

After the third-step grievance meeting, the State issued its “State Employee Grievance Answer” on December 13, 2018, concluding IWD had just cause to support its termination of Hall’s employment. The State’s answer identifies the grievant and those present for the meeting and includes a Statement of Issue, Background, Discussion, Analysis, and Disposition of the Grievance. At the end, the answer provides notice of Hall’s appeal rights to PERB and states in part:

Appeal of this decision in accordance with IAC 11—61.2(5), requires:

An employee who has alleged a violation of Iowa Code §§ 8A.401 to 8A.458 or the rules adopted to implement Iowa Code §§ 8A.401 to 8A.458 may, within 30 calendar days after the date the director’s response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the public employment relations board... [D]ecisions by the public employment relations board constitute final agency action.

On December 31, 2018, another State employee, Shane Shook, filed the “State Employee Grievance Answer” as Inger Hall’s Iowa Code section 8A.415(2) State employee disciplinary action appeal in PERB’s electronic document management system (EDMS). On January 2, 2019, PERB’s clerk, in charge of pre-clearance efilings, rejected the document with the reason,

Please refile using our form on the PERB website. You will use the form titled “State Employee Grievance & Disciplinary Action Appeal”, the document you filed will then be filed as an “Attachment”.

Thank you!

On February 22, 2019, Shook refiled Hall’s appeal using PERB’s “State Employee Grievance & Disciplinary Action Appeal.” The Clerk accepted the appeal and it was time-stamped the filing date of February 22, 2019.

Subsequently, the State filed its motion to dismiss Hall's appeal alleging it was filed untimely.

Discussion.

For disciplinary action cases such as this, the appeal process to PERB is set out by statute and administrative rules. Iowa Code section 8A.415(2) governs State employee disciplinary action appeals, and provides in relevant part,

8A.415 Grievances and discipline resolution procedures.

....

2. Discipline resolution.

a. A merit system employee ... who is discharged, suspended, demoted or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the [DAS] director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

b. If not satisfied, the employee may, *within thirty calendar days* following the director's response, file an appeal with the public employment relations board. . . .

Iowa Code § 8A.415(2) (emphasis added).

Chapter 11 of PERB's administrative rules addresses State employee appeals of grievance decisions and disciplinary actions. See Iowa Admin. ch. 621–11. PERB's administrative rule 621–11.1 incorporates the 30-day statutory deadline for both grievance and disciplinary action appeals:

621–11.1(8A,20) Notice of appeal rights. When the director of the Iowa department of administrative services (hereinafter referred to as the director) issues a response to an employee pursuant to Iowa Code section 8A.415 and the response does not grant the relief sought by the employee, the response shall include a notice to the affected employee that the employee may appeal the response by filing an appeal with the public employment relations board within 30 days of the date of the director's response.

Id. r. 621—11.1.

Iowa Code section 8A.415(2) State employee disciplinary action appeals, such as Hall's, must be filed within thirty days following the "director's response" for PERB to have jurisdiction. In this case, Hall's appeal deadline was January 12, 2019. Hall filed her appeal in PERB's EDMS on December 31, 2018, but PERB's clerk rejected the document as an improper appeal form. It was not until well over a month later that Hall refiled her appeal using PERB's form. The clerk accepted the form and the appeal received a February 22, 2019, file-stamp. The question is should December 31, 2018, or February 22, 2019, be deemed the date Hall's appeal was filed for the purposes of section 8A.415(2).

Pursuant to an amendment to chapter 20, Iowa Code section 20.24, PERB implemented its electronic filing system with applicable administrative rules and mandatory filing required on January 1, 2015. PERB's EDMS is similar to the courts' systems and developed by the same company. Additionally, PERB's administrative rules were modeled after the court rules with tailoring to the more limited scope of PERB proceedings.

Several PERB rules are relevant to the time Hall filed her appeal. Subrule 16.4(3) states, "The electronic transmission of a document to the [EDMS] consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes filing of the document." *Id.* r. 621—16.4(3). Subrule 16.4(4) provides:

Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

Id. r. 621—16.4(4). Rule 16.6 addresses the date and time:

16.6(1) *Date of filing.* An electronic filing may be made any day of the week, including holidays and weekends, and any time of the day the [EDMS] is available.

16.6(2) *Time of filing.* A document is timely filed if it is filed before midnight on the date the filing is due.

Id. r. 621—16.6.

Although the rules do not address this process, an electronic submission to PERB's EDMS undergoes a review by a clerk before the submission is accepted as a filing. When the clerk accepts the filing, a notice of electronic filing and a file stamp are generated that are back-dated to the original date and time when the document was filed with EDMS. In this case, the original filing was not accepted to generate a notice and file stamp of December 31, 2018. Rather, the notice and file stamp were generated when the appeal was corrected and resubmitted on February 22, 2019.

The Supreme Court addressed a similar case and determined when a resubmitted electronic document may relate back to the original submission date. See *Jacobs v. Iowa Dep't of Transp.*, 887 N.W.2d 590 (Iowa 2016). In *Jacobs*, a law firm filed a petition for judicial review on the deadline day and the next day, the clerk returned the filing because of minor errors in the cover sheet. The Court rejected the position that timeliness of an electronic filing, thus jurisdiction, turned on discretionary acts of the clerk's office. *Id.* at 597 (noting it is not the clerk's duty or function to rule on the validity or legal effect of the document received).

The Court concluded that because the petition was returned for “minor errors” after the deadline and the filer promptly corrected the errors and resubmitted the document, the resubmission related back to the original timely filing. *Id.* at 597-99. The Court noted that EDMS rules were designed “to continue the court practices that governed paper filing, not to change them.” *Id.* at 599 (citing *Concerned Citizens of Southeast Polk Sch. Dist. v. City Dev. Bd.*, 872 N.W.2d 399, 401 (Iowa 2015)).

In this case, the clerk rejected Hall’s appeal because it was filed using the “State Employee Grievance Answer.” Although Hall was not required to use the PERB form for her appeal, the document she utilized did not substantially comply with the requirements set out in Rule 11.4:

621—11.4(8A,20) Content of appeal.

11.4(1) The appeal shall contain the following:

- a. Name, address, telephone number, and e-mail address of the appealing employee;
- b. Name of agency/department by which the appealing employee is/was employed;
- c. A brief statement of the reasons for the appealing employee’s dissatisfaction with the director’s response;
- d. A brief statement of the requested remedy;
- e. The name, address, telephone number, and e-mail address of the appealing employee’s representative, if any;
- f. Signature of the appealing employee or employee’s representative; and
- g. In the case of a disciplinary action appeal filed pursuant to Iowa Code section 8A.415(2), a statement of whether the employee requests a hearing open to the public.

11.4(2) Completion of the State Employee Grievance and Disciplinary Action Appeal Form shall constitute compliance with all the requirements in subrule 11.4(1).

Iowa Admin. r. 621—11.4.

The document filed by Hall did not contain the information listed in paragraphs a, c, e, f, and g. Significant is the amount of missing information, including Hall's signature. While the absence of the appellant's signature is not a minor error, the Supreme Court has considered the civil procedure rule requiring a signature on petitions as "merely directory." *See Jones v. Great River Medical Center*, 924 N.W.2d 535 (Iowa App. Ct. 2018) (Table) (citing *In re Estate of Dull*, 303 N.W.2d 402, 407 (Iowa 1981)). However, the filing relates back to the original submission if the electronic filer *promptly* signs the petition. *Id.* (emphasis added).

Even assuming, *arguendo*, the errors on Hall's original appeal are minor, Hall did not promptly resubmit a corrected document. Hall's appeal was resubmitted 51 days after the original document had been rejected. The failure to promptly correct the appeal does not warrant the resubmitted appeal to relate back to the original filing date in this case.

Therefore, Hall's appeal was filed with PERB on February 22, 2019, which was 71 days following the "director's response" issued on December 13, 2018. Her appeal was plainly not filed within the 30-day period prescribed by Iowa Code section 8A.415(2)(b) and administrative rules, DAS subrules 11–61.2(5) and (6) and PERB rule 621–11.1.

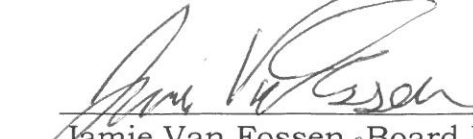
Accordingly, we enter the following:

ORDER

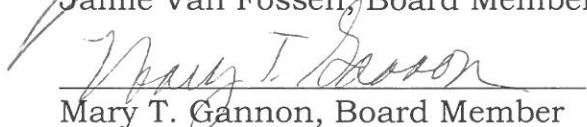
The State's motion is GRANTED and the State employee disciplinary action appeal of Inger Hall is hereby DISMISSED.

DATED at Des Moines, Iowa this 28th day of February, 2020.

PUBLIC EMPLOYMENT RELATIONS BOARD



Jamie Van Fossen, Board Member



Mary T. Gannon, Board Member

Original filed EDMS.