

STATE OF WISCONSIN
CIRCUIT COURT
EAU CLAIRE COUNTY
BRANCH 2

SANDRA LEA BENEDICT,

Petitioner,

v.

LABOR AND INDUSTRY REVIEW COMMISSION,
WISCONSIN EMPLOYMENT RELATIONS COMMISSION,
WISCONSIN EDUCATION ASSOCIATION COUNCIL,
EAU CLAIRE ASSOCIATION OF EDUCATORS, and
EAU CLAIRE AREA SCHOOL DISTRICT,

Respondents.

Case No. 00-CV-0392

[WERC is using the following electronic file name: 00-392C1.doc]

[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

NOTICE OF ENTRY OF DECISION AND ORDER

To: Sandra Lea Benedict
3642 Livingston Ln.
Eau Claire, WI 54701

PLEASE TAKE NOTICE that a Decision and Order dismissing petitioner's complaint, of which a true and correct copy is hereto attached, was signed by the court on the 9th day of October, 2000, and duly entered in the Circuit Court for Eau Claire County, Wisconsin, on the 9th day of October, 2000.

Notice of entry of this Decision and Order is being given pursuant to Wis. Stat. §§ 806.06(5) and 808.04(1).

Dated this 13th day of October, 2000.

JAMES E. DOYLE
Attorney General

David C. Rice /s/
DAVID C. RICE
Assistant Attorney General
State Bar No. 1014323

Attorneys for Respondents LIRC and WERC

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DECISION AND ORDER
Case No. 00CV392

Sandra Lea Benedict (hereinafter Benedict) on September 18, 1998 filed a discrimination complaint against the Eau Claire Association of Educators (ECAE) and the Wisconsin Education Association Council (WEAC). Benedict contended those entities did not represent her interests in an earlier discrimination case filed against the Eau Claire School District.

On April 21, 2000 an administrative law judge dismissed Benedict's claims against ECAE and WEAC after ruling that she was not subject to discrimination. On April 21, 2000 the judge's decision and a Notice of Appeal Rights were mailed to all parties.

Among other things the Notice of Appeal Rights advises participants that the judge's decision is final. It further clearly states, if anyone is dissatisfied with the decision, a written petition for review may be filed with the Labor and Industry Review Commission. Those who receive the appeal rights notification are advised that any petition for review... "must be received (emphasis is in the notice) by the Equal Rights Division

within twenty-one (21) days from the date of the decision or the decision will become final.”

On May 19, 2000, twenty eight days after the decision was entered, the Equal Rights Division received Benedict’s petition for review. On June 21, 2000 the Commission dismissed Benedict’s petition for failure to file within the required time. Benedict seeks judicial review of the decision to dismiss.

The twenty-one day period set forth in the Notice of Appeal Rights is a statutorily imposed time limit. (Sec. 111.39(5)(a) Stats.). Section 111.39(5)(b) does not allow for the grant of additional time ... “If the Commission is satisfied that a respondent or complainant has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order...” Benedict made no request for extension, nor has she ever contended she was prejudiced by any delay in receipt of the decision.

Ryan v. Department of Revenue, 68 Wis.2d 467, 472, 228 N.W.2d 357 (1975) stated that the Wisconsin Supreme Court, “...has consistently demanded strict compliance...” with filing deadlines.

Further the court ruled:

To dismiss an appeal because it comes one day late may seem harsh. However, if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending.

In that Benedict did not properly pursue her appellate rights to the Commission, this court lacks jurisdiction to review earlier decisions. For the reasons stated herein, Benedict’s complaint is hereby dismissed.

Dated at Eau Claire, Wisconsin this 9th day of October, 2000.

BY THE COURT:

Eric J. Wahl /s/

Eric J. Wahl

Circuit Judge, Branch 2

cc: Sandra L. Benedict
David C. Rice
James M. Ward
John D. Finerty, Jr.