
JAMES MORGAN,

Appellant,

v.

VERNE H. KNOLL, Deputy Director,
State Bureau of Personnel,

Respondent.

Case No. 75-204

OPINION AND ORDER

OFFICIAL

Before: JULIAN, Chairperson, STEININGER and DEWITT, Board Members.

OPINION

I. Facts

On November 17, 1975 Appellant received from the Bureau of Personnel a reallocation notice informing him that his position was to retain the title of Manpower Counselor 2. The date of the notice was October 24, 1975.

On December 1, 1975 Appellant wrote to the Personnel Board appealing the reallocation notice. The appeal letter was received by this Board's office December 3, 1975. Appellant alleges that his position should have been reallocated to Job Service Supervisor 3, based on the duties and responsibilities of the Employment Assistance Unit Supervisor position he has been filling on an acting basis for two years.

At a prehearing conference which was held on March 12, 1976 Respondent objected to this Board's jurisdiction because he alleged Appellant did not file his appeal in a timely manner.

II. Conclusions

The Appeal Was
Not Timely Filed

Appellant appealed under Section 16.05(1)(e), Wis. Stats. from a

decision of the Director of the Bureau of Personnel. Section 16.05(2), Wis. Stats. provides in part:

The Board shall not grant an appeal under [Section 16.05] sub (1)(e) or (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 the Appellant is notified of such decision, whichever is later.
(Emphasis added.)

Appellant contends that the above time limit is tolled when the appeal letter is put into the ordinary course of the mail. However, the statutory language is clear in requiring that the Board can only take jurisdiction over the appeal if the letter is received by the Board within the 15 day limit. We have repeatedly interpreted the statute in this manner, holding that the late filing of an appeal bars our taking subject matter jurisdiction over the appeal. (See Scott v. Estkowski, Personnel Board 379, January 29, 1975; Jarvis et al. v. Lerman et al., Personnel Board 74-92, November 24, 1975; Langlois v. Weaver, Personnel Board 75-49, December 22, 1975.)

Appellant further contends that the 15 day period refers to work days and not to calendar days. Under Section 990.01(1), Wis. Stats. (1973) words are to "be construed according to common and approved usage. . . ." Although no statutory section specifically states that the word days means calendar days, Section 990.001(4) which outlines the rules for construction of the computation of time would make little sense if days meant anything but calendar days. For example, the section details how time is computed when the last day falls on a Sunday or legal holiday. Obviously, if only work days were being referred to, the last day could not fall on a Sunday or legal holiday. Therefore, we conclude that the 15 day limit refers to calendar days.

Finally, Appellant contends that since the objection to the Board's jurisdiction was not raised until more than three months after he had filed his appeal, Respondent should be barred from raising it. However, it is

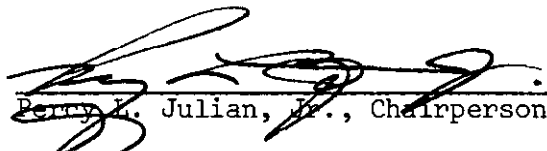
a well established legal principle that an objection to subject matter jurisdiction can be raised at anytime during the course of the proceedings whether judicial or quasi-judicial. (See 20 Am. Jur. 2d Courts Section 95 p. 456; 2 Am. Jur. 2d Administrative Law Section 726 p. 627.) Therefore, we conclude that the objection was raised in a timely manner.

The decision on Appellant's reallocation became effective on October 24, 1975. Appellant received notice of the decision of November 17, 1975. The 15 day period ended on Tuesday, December 2, 1975. We received Appellant's December 1, 1975 letter on December 3, 1975. Therefore, we must conclude that we have no jurisdiction over this appeal because it was not timely filed.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed.

Dated May 25, 1976. STATE PERSONNEL BOARD


Perry L. Julian, Jr., Chairperson