



communication from Harrison afterwards regarding the reason for his failure to telephonically appear during the scheduled time for arguments.

Undisputed Facts

Based upon the received filings, the following facts are established. Harrison was employed by the DOC. He was terminated on December 5, 2019. Harrison appealed his termination to DAS on December 17, 2019, claiming he was terminated without just cause. DAS responded to Harrison on January 9, 2020, informing Harrison he had no right to appeal because he was terminated during his probationary period. DAS further informed Harrison, even if he were a merit covered employee at the time of his termination, his appeal was not timely filed because he did not file it with DAS within seven days of his termination.

On February 4, 2020, Harrison filed a state employee disciplinary action appeal with PERB pursuant Iowa Code subsection 8A.415(2). Harrison indicated on the appeal form, in part, "On Dec 5th 2019 I was discharged stating that I had not completed my probationary period." The remainder of Harrison's assertions on the appeal form appear to pertain to a subsequent unemployment benefits proceeding involving Harrison and the DOC. Harrison references statutory provisions under Iowa Code chapter 96, Employment Security – Unemployment Compensation, and chapter 70A, Financial and Other Provisions for Public Officers and Employees. Harrison asserts the DOC claimed during the unemployment benefits proceeding that he was terminated for misconduct, but that an administrative law judge in that proceeding concluded his discharge was

“unjust.” All events regarding the unemployment benefits matter occurred on or after December 30, 2019.

Applicable Law

Iowa Code subsection 8A.415(2) establishes the statutory framework and PERB’s jurisdiction in discipline appeals such as the instant case. That section provides, in pertinent 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 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.

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 Iowa Code section 8A.415 further provide, in pertinent part:

**Chapter 61 Grievances and Appeals**

**11–61.2(8A) Appeals.**

. . .

**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).

These provisions uniformly establish that an employee must appeal his termination to DAS within seven days after the effective date of the action. 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 State's Motion*

The State contends that Harrison was a probationary employee at the time of his termination. As such, he does not have appeal rights under Iowa Code subsection 8A.415(2) and DAS rule 11—61.2(6). Alternatively, even if Harrison were a merit system employee at the time of his termination, he did not timely appeal his termination to DAS within the seven-day deadline prescribed by those same provisions. The State argues Harrison's appeal is thus procedurally defective and PERB lacks jurisdiction to adjudicate the merits of the appeal.

The undersigned was informed through email correspondence that Harrison resists the State's motion. However, Harrison did not submit any written arguments outlining the basis of his resistance and did not participate during oral arguments.

### Analysis

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. *See, e.g., 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, the State puts forth two positions as to why Harrison's appeal is not properly before PERB.

The State's first argument is that Harrison was a probationary employee at the time of his termination. Under the record before the undersigned, it is unclear whether Harrison disputes his status as a probationary employee. While his assertions on the PERB appeal form could be construed as Harrison's acknowledgment that he was a probationary employee, it is also possible he was merely reciting the State's purported reason for terminating his employment. As ambiguity exists on this record regarding Harrison's probationary status, it is improper to dismiss his appeal on that basis.

The State also argues that, even if Harrison is presumed to be a merit covered employee, he did not timely appeal his termination to DAS. Iowa Code subsection 8A.415(2) states that disciplinary actions can be challenged by filing an appeal with DAS within seven days following the effective date of the imposed discipline. No factual dispute exists regarding the pertinent dates for resolving the timeliness of Harrison's appeal. Undisputed facts presented here establish that Harrison was terminated on December 5, 2019, but did not submit his appeal to

DAS until December 17, 2019, which is twelve days following the date of his termination.

“Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter.” *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996). Under a plain reading of Iowa Code subsection 8A.415(2), Harrison was required to appeal his termination to DAS within seven days of his termination, or no later than December 12, 2019, which he did not do. Because Harrison failed to timely appeal his termination to DAS within the seven-day deadline prescribed by section 8A.415(2), PERB lacks jurisdiction to adjudicate the merits of Harrison’s discipline appeal.

Accordingly, I propose the following:

ORDER

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

DATED at Des Moines, Iowa this 3rd day of February, 2021.

/s/ Jasmina Sarajlija  
Administrative Law Judge

Electronically filed.  
Parties served via eFlex.