

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SADIE ALDINGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0152

Case Type: PA

DECISION NO. 40392

Appearances:

Blake Klinge, 7913 S. Scepter Drive #1, Franklin, Wisconsin, appearing on behalf of Sadie Aldinger.

Nicole M. Rute, Attorney, and Kennedy C. Cutts, Law Student Legal Intern, 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 May 17, 2024, Sadie Aldinger filed an appeal with the Wisconsin Employment Relations Commission asserting she has been suspended for one day without just cause by the State of Wisconsin Department of Health Services (DHS). On June 3, 2024, DHS filed a motion to dismiss the appeal as untimely filed. Aldinger filed a reply to the motion on June 4, 2024.

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 23rd day of July, 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Sadie Aldinger (Aldinger) received her Step 1 grievance decision via email on April 11, 2024. The decision indicates the “Date Returned” date as 04/11/2024. At the bottom of the Step 1 decision dated April 11, 2024, instructions for an appeal were outlined. “A timely appeal of a Step 1 decision must be submitted to DPM...within 14 days of the date provided in the ‘Date Returned’ box on the Step 1 decision.” Aldinger’s deadline to file a timely appeal to DPM was April 25, 2024. Aldinger filed her appeal with DPM on April 26, 2024.

Aldinger admits that her appeal was late but asserts that the State effectively waived the deadline when it accepted her late submission and subsequently responded to it in an official capacity with its Step 2 grievance decision. Aldinger fails to cite any statute or law to support this contention.

Under Wis. Stats. §§ 230.445(2) and 230.445(3)(b)1., an employee may not file an appeal later than 14 days after the date of the appointing authority’s (Step 1) decision. If an employee does not file a complaint or appeal by the deadline, they waive their right to appeal the decision. *See* Wis. Stat. § 230.445(2). “[T]he Commission is obligated to apply the restrictions that are imposed upon it by the Wisconsin Statutes. The Commission may not consider the merits of an appeal merely because the Commission believes the underlying issue is particularly important, or because the failure to timely file the appeal was unintentional or caused by confusion.” *See Biggar v. DOC*, Dec. No. 31388 (WERC, 7/05).

Here, Aldinger’s arguments are not a persuasive basis for denying the motion to dismiss. There is no good cause exception in the statutes, and the equities do not favor waiving the 14-day time limit. The Department gave Aldinger clear instructions on how and when to file an appeal to her Step 1 decision. There was no effort, intentional or otherwise, to mislead her. The late filing was attributable to Aldinger’s lack of diligence.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Aldinger’s failure to meet the statutory filing requirements contained in Wis. Stats. §§ 230.445(2) and 230.445(3)(b)1. Her appeal to the Commission was untimely filed on April 26, 2024. Therefore, the appeal has been dismissed.

Issued at the City of Madison, Wisconsin, this 23rd day of July, 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman