

Justin Daniels
723 Suhrke Rd
Plymouth, WI 53073

vs.

PFC Complaint No.: _____

Christopher Domagalski
Chief of Police, Sheboygan Police Department
1315 N 23rd St
Sheboygan, WI 53081

**MOTION TO DISMISS and BRIEF IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS FOR FAILURE TO
FILE A CHARGE WITHIN THE ALLOWABLE TIME**

Introduction

Chief Christopher Domagalski (“RESPONDENT”), submits the following Brief in support of his Motion to Dismiss the entire Complaint by Justin Daniels (“COMPLAINANT”). Complainant filed his original complaint with the Police Department on February 14, 2023, as required by the City of Sheboygan Board of Police and Fire Commissioners (“PFC”) Policies and Procedures. On February 16, 2023, the City provided the Complainant with a written disposition of the charges. The Complainant filed the current matter with the PFC on April 12, 2023. Under PFC Policies and Procedures, the Complainant was required to file his appeal with the Board no later than ten (10) days following receipt of the written disposition. Therefore, this body must dismiss the Complaint for failing to file a charge within the allowable period of time.

Background

The PFC has established policies and procedures to help ensure that a fair, consistent, and transparent process exists for resolving disciplinary actions. (Exhibit A). These policies and procedures are available to the public and the Complainant in this matter was aware of the policies and procedures as evidenced by his complaint about them prior to filing his original charge with the Police Department. Section 4 of the Disciplinary Actions section reads in part, “*A charge may be filed with the Board if the*

person is not satisfied with the disposition under the Citizen Complaint procedure. The charge shall be filed with the Board no later than ten (10) days following receipt of the written disposition.”

In the present matter, the Complainant received a written disposition of his original complaint on February 16, 2023. (Exhibit B). On February 20, 2023, the Complainant responded via email acknowledging receipt of the written disposition. (Exhibit C). The Complainant did not file this charge to the PFC until April 12, 2023, or 56 days after the written disposition was sent, and 52 days after acknowledging receipt of said disposition.

Argument

While not bound by the Federal Rules of Civil Procedure (“FRCP”), the Board has elected to often follow the FRCP to ensure that due process is granted to complainants and respondents. Under the FRCP, motions for dismissal are generally governed by Rule 12(b)(6), which is substantially mirrored by Wis. Stat. s. 802.06(2). When considering a motion to dismiss, Rule 12(b)(6) requires that the decision maker construe the complaint in a light most favorable to the complainant, accept all of the factual allegations as true, and determine whether, even with those presumptions, the complainant undoubtedly cannot prove a set of facts in support of his claims that would entitle him to relief.

The limitation for filing a charge with the PFC is ten (10) days after the receipt of the written disposition. In this matter, the Complainant waited more than 52 days to file his charge with the PFC. Thus, on their face, the charges are time barred.

In the charges before you there are no facts to support a determination that the Complainant properly filed his appeal/charges within the required time limit.

Conclusion

Because the COMPLAINANT failed to follow proper procedure and has not filed his charge/appeal within the required time period, we respectfully request this commission dismiss all charges with prejudice.

Dated this 26th day of May, 2023

CITY OF SHEBOYGAN

By: *electronically signed by Adam James Westbrook*

Adam James Westbrook

Director of Human Resources and Labor Relations Attorney

State Bar No. 1098561

Human Resources Department, City of Sheboygan

828 Center Ave

Sheboygan WI 53081

(920) 459-3314

Adam.westbrook@sheboyganwi.gov