

appeal from Lee Jackson v. UW-Milwaukee, 81-PC-ER-11712, 10/6/82 X

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
BRANCH 12

-----  
GENE JACKSON,

Plaintiff-Petitioner,

DECISION AND ORDER

-vs-

Case No. 598-284

STATE OF WISCONSIN  
PERSONNEL COMMISSION,

Defendant-Respondent,

and

CHANCELLOR, UNIVERSITY OF  
WISCONSIN,

Employer.

-----  
The Respondent, Wisconsin Personnel Commission, moves to dismiss the Petitioner Gene Jackson's petition for judicial review for lack of subject matter jurisdiction under sec. 227.16(1)(a), Wis. Stats. That subsection required the Petitioner to file his petition with this Court and to serve it on the Respondent within 30 days of October 6, 1982. Because he did not, and for the reasons set forth in its written decision dated January 10, 1984, the Court has already ruled that it is without subject matter jurisdiction to review the petition. However, the parties agreed to a bifurcation of issues whereby they would separately address the issue of whether or not the Petitioner's competency, or

lack thereof, extended the time for the filing of his petition for review. Therefore, the Court did not enter a final order on the Respondent's motion.

#### FACTS

The Petitioner was housed in the lock ward of the Veteran's Administration Hospital in Wood, Wisconsin, from July 31, 1982 through September 13, 1982. He was released from the ward on the condition that he receive further psychiatric/psychological treatment at the V.A. Domiciliary. He remained at the domiciliary until November 30, 1982, when his condition required hospitalization. He was released back to the domiciliary on December 15, 1982, where he remained until January 18, 1983. He then began to receive treatment from Dr. Robert Shopp, a psychologist at the Milwaukee County Mental Health Complex.

#### ISSUE

Do the statute of limitations extension provisions found in sec. 893.16, Wis. Stats. (1981) extend the time for serving and filing petitions for judicial review brought under ch. 227 beyond the prescribed 30-day period?

#### STATUTE

Sec. 893.16, Wis. Stats. (1981), Persons Under Disability:

- (1) If a person entitled to bring an action is, at the time the cause

of action accrues ... insane ...  
the action may be commenced within  
two years after the disability ceases,  
except that where the disability is  
due to insanity ... the period of  
limitation prescribed in this  
chapter may not be extended for more  
than five years.

(2) ...

(3) ...

(4) ...

(5) This section applies only to  
statutes in this chapter limiting the  
time for commencement of an action or  
assertion of a defense or counterclaim

....

(a) ...

(b) ...

(c) ...

#### DECISION

The Respondent's motion to dismiss is granted.

Whether or not the Petitioner was legally disabled at the time  
his right to judicial review accrued, the limitation extension  
provisions found in sec. 893.16 "apply only to statutes in this  
chapter ...." (Emphasis supplied) Obviously, sec. 227.16(1)(a),  
Wis. Stats., is not such a statute. Therefore, it is neither  
modifiable nor modified by sec. 893.16.

Petitioner cites no authority to the contrary and  
the Court has found none. The Boldt case, 101 Wis. 2d 566 (1981),  
cited at Page 1 of the Petitioner's brief, is inapplicable.  
The Court in Boldt did not inquire into whether ch. 893's

limitation extension provisions extend the time allowed for commencing particular actions, appeals, or petitions for review brought under other chapters in the Statutes. Boldt involved a contract claim subject to the six-year statute of limitations prescribed by sec. 893.19(3), Wis. Stats. (1977). 101 Wis. 2d at 578. The Supreme Court held in the plaintiff's favor not on the question whether the limitation extension provisions of ch. 893 applied to his claim, but when the limiting statute was tolled and for how long. 101 Wis. 2d at 581-582.

Given the ground on which the Court rules, it is unnecessary to decide whether under the facts of this case the Petitioner was legally disabled at the time his right of judicial review accrued. The rest of the cases cited in his brief are therefore superfluous. Sec. 227.16(1)(a), Wis. Stats., controls the manner in which subject matter jurisdiction is obtained. Ryan v. Dept. of Revenue, 68 Wis. 2d 467, 472 (1975).

CONCLUSION AND ORDER

For all the foregoing reasons, and for the reasons set forth in its decision dated January 10, 1984, this Court lacks subject matter jurisdiction to review the petition in question. Therefore, the Respondent's motion to dismiss the petition is granted.

Dated at Milwaukee, Wisconsin,  
this 16 day of May, 1984.

BY THE COURT:

Michael Skwierawski  
Hon. Michael Skwierawski