

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NICHOLAS BAZYLEWICZ
vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0885
Case Type: PA

DECISION NO. 41337

Appearances:

Nicholas Bazylewicz, 530 Evans Drive Apt C, Fond du Lac, 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 January 28, 2026, Nicholas Bazylewicz filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for one day without just cause by the State of Wisconsin Department of Corrections (DOC). On February 11, 2026, DOC filed a motion to dismiss the appeal as untimely filed. On February 12, 2026, DOC filed an amended motion to dismiss the appeal as untimely filed. Bazylewicz did not file a response by the given deadline of February 27, 2026.

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 Madison, Wisconsin, this 23rd day of March 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis
Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Nicholas Bazylewicz (Bazylewicz) received his Step 2 grievance decision via email on January 13, 2026. The decision indicates the “Date Returned” date as 1/13/2026. At the bottom of the Step 2 decision dated January 13, 2026, 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 (WERC) were also included with the Step 2 Response. “An employee’s appeal to the Wisconsin Employment Relations Commission (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.”

The last day for a timely appeal to the Commission within the 14-day deadline would have been January 27, 2026. Bazylewicz’s appeal to the Commission was received on January 28, 2026, one day late. That is outside of the 14-day mandatory requirement set forth in Wis. Stat. § 230.445(3)(c)1.

Under Wis. Stat. §§ 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).

Furthermore, the Commission has consistently held that appeals received after the Commission’s office is closed are not considered filed until the Commission’s offices open on the next business day and are therefore not timely filed and must be dismissed pursuant to the requirements of Wis. Stat. § 230.445(c)1. *See LaMar v. DOA*, Dec. No. 41291 (WERC, 2/26); *Marshall-Watson v. DOC*, Dec. No. 38997 (WERC, 9/21); *Mallmann v. DOC*, Dec. No. 37932 (WERC, 4/19); *Payne v. DOC*, Dec. No. 37799 (WERC, 1/19).

Here, Bazylewicz emailed his appeal to the Commission at 7:53 p.m. on January 27, 2026, which is after the close of business at 4:30 p.m. It was therefore received and not considered filed until the next business day.

In this case, there is no good cause exception in the statutes, and the equities do not favor waiving the 14-day time limit. The Department gave Bazylewicz 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 Bazylewicz’s lack of diligence.

Given the foregoing, the Commission concludes the motion to dismiss must be granted due to Bazylewicz’s failure to meet the statutory filing requirements contained in Wis. Stat. §§

230.445(2) and 230.445(3)(c)1. His appeal was untimely filed to the Commission on January 28, 2026. Therefore, the appeal has been dismissed.

Issued at Madison, Wisconsin, this 23rd day of March 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman