

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

STEVEN BOWMAN,)	
Appellant,)	
)	
and)	CASE NO. 102380
)	
STATE OF IOWA (DEPARTMENT OF)	
TRANSPORTATION),)	
Appellee.)	

DECISION AND ORDER

This case is before the Public Employment Relations Board (PERB or Board) on Appellant Steven Bowman’s petition for review of a ruling and order issued by an administrative law judge (ALJ) following oral arguments on the State of Iowa’s motion to dismiss Bowman’s Iowa Code section 8A.415(2) State employee disciplinary action appeal. The ALJ granted the State’s motion to dismiss due to untimeliness of Bowman’s grievance filing.

Bowman had hand-delivered his grievance appeal to the Department of Administrative Services (DAS) on August 16, 2019, purporting to seek review and removal of a November 2018 written reprimand issued to him and a one-day suspension he received on August 2, 2019. In her proposed decision, the ALJ concluded Bowman had failed to meet the seven-day filing deadline set out in Iowa Code section 8A.415(2)(a) and DAS subrule 61.2(6).

On Bowman’s appeal of the ALJ’s ruling, oral arguments were presented virtually to the Board on January 26, 2022. Attorneys Nathan

Reckman and Annie Myers appeared for the State, and Steven Bowman appeared pro se.

Pursuant to Iowa Code section 17A.15(3), on appeal from an ALJ's proposed ruling, we possess all powers that we would have possessed had we elected, pursuant to PERB rule 621–2.1(20), to preside at the oral arguments in the place of the ALJ. Pursuant to PERB rules 621–11.8(8A,20) and 621–9.5(17A,20), on this petition for review we have utilized the record as submitted to the ALJ.

Based upon our review of this record, as well as the parties' oral arguments, we adopt the ALJ's undisputed facts set out for her analysis of a motion to dismiss. Further, we concur with the ALJ's conclusion in her ruling that Appellant Bowman's Iowa Code section 8A.415(2) State employee disciplinary action appeal was untimely filed with DAS.

FINDINGS OF FACT

The ALJ's undisputed facts, as set forth in the proposed ruling and order, attached as "Appendix A," are fully supported by the record. We adopt the ALJ's undisputed facts as our own.

CONCLUSIONS OF LAW

We agree with the ALJ's analysis and conclusions following the undisputed facts, and as set out in Appendix A, and adopt them as our own.

Accordingly, we enter the following:

ORDER

Bowman's Iowa Code section 8A.415(2) State employee disciplinary action appeal is DISMISSED.

The cost of reporting and of the agency-requested transcript, in the amount of \$144.25, are assessed against the appellant, Steven Bowman, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9(20). A bill of costs will be issued to Steven Bowman in accordance with PERB subrule 11.9(3).

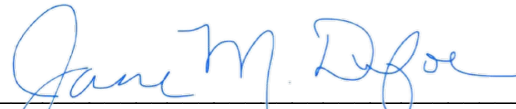
This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 28th day of January, 2022.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Board Chair



Jane M. Dufoe, Board Member

Original filed EDMS.

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STEVEN BOWMAN, Appellant,	}	
and	}	CASE NO. 102380
STATE OF IOWA (DEPARTMENT OF TRANSPORTATION), Appellee.	}	

RULING AND ORDER

On October 12, 2019, Appellant Steven Bowman filed a state employee disciplinary action appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code subsection 8A.415(2) and PERB subrule 621—11.2(2). Bowman received a one-day suspension on August 2, 2019. He appealed the suspension directly to the Iowa Department of Administrative Services (DAS) on August 16, 2019. DAS denied his appeal on September 13, 2019, on the basis of untimely filing to DAS and declined to address the merits of Bowman’s appeal.

On October 31, 2019, the State filed a motion to dismiss Bowman’s appeal to PERB contending that Bowman failed to timely appeal his suspension to DAS at the third-step of the grievance procedure. Bowman resists the motion. Oral arguments on the motion were held on September 18, 2020.

Undisputed Facts and Course of Proceedings

The facts relevant to the State’s motion are not in dispute. Bowman is employed by the Iowa Department of Transportation (DOT) as a policy analyst. He has been employed by the DOT for over 30 years. Since November 2018, Bowman has been the subject of three separate investigations into potential violations of

DOT policies and work rules. One of the investigations concluded without a finding of a violation, while the other two investigations resulted in disciplinary action. In November 2018, Bowman received a written reprimand. The record is devoid of any indication that Bowman appealed the written reprimand.

On August 2, 2019, Bowman was disciplined with a one-day suspension for not following instructions of supervisory authority when he nominated himself to multiple National Cooperative Highway Research Program (NCHRP) panels without first obtaining supervisory approval. Bowman received a copy of the discipline letter on August 2, 2019. The discipline letter recited the language of DAS rule 11—61.2(6), *Appeal of Disciplinary Action*, and informed Bowman he may grieve the disciplinary action in accordance with the provisions outlined in the cited rule. Bowman emailed the DOT director on August 8, 2019, to inquire what appeal forms the suspension notice was referencing. The DOT director replied the same day, and sent Bowman a link to the state employee grievance form to be utilized.

Bowman hand-delivered a completed grievance form to DAS on August 16, 2019, along with a copy of his August 2, 2019, suspension letter, and a copy of the August 8, 2019, email exchange with the DOT director. Bowman marked a box on the grievance form indicating it involves an appeal of disciplinary action. In describing the issue involved, Bowman indicated that he applied to and was subsequently asked to serve on multiple NCHRP panels. For the remedy requested section, Bowman stated he was seeking a “review and removal of both the November 2018 reprimand and the August 2, 2019 suspension.” At the bottom of the appeal form, Bowman further stated: “I am submitting the appeal directly to

the DAS Director in Des Moines because all levels of management within the chain of command (including HR) of IA DOT have previous involvement in current decisions.”

On August 21, 2019, DAS emailed Bowman to ask for clarification regarding the scope of his grievance. Bowman responded that he is grieving all three investigations that he had been subject to since November 2018 and the two disciplinary actions that resulted from those investigations, the November 2018 written reprimand and the August 2019 one-day suspension. DAS further informed Bowman that it appeared his grievance was untimely filed and asked for documentation specifically regarding the timeliness issue. Bowman submitted documentation but it is unknown what he submitted to DAS for consideration. DAS issued an answer to Bowman’s appeal on September 13, 2019, denying the grievance on the basis of untimely filing to DAS within the required seven days following the date of the one-day suspension.

On October 12, 2019, Bowman appealed DAS’s September 13, 2019, response to PERB. On the PERB appeal form, Bowman specifically indicated he was appealing DAS’s response pursuant to Iowa Code section 8A.415(2) concerning an appeal of disciplinary action. Bowman described three separate investigations that were conducted. He also included documentation pertaining to the written reprimand and the one-day suspension he received. Bowman indicated that DAS requested documentation but ultimately denied his appeal on the basis of untimeliness. For the requested remedy before PERB, Bowman indicated he is

asking for the “negative data” to be expunged from his file and to “investigate the events to eliminate further treatment of this nature.”

On October 31, 2019, the State filed a motion to dismiss Bowman’s appeal. The State argues the appeal is untimely because Bowman did not appeal the disciplinary action to DAS within seven calendar days following the date of the one-day suspension. As such, the State contends PERB lacks jurisdiction to adjudicate Bowman’s appeal because it was not timely appealed to DAS.

On November 8, 2019, Bowman filed a resistance to the State’s motion to dismiss contending that the appeal is “timely and appropriate.” Although Bowman submitted a written resistance and supporting documents, the information submitted does not address the timeliness of his appeal. Instead, his submissions question the DOT’s investigatory procedures, the legitimacy of DOT’s investigations into his conduct, and DAS’s independence as an appeal authority of DOT’s actions against him, none of which are pertinent to the timeliness issue.¹

By Order dated August 13, 2020, oral arguments on the State’s motion to dismiss were set to be heard on September 18, 2020. On September 17, 2020, Bowman filed an amended appeal form. While the content of the appeal remained the same in the amended form, Bowman marked that he is appealing DAS’s September 13, 2019, answer pursuant to Iowa Code subsection 8A.415(1) as a

¹ In addition to resisting the State’s motion, Bowman filed two additional motions that were previously ruled upon. On February 20, 2020, the undersigned denied Bowman’s motion to remove the assigned ALJ as the hearing officer. On August 10, 2020, the undersigned denied Bowman’s motion to reassign his appeal to the Polk County District Court.

grievance appeal, not a disciplinary action appeal as originally filed on October 12, 2019.

Applicable Law

Iowa Code section 8A.415 establishes the statutory framework for grievance and discipline appeals. For grievance appeals filed pursuant to 8A.415(1), the statute provides, in pertinent part:

8A.415 Grievances and discipline resolution procedures.

1. *Grievances.*

a. An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

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. ... Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. . . .

The "department" as referred to in Iowa Code chapter 8A is DAS and "director" is the DAS director or the director's designee. Iowa Code §§ 8A.101(2)–(3).

DAS rules implementing subsection 8A.415(1) further establish the grievance procedure steps to be utilized in appeals initiated pursuant to that subsection. The implementing DAS rules provide, in pertinent part:

Chapter 61 Grievances and Appeals

61.1(1) Grievance procedure.

a. Step 1. The grievant shall initiate the grievance by submitting it in writing to the immediate supervisor, or to a supervisor designated by the appointing authority, within 14

calendar days following the day the grievant first became aware of, or should have through the exercise of reasonable diligence become aware of, the grievance issue. The immediate supervisor shall, within 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules and give a decision in writing to the grievant with a copy to the director.

b. Step 2. If the grievant is not satisfied with the decision obtained at the first step, the grievant may, within 7 calendar days after the day the written decision at the first step is received or should have been received, file the grievance in writing with the appointing authority. The appointing authority shall, within 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules by affirming, modifying, or reversing the decision made at the first step, or otherwise grant appropriate relief. The decision shall be given to the grievant in writing with a copy to the director.

c. Step 3. If the grievant is not satisfied with the decision obtained at the second step, the grievant may, within 7 calendar days after the day the written decision at the second step was received, or should have been received, file the grievance in writing with the director. The director shall, within 30 calendar days after the day the grievance is received, attempt to resolve the grievance and send a decision in writing to the grievant with a copy to the appointing authority. The director may affirm, modify, or reverse the decision made at the second step or otherwise grant appropriate relief. If the relief sought by the grievant is not granted, the director's response shall inform the grievant of the appeal rights in subrule 61.2(5).

d. If the grievant is not satisfied with the decision obtained from the third step, the grievant may file an appeal in accordance with subrule 61.2(5).

...

61.2(5) *Appeal of grievance decisions.* An employee who has alleged a violation of Iowa Code sections 8A.401 to 8A.458 or the rules adopted to implement Iowa Code sections 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. ...

The statutory language of 8A.415(1) and the implementing DAS rules establish that grievances alleging a lack of substantial compliance with 8A,

subchapter IV, or rules implementing that subchapter, must be initiated at step one of the grievance procedure within 14 days of the action being grieved.

For discipline appeals filed pursuant to 8A.415(2), the statute provides, in pertinent part:

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 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. . . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. . . .

DAS rules implementing Iowa Code subsection 8A.415(2) further provide, in pertinent part:

61.2(6) *Appeal of disciplinary actions.* Any nontemporary employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may bypass steps one and two of the grievance procedure provided for in rule 11—61.1(8A) and may file an appeal in writing to the director for a review of the action within 7 calendar days after the effective date of the action. The appeal shall be on the forms prescribed by the director. The director shall affirm, modify or reverse the action and shall give a written decision to the employee within 30 calendar days after the receipt of the appeal. The time may be extended by mutual agreement of the parties. If not satisfied with the decision of the director, the employee may request an appeal hearing before the public employment relations board as provided in subrule 61.2(5).

The statutory language of 8A.415(2) and the implementing DAS rules establish that an employee appealing a disciplinary action may bypass the first two steps of the grievance procedure and appeal directly to DAS. If an employee chooses to bypass steps one and two of the grievance procedure, the employee is required to appeal the disciplinary action to DAS within seven calendar days of the action being grieved. PERB has recognized that the seven-day appeal period prescribed by 8A.415(2) and DAS rule 61.2(6) is mandatory and jurisdictional. *Rule and State of Iowa (Dep't of Human Servs.)*, 06-MA-03 at 2-3.

The Parties' Positions

The State's motion to dismiss is based on the 8A.415(2) language requiring an employee to file an appeal of disciplinary action to DAS within seven days from the date of the discipline. In this case, Bowman was disciplined on August 2, 2019. As such, the State argues, he had to submit an appeal to DAS within seven days of that date. However, Bowman did not initiate an appeal with DAS until August 16, which is 14 days after he received notice of the discipline. The State asserts Bowman chose to bypass the first two steps of the grievance procedure and is thus subject to the prescribed seven-day filing deadline when initiating an appeal directly to DAS at the third step of the grievance procedure. In addition to being untimely in his appeal of the August 2, 2019, one-day suspension, the State contends Bowman is undoubtedly untimely in terms of all other actions he grieves that date back to November 2018.

Bowman disagrees with the State's position and posits instead that he is allotted more time to initiate his appeal to DAS because he bypassed the first two

steps of the grievance procedure. Specifically, Bowman asserts he is entitled to 14 days to file his appeal at step one of the grievance procedure, plus 14 days for the immediate supervisor to answer, and an additional 7 days to file at step two, plus 7 days for the appointing authority to answer. Finally, after the appointing authority answers, Bowman contends he is entitled to 7 more days to file with DAS. Bowman argues it would not make sense for him to appeal disciplinary action to the immediate supervisor or the appointing authority because they conducted the investigation and made the decision to discipline him. Therefore, he appealed directly to DAS, but still contends he should be granted the combined appeal time granted under the first two steps of the grievance procedure. Bowman has not articulated why he is timely in appealing all other actions dating back to November 2018, but maintains that they are appropriately part of his appeal in this proceeding.

The State further contests Bowman's amendment of his appeal originally initiated as an appeal of disciplinary action under 8A.415(2). The State argues it has understood Bowman's appeal to be that of disciplinary action because he filed it with DAS in that manner. He described the content of his appeal as one of disciplinary action. The State issued an answer at third step of the grievance procedure based on its understanding that he was grieving disciplinary action directly to DAS. For those reasons, the State argues Bowman's attempt to amend his appeal now is inappropriate. Furthermore, in terms of seeking dismissal, the State contends it does not change the State's position because the appeal is still

untimely. No record exists that Bowman filed the appeal at step one or step two of the grievance procedure as he would be required to do for 8A.415(1) appeals.

Bowman describes his amended filing as merely a “correction” on the form, and argues it does not change his appeal. Bowman asserts the contents of his appeal and submissions to DAS have remained the same. Specifically, he contends he is still grieving all the investigations and disciplinary sanctions imposed against him that date back to November 2018. As such, Bowman argues, the State has been on notice as to the nature of his appeal since his original filing.

Analysis of Law

(1) Bowman’s Amended 8A.415(1) Grievance Appeal

Bowman’s attempt to amend his appeal from a discipline appeal under 8A.415(2) to a grievance appeal under 8A.415(1) is unavailing under the facts presented.

Upon review of Bowman’s submissions and arguments, it is clear Bowman did not allege a violation pursuant to 8A.415(1) prior to his appeal to PERB. Grievance appeals under 8A.415(1) allege a lack of “substantial compliance with [subchapter IV of chapter 8A] and the rules of the department [of administrative services].” To state a claim under 8A.415(1), Bowman is not required to state this exact phrasing or cite the precise statutory provision. However, he is required to put forth sufficient information to place the State on notice regarding the nature of his appeal. In this case, Bowman’s submissions to DAS did not identify or provide any notice that he was alleging a lack of substantial compliance with provisions of chapter 8A, subchapter IV, or DAS rules. Instead, he affirmatively

marked that the issue involves an appeal of disciplinary action, described the events underlying his disciplinary suspension, and requested as a remedy the removal of the disciplinary actions imposed against him. As such, the contents of Bowman's appeal only provided notice that he was appealing the imposition of disciplinary action.

Furthermore, even if Bowman had a viable claim under 8A.415(1), he failed to follow the proper grievance steps to preserve that claim. Iowa Code subsection 8A.415(1) and the implementing DAS rules establish that an employee must initiate an 8A.415(1) grievance appeal at step one of the grievance procedure. PERB has previously found that compliance with grievance procedures in 8A.415(1) appeals is mandatory and dismissal is proper if an employee fails to exhaust the applicable grievance procedure steps. *Sanders and State of Iowa (Eight Jud. Dist.—Dep't of Corr. Servs.)*, 2019 ALJ 102234 and *Kuhn and State of Iowa (Comm'n of Veterans Affairs)*, 04-MA-03 (dismissing an 8A.415(1) grievance appeal when the employee failed to first grieve the issue to DAS prior to appealing to PERB). Bowman did not appeal to step one or step two of the outlined grievance procedure. Instead, he proceeded directly to DAS at step three, a bypass option only available for appeals of disciplinary actions. As such, Bowman cannot establish that he followed the proper grievance steps for initiating a grievance under 8A.415(1) prior to filing his appeal to PERB.

For the reasons discussed, Bowman's attempt to amend his appeal to an 8A.415(1) grievance appeal is improper and consequently denied.

(2) Timeliness of Bowman's 8A.415(2) Discipline Appeal

In ruling on a motion to dismiss, the hearing officer accepts as true the allegations of the appeal and construes any doubts or ambiguities in a light most favorable to the non-moving party. *Callahan and State of Iowa (Dept. of Transp.)*, 04-MA-02 at 2; *Capps and State of Iowa (Dept. of Corr.)*, 03-MA-07/03-MA-09 at 6-7. In this case, it is undisputed that Bowman filed an appeal directly to DAS at third step of the grievance procedure more than seven days following the imposition of his one-day suspension. The sole issue to be determined is whether Bowman is entitled to more than seven days to file his appeal to DAS because he chose to bypass steps one and two of the grievance procedure.

Bowman's position that he is allotted more than seven days to file an appeal directly to DAS is without merit. Iowa Code subsection 8A.415(2) allows certain merit system employees to challenge disciplinary actions by filing an appeal directly with DAS within seven days following the effective date of the imposed discipline. The statutory language and the implementing rules unambiguously establish that if the appealing employee chooses to bypass steps one and two of the grievance procedure, the employee must submit the appeal to DAS within seven days of the action being grieved. Contrary to Bowman's position, the applicable deadlines outlined in 8A.415 do not provide an employee with additional time to appeal because an employee chose to bypass the first two steps of the grievance procedure. Had Bowman initiated his appeal at step one of the grievance procedure, which he intentionally declined to do, he would be subject to the appeal deadlines provided under those steps of the procedure. In

this instance, however, Bowman decided to file an appeal directly to DAS. As such, Bowman had to submit his appeal to DAS within seven days of August 2, 2019, when he received notice of the disciplinary action being imposed. Bowman did not meet this required deadline.

Under a plain reading of Iowa Code subsection 8A.415(2) and DAS subrule 61.2(6), Bowman was required to submit his direct appeal to DAS within seven days of the action being grieved. The undisputed facts demonstrate Bowman did not meet the required appeal deadline. Because Bowman's appeal pursuant to subsection 8A.415(2) is untimely, PERB lacks jurisdiction to adjudicate the merits of Bowman's discipline appeal.

Accordingly, I propose the following:

ORDER

The State of Iowa's motion to dismiss is GRANTED and Bowman's state employee disciplinary action appeal is consequently DISMISSED.

DATED at Des Moines, Iowa this 30th day of April, 2021.

/s/ Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Parties served via eFlex.