

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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JOEL KAMINSKIS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION, Respondent.

Case ID: 446.0044

Case Type: PA

DECISION NO. 40918

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**Appearances:**

Thomas Sucevic, Attorney, MacGillis Law Group, LLC, 12700 W. Bluemound Road, Suite 200, Elm Grove, Wisconsin, appearing on behalf of Joel Kaminskis.

William Ramsey, Deputy Chief Legal Counsel, 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 Transportation.

**DECISION AND ORDER GRANTING MOTION TO DISMISS**

On May 30, 2025, Joel Kaminskis filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Transportation (DOT). On June 13, 2025, DOT filed a motion to dismiss the appeal as untimely filed. On June 27, 2025, Kaminskis filed a response opposing the motion and the matter became ripe for Commission consideration.

Having considered the matter, the Commission concludes the motion to dismiss should be granted.

NOW, THEREFORE, it is:

**ORDERED**

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

Issued at the City of Madison, Wisconsin, this 30<sup>th</sup> day of July 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Anfin J. Wise, Hearing Examiner

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

Joel Kaminskis (Kaminskis) received his Step 2 grievance decision via email from the Department of Personnel Management (DPM) on May 15, 2025. The decision indicates the “Date Returned” date as 5/15/2025. In the body of that email, a DPM representative advised Kaminskis that if he disagreed with the Employer’s decision, he had the right to file an appeal with WERC. At the bottom of the “Employer Grievance Decision” which was attached to the May 15<sup>th</sup> email, were instructions for filing an appeal with WERC. Those instructions said that “[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.” DPM also attached instructions for filing an appeal with the WERC to the email. The attached instructions – which were entitled “How to Appeal the DPM Step 2 Response to the Wisconsin Employment Relations Commission (WERC)” – stated that the appeal “must be made in writing and filed with and received by the WERC within 14 calendar days from receipt of the DPM’s Step 2 response.” Kaminskis’ deadline to file a timely appeal to the WERC was May 29, 2025. Kaminskis’ appeal was received by the Commission on May 30, 2025.

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. Stats. § 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).

Kaminskis claims that “he did not interact with or receive” the Step 2 decision email until the following day because he did not check his email. However, his failure to check his email does not extend the deadline. Additionally, he still had 13 days to file a timely appeal. Kaminskis also argues that his attorney was not emailed a copy of the Step 2 decision. While that may be true, it was Kaminskis’ responsibility to notify his attorney. Finally, Kaminskis contends that the Step 2 decision was not issued within the DPM 30-day deadline. However, this does not waive his deadline to file the appeal within 14 days of receiving the decision.

Additionally, while referring to process of service, Wis. Stat. § 801.14(2) states “service by electronic mail is complete upon transmission, except if the sender receives notification or indication that the message was not delivered. Attached as Ex. R-6 to the State’s June 13, 2025, Motion to Dismiss is a Microsoft Outlook Exchange receipt that states delivery to the recipient – Kaminskis – is complete.

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 Kaminskis 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 Kaminskis’ lack of diligence.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Kaminskis' 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 May 30, 2025. Therefore, the appeal has been dismissed.

Issued at the City of Madison, Wisconsin, this 30<sup>th</sup> day of July 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Anfin J. Wise, Hearing Examiner