

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAY KIDDER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0699

Case Type: PA

DECISION NO. 40727

Appearances

Jay Kidder, 2321 N. 4th Street, Sheboygan, Wisconsin, appearing on his own behalf.

David G. 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 December 2, 2024, Jay Kidder 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 December 18, 2024, DOC filed a motion to dismiss the appeal as untimely filed. Kidder filed a response to the motion on December 19, 2024. Kidder filed an additional response to the motion on December 23 and 30, 2024, and on January 8, 2025. The record was closed on January 8, 2025.

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**

Jay Kidder (Kidder) received his Step 2 grievance decision via email on November 15, 2024. The decision indicates the “Date Returned” date as 11/15/2024. At the bottom of the Step 2 decision dated November 15, 2024, instructions for an appeal were outlined. “A timely appeal of a Step 2 decision must be filed with the Wisconsin Employment Relations Commission no later than 14 days after receiving DPM’s decision.” Directions on How to Appeal the DPM Step 2 Response to the Wisconsin Employment Relations Commission were also included with the Step 2 Response. “An appeal must be filed with the WERC by close of business (4:30 p.m. CST) on the 14th calendar day, or it will be deemed untimely.” Additionally, the directions state that the appeal may be emailed to werc@werc.state.wi.us. Kidder’s deadline to file a timely appeal to the WERC was November 29, 2024, at 4:30 p.m. CST. Kidder’s appeal was received by the Commission on December 2, 2024.

Under Wis. Stats. §§ 230.445(2) and 230.445(3)(c)1., an employee may not file an appeal with the commission later than 14 days after receiving the administrator’s (DPM’s Step 2) 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).

Kidder claims he filed his appeal timely on November 29, 2024. However, the record established that he emailed his appeal at 11:58 p.m. CST on November 29, 2024, to the wrong email address: DOADPMGrievance@wisconsin.gov. The next morning, DPM responded to Kidder, informing him that the WERC filing information was included with his Step 2 response. After receiving this response from DPM, Kidder filed his appeal with the WERC on December 2, 2024, at 10:25 a.m. CST.

Here, there is no good cause exception in the statutes, and the equities do not favor waiving the 14-day time limit. The Department gave Kidder clear instructions on how and when to file an appeal to his Step 2 decision. There was no effort, intentional or otherwise, to mislead him. The late filing was attributable to Kidder’s lack of diligence.

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

¹ If Kidder had emailed his appeal to the Commission on November 29 at 11:58pm instead of to DPM, his appeal would still be untimely because it would have been received after 4:30pm. *See Payne v. DOC*, Dec. No. 37799 (WERC, 2/19).

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman