

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN KOONTZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0681

Case Type: PA

DECISION NO. 40694

Appearances:

Thomas Nelson, 200 S. Madison Stree, Waupun, Wisconsin, appearing on behalf of John Koontz.

Nicole Porter, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER DISMISSING APPEAL

On October 3, 2024, John Koontz filed an appeal with the Wisconsin Employment Relations Commission regarding his suspension by the State of Wisconsin Department of Corrections (DOC). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

On October 9, 2024, the DOC made a motion to dismiss the appeal pursuant to Wis. Stat. §§ 230.445(2) and 230.445(3)(a)1. Koontz did not file a response.

Having considered the matter, the Commission is satisfied that the appeal should be dismissed.

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is granted and the appeal is dismissed.

Issued at Madison, Wisconsin, this 7th day of November 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION
AND ORDER DISMISSING APPEAL

An employee must first file a grievance with their appointing authority no later than 14 days after the employee becomes aware of – or should have become aware of – the decision on the matter grieved. See Wis. Stat. § 230.445(3)(a)(1.) and Wis. Admin. Code § ER 46.06 (2) (a). The employee may then file a second step (or a Step 2 Grievance) with the Administrator of the Division of Personnel Management no later than 14 days after the date of the appointing authority’s decision. See Wis. Stat. § 230.445(3)(b)(1.) and Wis. Admin. Code § ER 46.06 (2)(b)(1.). If this too proves unsuccessful, the employee may file with the WERC within 14 days after receipt of the second step decision. See Wis. Stat. § 230.445(3)(c)(1.) and Wis. Admin. Code § ER 46.07 (2). The appellant bears the burden of establishing that her appeal was timely filed. See *Kline v. UW-OSER*, Dec. No. 30818 (WERC, 3/04).

Koontz was notified of his suspension on July 24, 2024. The email contained step-by-step instructions for filing an appeal with WERC within 14 days, or by August 7, 2024. On August 7, 2024, Koontz’s representative Thomas Nelson emailed DOCBHRGrievances@wisconsin.gov, attempting to commence the grievance for Koontz. On August 8, 2024, DOC employee Kelli Brown informed Nelson that he could not file an appeal on Koontz’s behalf, per Wisconsin Human Resources Handbook Chapter 430.100. That same day, Nelson told Koontz that he (Koontz) needed to initiate the appeal. However, Koontz did not file an appeal until August 11, 2024.

Koontz did not file a response to the State’s motion to dismiss. However, it does not seem that the equities favor a waiver of the time limits. Koontz was provided with clear instructions on how to file an appeal, and there is no evidence of any intent by the State to mislead him. Koontz was promptly notified of the issue with the August 7 filing, yet still did not file his appeal until three additional days had passed.

Koontz failed to file an appeal with the WERC within the deadline. Therefore, this appeal is untimely filed.

Given the foregoing, the motion to dismiss is granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 7th day of November 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman