

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MICAH A. SAUER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0499

Case Type: PA

DECISION NO. 39288

Appearances:

Micah A. Sauer, 77 Arvey Lane, Fond du Lac, Wisconsin, appearing on his own behalf.

Anfin Jaw, Attorney, Department of Administration, 101 E. 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 November 5, 2021, the Wisconsin Employment Relations Commission received an appeal from Micah A. Sauer asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). On November 19, 2021, DOC filed a motion to dismiss the appeal as untimely filed. Sauer responded to the motion on December 1, 2021.

Having considered the matter, the Commission is satisfied that 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 the City of Madison, Wisconsin, this 9th day of December, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Wisconsin Stat. § 230.445(3)(c)1. provides in pertinent part:

An employee or an appointing authority may appeal a decision issued by the administrator under par. (b) by filing an appeal with the commission. The employee or appointing authority may not file an appeal with the commission under this paragraph later than 14 days after receiving the administrator's decision. . . . **If a procedural requirement was not met by the employee . . . the commission shall dismiss the appeal** [emphasis added].

Sauer received discipline from the Department of Corrections (DOC) and, after grieving the matter internally, his Step 2 grievance was returned to him by the Department of Personnel Management (DPM) on September 2, 2021. At the bottom of DPM's decision to deny the grievance, instructions were provided on how to file an appeal with the Wisconsin Employment Relations Commission (WERC), including the need to file such within 14 days of receiving the employer's decision. An attachment was also provided instructing Sauer on the step-by-step process for making an appeal to WERC, and again the 14-day deadline for filing was provided. Sauer filed his grievance with WERC on November 5, 2021, over 60 days after he had received his Step 2 denial from DPM, and over 45 days after the deadline to file with WERC.

Sauer asks WERC to find equity in extending the deadline due to health complications that he suffered through during the time in question. We decline to do so in this matter. Sauer woke up feeling sick starting on August 21st which led to hospitalization until he was discharged on September 3rd. Sauer did not return to work until September 27th. Sauer argues that due to his illness, upon his discharge his main focus was on his family and recovery. While that may be the case, it does not explain nor excuse the length of delinquency in filing with the Commission. Additionally, in his response to DOC's current motion, Sauer admits during this time he "had to go back and have the FMLA paperwork redone FOUR different times . . ." [emphasis in the original], revealing his ability to engage in similar activity as what would be required here during this time frame.

Given all the foregoing, it is concluded that the appeal grossly exceeded the statutory deadline in being filed with WERC and that there is no basis for an extension due to equity. Therefore, the appeal was not timely filed and is dismissed pursuant to the requirement of Wis. Stat. § 230.445(c)1.

Issued at the City of Madison, Wisconsin, this 9th day of December 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman