

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARTHA BREEN-SMITH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0787

Case Type: PA

DECISION NO. 40931

Appearances

Wayne Pankratz, 2731 3rd St. South, Wisconsin Rapids, Wisconsin, appearing on behalf of Martha Breen-Smith.

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 1, 2025, Martha Breen-Smith filed an appeal with the Wisconsin Employment Relations Commission asserting that she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC). On July 9, 2025, the DOC filed a motion to dismiss the appeal because grievance procedural requirements had not been met. On July 22, 2025, the appellant filed a reply to the motion to dismiss. On July 11, 2025, pursuant to Wis. Stat. § 227.46(3)(a), Examiner Lisiecki was given final authority to issue the Commission's decision.

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 the City of Madison, Wisconsin, this 21st day of August 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

The grievance process for demotion, suspension, discharge, layoff, or reduction in base pay found in Wis. Stat. § 230.445 states, in pertinent part:

“(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 against the employee 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.”

Failure to observe a statutory time limit deprives the Commission of competence to proceed. *See Stern v. WERC*, 2006 WI App 193 ¶26, 296 Wis.2d 306, 326, 722 N.W.2d 594. Per Wis. Stat. § 230.445(2), if an employee fails to follow the grievance procedure, they waive their right to appeal the adverse employment decision. The appellant bears the burden of establishing that their appeal was timely filed. *See UW v. OSER (Klein)*, Dec. No. 30818 (WERC, 4/2004).

Martha Breen-Smith was discharged on March 24, 2025. She timely filed her Step 1 and Step 2 appeals. Her step 2 Grievance was denied on May 22, 2025. The email notified her that her appeal to the WERC “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. 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.” Therefore, Breen-Smith should have filed her appeal with the WERC by June 5, 2025. However, she did not file her appeal until July 1, 2025, nearly a month after the deadline had passed.

Breen-Smith argues that the denial of her Step 2 Grievance was only sent to her personal email, rather than to the email of her representative, Wayne Pankratz. However, the denial was sent to the email address that filed the Step 2 Grievance (“surfaces@live.com”), which was not clearly identifiable as either Breen-Smith’s or Pankratz’s. Breen-Smith received the Step 2 Grievance denial and should have notified her representative to allow them to timely file the appeal.

Breen-Smith argues that she was unable to file her appeal because she was experiencing computer problems, caring for her sick spouse, and was sick herself. However, there is no good faith exception to the filing deadlines in the statutes.

Breen-Smith failed to meet the statutory filing requirements contained in Wis. Stat. § 230.445. Given the foregoing, the motion to dismiss is granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 21st day of August 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Hearing Examiner