger's request does not translate into an obligation on the part of DPM or DHS to have independently done so earlier.