

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LISA BLACK, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0151

Case Type: PA

DECISION NO. 40395

Appearances:

Lisa Black, 2921 North 39th Street, Milwaukee, Wisconsin, appearing on her own behalf.

David Makovec, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Health Services.

ORDER DENYING MOTION TO DISMISS

On May 15, 2024, Lisa Black filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been suspended for five days without just cause by the State of Wisconsin Department of Health Services (DHS). On May 30, 2024, DHS filed a motion to dismiss asserting that Black's Step 1 grievance was not timely filed. At the request of the Commission, both parties supplemented the evidence upon which the motion is to be decided and the record was closed July 15, 2024.

Having considered the matter, the Commission makes and issues the following

ORDER

The motion to dismiss is denied.

Issued at Madison, Wisconsin, this 24th day of July 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING

ORDER DENYING MOTION TO DISMISS

Wisconsin Stat. § 230.445(3) states in pertinent part:

(a)1. To commence the grievance process for an adverse employment action, an employee shall file a complaint with the employee's appointing authority challenging the adverse employment decision against the employee 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. . . .

(c)1. ... If a procedural requirement was not met by the employee ... the commission shall dismiss the appeal.

Black was suspended April 9, 2024. That same day, she filed a grievance by email but sent it to DOA DPM Region 4 Human Resources DOADPMRegion4HumanResources@wisconsin.gov instead of the email address specified in the suspension letter. The DOA employees who monitor that email address forwarded the email to a DHS email address on April 9. Thereafter, DHS employees forwarded the email several times to other incorrect DHS email addresses as they were unsure where to forward the grievance. In this regard, in response to an inquiry from a Commission examiner, DHS advised:

The team who monitors DOA DPM Region 4 Human Resources mailbox, forwarded Ms. Black's grievance request on the date of receipt to DHS BHRERBP DHSBHRERBP@dhs.wisconsin.gov which is used by the E&I Team for faxes related to medical leave requests. The ER mailbox for general ER issues is this email-dhsemployeerelations@dhs.wisconsin.gov. The teams who monitor both mailboxes (the teams are different) have been notified of this information. The email went through a number of forwards but not to the ER Specialists who handle grievances until it was eventually forwarded to the grievance mailbox on April 24th.

On April 23, 2024, the last day a grievance could be timely filed, Black sent a follow up email (again to the wrong address) seeking acknowledgment that her grievance had been received. On April 24, 2024, as noted above, her original email finally made its way to a DHS ER Specialist who handles grievances.

DHS correctly argues that Black received the accurate information she needed to properly file a grievance and that it was her responsibility to act on that information. It is also true that employee failure to timely file typically leads to Commission dismissal of the grievance. However, in *Roen v DOC*, Dec. No. 37431 (WERC 3/18), the Commission held:

Where, as here, a grievance was timely sent but to the wrong State employer-side email address, there are factual circumstances where the Commission would conclude a grievance was timely. As a general matter, when an employee is unrepresented, the best practice would be for DPM to forward a grievance on to

DOC. At a minimum, DPM should advise the employee that the grievance had been sent to the wrong address. From the record as it stands, neither of these things happened, but there may have been factual circumstances that justify these failures. The matter will proceed to hearing to allow for the presentation of any such evidence.

In the instant matter, DHS employees had several opportunities to timely advise Black that she had used the wrong address but that did not occur. However, in the words of *Roen*, “there may have been factual circumstances” that justified this failure. Therefore, a hearing will be held. Given the 120-day time limit for completion of this matter, the hearing will encompass both matters related to the motion (should DHS choose to pursue same) and to the merits of the suspension.

Issued at the City of Madison, Wisconsin, this 24th day of July 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman