

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARY FREITAG, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0122

Case Type: PA

DECISION NO. 39495

Appearances:

Sean Heiser, 1616 East Road 2, Edgerton, Wisconsin, appearing on behalf of Mary Freitag.

David G. Makovec, 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 DENYING MOTION TO DISMISS

On August 4, 2022, Mary Freitag filed an appeal with the Wisconsin Employment Relations Commission (WERC) asserting that she had been suspended for three days without just cause.

On August 26, 2022, DHS filed a motion to dismiss the appeal, arguing that the WERC did not have jurisdiction over the appeal because it was untimely. Freitag filed argument in opposition to the motion on September 7, 2022.

Having considered the matter, the Commission is satisfied that it has jurisdiction to hear the appeal under Wis. Stat. § 230.45(1)(c).

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is denied.

Issued at the City of Madison, Wisconsin, this 19th day of September, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER DENYING 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.

The statute focuses on whether the employee received notice of the decision. The 14-day deadline is counted from the date on which the employee is made aware of the decision.

Here, DPM emailed the decision, with appeal instructions, to the incorrect Mary Freitag, another employee with the same name, on July 20, 2022. The correct Mary Freitag did not receive the email until the next day, July 21, when the mistake was recognized. Since Freitag did not become aware of the decision until July 21, that is the date from which the 14-day deadline should be counted. To hold otherwise would be to penalize Freitag for DPM's error. Therefore, the deadline for filing an appeal was August 4, not August 3. Since Freitag's representative, Sean Heiser, filed the appeal on August 4, the appeal is timely.

Given the foregoing, the Commission concludes the motion to dismiss must be denied due to DPM's failure to properly notify the correct Mary Freitag.

Issued at the City of Madison, Wisconsin, this 19th day of September, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman