

Upon receipt, McCord did not appeal her termination to the director of the department of administrative services. Instead, she appealed the February 14 notice of termination directly to PERB on March 12, 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 the department of administrative services (DAS) and “director” is the DAS director or the director’s designee. Iowa Code §§ 8A.101(2)–(3) (2019).

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).

The State's Motion

The State contends Iowa Code subsection 8A.415(2) and DAS rule 11—61.2(6) require McCord to first appeal her termination to DAS before she can initiate an appeal with PERB under subsection 8A.415(2)(b). The State argues the instant appeal is thus procedurally defective and PERB lacks jurisdiction to adjudicate the merits of McCord's discipline appeal.

McCord filed what she designated as a resistance to the State's motion. In her "resistance," McCord indicates she was unaware of the proper grievance procedure steps to follow and acknowledges she never appealed her termination to DAS. McCord does not put forth any arguments to contradict the State's position.

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 parties are in agreement that McCord did not appeal her termination to DAS prior to initiating the instant appeal with PERB.

Thus, the sole issue to be determined is whether McCord's failure to exhaust a prior step of the grievance procedure deprives PERB of its jurisdiction to adjudicate the merits of her discipline appeal.

Iowa Code subsection 8A.415(2) allows certain merit system employees to challenge disciplinary actions by filing an appeal with the DAS director within seven days following the effective date of the imposed discipline. DAS must respond to the appeal within thirty days. This statutory provision and DAS subrule 11—61.2(6) further provide that an employee may appeal DAS's response to PERB if the employee is not satisfied with DAS's response or if DAS fails to respond to the appeal within thirty calendar days.

“Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter.” *Carolán v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996). The applicable provisions previously referenced contemplate that an appeal pursuant to 8A.415(2) may be initiated with PERB only after the employee appeals the disciplinary action at issue to DAS and either receives or should have received a third-step written decision from DAS. 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). Although *Sanders* and *Kuhn* involved grievances initiated under

subsection 8A.415(1), the third step of the outlined procedure requiring an appeal to DAS before an appeal to PERB can be initiated applies to both “grievance” appeals under 8A.415(1) and “discipline” appeals under 8A.415(2).

Under a plain reading of Iowa Code subsection 8A.415(2) and DAS subrule 61.2(6), McCord was required to first appeal the termination of her employment to DAS. As the undisputed facts demonstrate, McCord did not appeal her termination to DAS and consequently never received a decision from DAS affirming, modifying, or reversing the disciplinary action. Because McCord failed to exhaust a mandatory grievance step pursuant to subsection 8A.415(2), PERB lacks jurisdiction to adjudicate the merits of McCord’s discipline appeal.

Accordingly, I propose the following:

ORDER

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

DATED at Des Moines, Iowa this 9th day of July, 2019.

/s/ Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Parties served via eFlex.