

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JA'NET BRANTLEY, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0944

Case Type: PA

DECISION NO. 41524

Appearances:

Ja'Net Brantley, 6204 22nd Ave., Apt. 222, Kenosha, Wisconsin, appearing on her own behalf.

David Makovec, Attorney, Department of Administration, 101 E. Wilson St., 10th Floor
PO Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On June 18, 2026, Ja'Net Brantley filed an appeal to the Wisconsin Employment Relations Commission asserting she had been discharged without just cause by the State of Wisconsin Department of Corrections (DOC).

On July 13, 2026, the DOC filed a motion to dismiss the appeal as untimely filed. Brantley filed a response on July 15, 2026.

Having considered the matter, the Commission is satisfied that 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 Madison, Wisconsin, this 3rd day of August 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

An employee must first file a grievance with their appointing authority no later than 14 days after the employee becomes aware of – or should have become aware of – the decision on the matter grieved. *See* Wis. Stat. § 230.445(3)(a)(1.) and Wis. Admin. Code § ER 46.06 (2) (a). The employee may then file a second step (or a Step 2 Grievance) with the Administrator of the Division of Personnel Management no later than 14 days after the date of the appointing authority’s decision. *See* Wis. Stat. § 230.445(3)(b)(1.) and Wis. Admin. Code § ER 46.06 (2)(b)(1.). If this too proves unsuccessful, the employee may file with the WERC within 14 days after receipt of the second step decision. *See* Wis. Stat. § 230.445(3)(c)(1.) and Wis. Admin. Code § ER 46.07 (2). The appellant bears the burden of establishing that her appeal was timely filed. *See Kline v. UWOSER*, Dec. No. 30818 (WERC, 3/04).

The material facts relevant to the timeliness issue are undisputed. The Department discharged Brantley on March 6, 2026. She timely filed a Step 1 grievance, and the Department issued its Step 1 decision on April 14, 2026. The Department sent the decision to the email address Brantley identified for communications. The decision informed her that she had 14 calendar days to file a Step 2 grievance with the Division of Personnel Management and provided instructions for doing so. Brantley’s deadline to file a Step 2 grievance was April 28, 2026. *See* Wis. Admin. Code § ER 46.06(2)(b). She filed her Step 2 grievance on May 19, 2026. The parties do not dispute that the filing was untimely.

The sole issue before the Commission is whether equitable tolling excuses Brantley’s untimely Step 2 grievance. Brantley argues that it does because the Department issued its Step 1 decision sooner than she expected, sent the decision in a different email thread than prior communications, continued communicating with her through another email thread, did not notify her that the record had closed, and failed to accommodate her disability. Because this matter is before the Commission on a motion to dismiss, the Commission assumes Brantley’s factual allegations are true solely for purposes of deciding the motion.

Here, even accepting Brantley’s allegations as true, those allegations do not establish that the Department prevented her from timely filing her Step 2 grievance. The Department sent its Step 1 decision to the email address Brantley designated for communications. The decision accurately stated the 14-day filing deadline and explained how to file a Step 2 grievance. Brantley does not allege that the Department misstated the filing deadline, advised her that she could file a Step 2 grievance after the deadline, or represented that the deadline did not apply. Nor does she allege facts showing that her disability or the alleged failure to accommodate prevented her from timely filing her Step 2 grievance. Although Brantley alleges that the Department’s communications caused her to overlook the Step 1 decision until after the filing deadline had passed, those allegations, even if true, do not extend the filing deadline established by Wis. Admin. Code § ER 46.06(2)(b) or establish that the Department prevented her from timely filing a Step 2 grievance.

Because Brantley did not timely file her Step 2 grievance and equitable tolling does not apply, the Respondent's motion to dismiss is granted, and the appeal is dismissed.

Issued at Madison, Wisconsin, this 3rd day of August 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman