

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

KIMBERLY SKAGGS,
Appellant,

and

STATE OF IOWA
(DEPARTMENT OF HUMAN SERVICES—
WOODWARD RESOURCE CENTER),
Appellee.

)
)
)
)
)
)
)
)
)
)

CASE NO. 102198

RULING AND ORDER

Appellant Kimberly Skaggs filed this Iowa Code section 8A.415(2) State employee disciplinary action appeal with the Public Employment Relations Board (PERB). The State of Iowa subsequently moved to dismiss the appeal alleging Skaggs' filing of her appeal to PERB was untimely.

Oral arguments on the motion were heard by telephone conference call on September 6, 2018. The State was represented by its counsel Alla Mintzer Zaprudsky and Skaggs was represented by AFSCME representative Rick Eilander. Skaggs does not resist the State's motion.¹

Background Facts and Proceedings.

Skaggs began her employment as a Residential Treatment Worker for the Iowa Department of Human Services (DHS) — Woodward Resource Center on November 7, 2014. The State terminated her employment on April 7, 2018, for allegedly violating the DHS attendance policy.

¹ Although Skaggs does not resist the State's motion, she declined to file a voluntary dismissal of her appeal.

On April 10, 2018, Skaggs filed a grievance with the Iowa Department of Administrative Services (DAS) alleging the State's termination of her employment was without just cause. Following the "Step 3" grievance meeting, her grievance was denied by the DAS Director in a "State Employee Step 3 Grievance Answer" issued May 9, 2018. The Step 3 Grievance Answer notified Skaggs of her right to file an appeal with PERB within 30 days pursuant to DAS subrules 11–61.2(5) and 61.2(6).

Skaggs filed this appeal with PERB on June 14, 2018. Pursuant to Iowa Code section 8A.415(2)(b), she requested a hearing closed to the public.² Subsequently, the State filed its motion to dismiss Skaggs' appeal.

Discussion.

In its motion, the State asserts Skaggs' section 8A.415(2) State employee disciplinary action appeal is untimely. For 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.

² All references are to Iowa Code (Supp. 2017).

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).

Further guidance is provided by administrative rules. Chapter 61 of DAS administrative rules covers various grievance and appeal processes for State employees. See Iowa Admin. Code ch. 11–61. DAS subrule 11–61.2(6), “Appeal of disciplinary actions,” sets forth the appeal process for State employees who have been disciplined such as Skaggs. The appeal process begins with the DAS Director and “[i]f 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).” *Id.* r. 11–61.2(6). For an appeal to PERB, “as provided in subrule 11–61.2(5),”

[I]f not satisfied with the decision of the director, [the employee may] request an appeal hearing before the public employment relations board *within 30 calendar days* after the date the director's decision was issued or should have been issued. . . .

Id. r. 11–61.2(5) (emphasis added).

PERB's administrative rules also provide guidance on these proceedings before the agency. Chapter 11 of PERB's administrative rules addresses State employee appeals of grievance decisions and disciplinary actions. *Id.* 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.

Skaggs filed her appeal with PERB on June 14, 2018—36 days following the “director’s response” as outlined in the State Employee Step 3 Grievance Answer issued on May 9, 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. Skaggs does not resist the dismissal of her appeal due to its untimely filing.

Accordingly, I propose entry of the following:

ORDER

The State’s motion is GRANTED and the State employee disciplinary action appeal of Kimberly Skaggs is hereby DISMISSED.

This proposed ruling and order will become PERB’s final agency action on Kimberly Skagg’s appeal pursuant to PERB rule 621–9.1 unless, within 20 days of the date below, a party files a petition for review with the Public Employment Relations Board or the Board determines to review the proposed ruling on its own motion.

DATED at Des Moines, Iowa this 2nd day of January, 2019.



Diana S. Machir
Administrative Law Judge

Original filed EDMS.