

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH RUDDY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0165

Case Type: PA

DECISION NO. 40718

Appearances

Matt Davis, Winnebago Mental Health Institute, 4100 Treffert Drive, Oshkosh, Wisconsin, appearing on behalf of Joseph Ruddy.

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 Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On October 23, 2024, Joseph Ruddy (Ruddy) filed an appeal with the Wisconsin Employment Relations Commission asserting he has been discharged without just cause by the State of Wisconsin Department of Health Services (DHS). On November 14, 2024, DHS filed a motion to dismiss the appeal as untimely filed. Ruddy did not file a reply to the motion by the given deadline of December 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 16th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

Joseph Ruddy (Ruddy) was discharged from employment via telephone on September 9, 2024, by HR Director Susan Butkiewicz. Ms. Butkiewicz read the termination letter in its entirety, as well as the instructions on how to file an appeal, on September 9, 2024, to Ruddy. A paper copy of the letter was also sent via certified mail on that same day. Ruddy was told twice that grievances must be submitted to the DHS email mailbox at DOADPMRegion4Grievances@wisconsin.gov, no later than 14 calendar days after the employee becomes aware of, or should have become aware of, the decision that is the subject of the complaint. Ruddy's deadline to file a timely appeal to commence his grievance was September 23, 2024. Ruddy filed his appeal on October 1, 2024.

Under Wis. Stat. §§ 230.445(2) and 230.445(3)(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, 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. 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).

There is no good cause exception in the statutes, and the equities do not favor waiving the 14-day time limit. The Department gave Ruddy clear instructions on how and when to file an appeal. There was no effort, intentional or otherwise, to mislead him. The late filing was attributable to Ruddy's lack of diligence.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Ruddy's failure to meet the statutory filing requirements contained in Wis. Stat. § 230.445(2) and 230.445(3)(a)1. His appeal to commence the grievance process was untimely filed on October 1, 2024. Therefore, the appeal has been dismissed.

Issued at the City of Madison, Wisconsin, this 16th day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman