
KENNA JARVIS, KATHLEEN LEARNED,
LINDA ROBERSON, MARY FRASER,
JOYCE BORKENHAGEN,

Appellants,

v.

PHILIP LERMAN, Chairman,
Dept. of Industry, Labor & Human Relations,
C. K. WETTENGEL, Director,
State Bureau of Personnel,
JOHN ZINOS and WILLIAM JOHNSON, Commissioners,
Dept. of Industry, Labor and Human Relations,
and DAVID C. RICE,
EEOC Project Director,

Respondents.

Case No. 74-92

Before: JULIAN, Chairperson, SERPE, STEININGER and WILSON, Board Members

OPINION

I. Facts

Appellants are all women attorneys who competed for an EEOC Project Attorney position and a hearing officer position with the Department of Industry, Labor and Human Relations, Equal Rights Division. Both positions were classified as Attorney 12.

A notice of rejection for the EEOC Project Attorney position was received by Appellant Fraser on June 18, 1974 and by Appellants Jarvis, Learned and Roberson on July 1, 1974. Appellants Jarvis, Learned, Roberson and Borkenhagen received notification of their rejection for the hearing officer position on August 20, 1974. Appellant Fraser received a similar notice on August 21, 1974.

By letter dated August 26, 1974 and received by this Board's office on August 27, 1974 Appellants Jarvis, Learned and Roberson appealed the rejection. The letter based the Board's jurisdiction on Section 16.05(1)(f)

OFFICIAL

OPINION AND ORDER

ON

JURISDICTIONAL ISSUE

Wis. Stats.. On August 28, 1974 Appellant Fraser sent a virtually identical letter which was received on September 3, 1974. Appellant Borkenhagen also sent a nearly identical letter dated September 3, 1974 and received by the Board's office September 4, 1974.

On September 2, 1974 Appellants Jarvis, Learned, Roberson, and Fraser sent a letter which was intended to amend their original appeals. This letter which was received September 4, 1974 appealed the rejection notices for the EEOC Project Attorney position. Appellants wrote the following in their appeal letter:

We realize that this appeal may be considered untimely, but we feel that the timeliness requirement should be waived in this instance for the following reasons:

- (a) The confusion of the bureaucratic process resulted in our initial understanding that hirings for the two jobs, Project Attorney and Hearing Examiner, were essentially the same process. Since both positions are ranked as Attorney 12, both involve hearing examiner duties, and we applied for both at the same time and were not required to reapply for the second (Hearing Examiner) position, we continued in this belief until the time of the second interview.
- (b) At the time of the second interview, when we realized that the jobs were being filled by two separate hiring processes, we feared that we would jeopardize our chances for being appointed to the second position if we complained about the hiring process of the first.
- (c) Even after we realized that two hiring processes were involved, because of the overlap between the two we felt that we could express our concerns about the administrative procedures used in both through the vehicle of one appeal. However, additional reflection and analysis has led us to view the two hirings as essentially separate processes, despite the considerable amount of overlap.

II. Conclusions

The Appeal From The Hiring Process For The EEOC Project Attorney Position Was Not Timely Filed

Appellants concede that their appeal from Respondent Rice's rejection for the EEOC Project Attorney position was not timely filed. However, they contend that the 15 day time limit found under Section 16.05(2), Wis. Stats.,

should be waived because of the extenuating circumstances. We do not agree with this contention.

Section 16.05(2) Wis. Stats. states:

The board shall not grant an appeal under sub. (1)(e) or (1)(f) unless a written request therefor is received by the board within 15 days after the effective date of the decision, or within 15 days after appellant is notified of such decision, whichever is later.

The above language makes it clear that the 15 day limit goes directly to the subject matter jurisdiction of this Board. By failing to file within the prescribed time, we are prohibited from hearing the appeal under Section 16.05(1)(e) or (1)(f). We have so interpreted the statute previously. In Scott v. Estkowski, Case No. 379, decided January 29, 1974, p. 2, we stated:

There is much authority that the right of appeal to a reviewing administrative agency is purely statutory and all applicable statutory requirements must be complied with to sustain such appeal; that the time for taking an administrative appeal is generally prescribed by statute or regulation or timely application has been held necessary, delay beyond the statutory time being fatal.

This Board proposes to adhere to the position it has always taken; that is, that the matter of time within which an appeal may be taken is a jurisdictional matter, and if the appeal be not taken within the prescribed time that the Board has no authority to pass on the merits of the appeal. (Emphasis added.) (See also Maegli v. Schmidt, Case No. 74-6, -13, decided January 20, 1975.)

Therefore, we conclude that we have no jurisdiction under Section 16.05(1)(f) over the appeal from the rejection for the EEOC Project Attorney position. The timeliness requirement is one which goes directly to the Personnel Board's power to hear the appeal and it cannot be waived. (Scott v. Estkowski, supra.) This is true regardless of the circumstances which gave rise to this appeal.

The Personnel Board Will
Exercise Its Jurisdiction
Under Section 16.05(4)

Appellants contend that the Personnel Board should take jurisdiction of their complaint under Section 16.05(4) which gives the Board power to conduct investigations. We agree with this contention.

Appellants were very specific in their request for an appeal from their rejection for the hearing examiner position that they were taking the appeal under Section 16.05(1)(f). When they amended their appeal to include the rejection from the EEOC Project Attorney position, they did not attempt to change the basis of the Board's jurisdiction. They stated in their September 2, 1974 appeal letter: "We realize that this appeal may be considered untimely, but we feel that the timeliness issue should be waived in this instance . . ." This appeal was untimely and for reasons discussed above cannot be considered by the Board under Section 16.05(1)(f).

However, Section 16.05(4), Wis. Stats., provides:

The board may make investigations and hold hearings on its own motion or at the request of interested persons and issue recommendations concerning all matters touching the enforcement and effect of this subchapter and rules prescribed thereunder. If the results of an investigation disclose that the director, appointing authority or any other person acted illegally or to circumvent the intent and spirit of the law the board may issue an enforceable order to remand the action to the director or appointing authority for appropriate action within the law. Any action brought against the director or appointing authority for failure to comply with the order of the board shall be brought and served within 60 days after the date of the board's findings.
(Emphasis added.)

We have interpreted this language to be discretionary and have held that we will generally not investigate a case which had a clear route of appeal under Section 16.05(1)(e) or (1)(f) but failed to pursue it in a timely manner. See Schwartz v. Schmidt, Case No. 74-18, decided January 17, 1975; Maegli v. Schmidt, Case No. 74-6, -13, decided January 20, 1975. However, we have reserved the power to conduct an investigation when we feel that

at p. 4, we held:

This is not to say that the Board would not in other instances exercise its jurisdiction, even though the subject matter might have been the basis of a timely civil service appeal, where the record raises important questions the Board deems appropriate to resolve.

We hold that the instant case presents such questions. Appellants allege that they were discriminatorily denied employment because of their sex. Section 16.14, Wis. Stats., clearly prohibits sex discrimination. Therefore, we conclude that we will exercise our discretion and take jurisdiction of this case under Section 16.05(4), Wis. Stats.

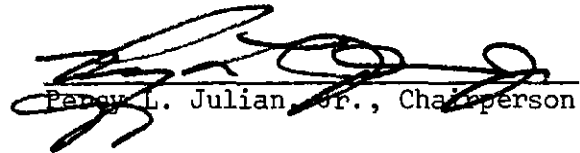
ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss be denied.

Dated November 24, 1975.

STATE PERSONNEL BOARD

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Percy L. Julian, Jr., Chairperson