

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

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 DENYING 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 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.

Having considered the matter, the Commission concludes the motion should be denied pending a hearing on relevant factual matters..

NOW, THEREFORE, it is

ORDERED

The motion to dismiss is denied.

Issued at Madison, Wisconsin, this 27th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Wisconsin Stat. § 230.445 (3)(a)1. provides that a complaint challenging an adverse employment decision shall be filed with the employee’s “appointing authority” (i.e., their agency) “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.”

Consistent with the clear legislative intent expressed above, the Commission has consistently dismissed appeals where the employee did not 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 DPM. 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 and DPM advised the employee of her error. An untimely appeal was ultimately filed. In both instances, DOC filed a motion raising the timeliness issue and the appeals were dismissed

In this case, Granger was notified of his termination by phone on July 2, 2021. On that date, HR Director Christine Arens (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 the Department of Administration, Division of Personnel Management (DPM) on July 6, 2021. That same day, DPM responded by email specifically advising Granger that he needed to file with DHS. However, Granger did not read the DPM response until after the July 16 deadline for timely filing had passed. He ultimately filed with DHS on July 19.

Granger contends that his error should be excused because his ability to receive email on his phone is often limited and that he therefore relies on the local public library to send and check email. Nonetheless, as was true in the Maxwell matter, having wrongly filed in the first instance, it became Granger’s responsibility to become aware of the efforts to alert him to the need to file directly with DHS.

Granger makes a related argument to the effect that he spoke with HR Director Arens 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, Arens had an obligation to tell him of his error so that he could correct it. It is not known what Arens personally did or did not know at the time of the July 9 conversation or what was or was not mentioned by Granger. However, the Commission concurs that the facts surrounding the July 9 conversation and the DHS knowledge of the Granger complaint need to be known before the motion to dismiss can be ruled upon. Thus, pending hearing on those facts, the motion to dismiss is denied.

Issued at Madison, Wisconsin, this 27th day of October, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman