

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BRIAN MARKEE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0115

Case Type: PA

DECISION NO. 39474

Appearances:

Paul Schinner, Attorney, Cross Law Firm, S.C., 845 North 11th Street, Milwaukee, Wisconsin, appearing on behalf of Brian Markee.

Nicole M. Rute, Attorney, Wisconsin 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 Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On June 20, 2022, Brian Markee filed an appeal with the Wisconsin Employment Relations Commission asserting he has been suspended for one day without just cause by the State of Wisconsin Department of Health Services (DHS). On June 23, 2022, DHS filed a motion to dismiss the appeal as untimely filed. Markee responded to the motion on July 8, 2022. DHS did not file a response, and the matter became ripe for Commission consideration on July 14, 2022.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 25th day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Brian Markee filed a Step 2 grievance with the Department of Administration, Division of Personnel Management (DPM) on February 20, 2022. On March 3, 2022, via email, Markee was provided his Step 2 Employer Grievance Decision, as well as step-by-step instructions for filing an appeal with the WERC within 14 calendar days. Markee filed his appeal with the Commission on June 20, 2022.

Markee asserts his untimely filing should be excused because he attempted to file his appeal timely on March 16, 2022. That appeal was not received because of a typographical error in the email address (werc@werc.state.we.us instead of werc@werc.state.wi.us).¹ On April 25, 2022, Markee attempted to verify receipt of his appeal with the Commission via email, however, he did not include grievance information or attach his appeal. Therefore, the Commission simply acknowledged receipt of his April 25 email; it did not acknowledge receipt of his appeal. On June 20, 2022, Markee forwarded a copy of his appeal to the correct WERC email address.

The Commission has previously found an appeal had not been received where an appellant sent the appeal to an incorrect email based on a typographical error. *See Ebel v. DOC*, Dec. No. 37992 (WERC, 9/19). Additionally, in *Moore v. DHS*, the Commission held that an appellant has a responsibility to “take steps to successfully, timely file and, if needed, to verify ... receipt.” Dec. No. 38004 (WERC, 10/19) at 3 n.1. Given the typographical error in Markee’s March 16 email, and his failure to verify that his appeal was received, the Commission concludes that the appeal was never received.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Markee’s failure to meet the statutory filing requirements contained in Wis. Stat. § 230.445(3). His appeal to the Commission was untimely filed on June 20, 2022. Therefore, the appeal has been dismissed.

Issued at the City of Madison, Wisconsin, this 25th day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ Markee claims he was provided the wrong email address to contact the Commission, however, there is no evidence to support his claim. Moreover, in its Step 2 Employer Grievance Decision, DHS clearly advised Markee of the correct email address: werc@werc.state.wi.us.