

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ROY FIELDS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0493

Case Type: PA

DECISION NO. 39273

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**Appearances:**

Roy Fields, 140 E. Rees Street, Fond du Lac, Wisconsin and David Gallop, 119 Tygert Street, Ripon, Wisconsin appearing on behalf of Roy Fields.

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 Corrections.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On September 27, 2021, Roy Fields filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC) had suspended him for five days without just cause. On September 30, 2021, DOC filed a motion to dismiss the appeal on the grounds that Field's grievance challenging his suspension was untimely filed with DOC. Fields filed a response opposing the motion on October 18, 2021, whereupon the matter became ripe for Commission consideration.

Having considered the matter, the Commission concludes the motion should be granted

NOW, THEREFORE, it is

**ORDERED**

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

Issued at Madison, Wisconsin, this 2<sup>nd</sup> day of November, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Section 230.445(3)(a)1., Wis. Stats. 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.”

Section 230.445(2), Wis. Stats. 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 ....”

Section 230.445(3)(c)1., Wis. Stats. provides in pertinent part “[i]f 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.

Here, Fields was suspended on July 23, 2021 and did not file his appeal with DOC until September 8, 2021. Although Fields claims to have been confused as to how to file an appeal, the documents he submitted in support of that claim are all dated well after the time for timely filing had long since passed. His suspension letter gave him clear instructions as to how and when to file and DOC personnel repeated those instructions in a July 26, 2021 email sent to both his work and personal email accounts. Fields asserts he was on vacation after serving his suspension and thus did not see the July 26 email until the deadline for timely filing had passed. Assuming that to be true, Fields was nonetheless given clear filing instructions in the suspension letter and he failed to follow them. Therefore, his appeal has been dismissed as untimely filed.

Issued at Madison, Wisconsin, this 2<sup>nd</sup> day of November, 2021.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman