

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH KRAUS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0659

Case Type: PA

DECISION NO. 40413

Appearances

Steven E. Parenteau, Columbia Correctional Institution, 2925 Columbia Drive, Portage, Wisconsin, appearing on behalf of Joseph Kraus.

David 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 Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On July 11, 2024, Joseph Kraus filed an appeal with the Wisconsin Employment Relations Commission asserting he has been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On July 26, 2024, DOC filed a motion to dismiss the appeal as untimely filed. On July 29, 2024, DOC filed a supplement affidavit in support of its motion. Kraus filed a reply to the motion on August 5, 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 24th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS

Joseph Kraus (Kraus) received his Step 1 grievance decision via email on June 4, 2024. The decision indicates the “Date Returned” date as 6/4/2024. At the bottom of the Step 1 decision dated June 4, 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.” Kraus’ deadline to file a timely appeal to DPM was June 18, 2024. Kraus filed his appeal with DPM on June 20, 2024.

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

Under Wis. Stat. §§ 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, Kraus’ 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 Kraus clear instructions on how and when to file an appeal to his Step 1 decision. There was no effort, intentional or otherwise, to mislead him. The late filing was attributable to Kraus’ lack of diligence.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Kraus’ failure to meet the statutory filing requirements contained in Wis. Stat. §§ 230.445(2) and 230.445(3)(b)1. His appeal was untimely filed on June 20, 2024. Therefore, the appeal has been dismissed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman