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RUTH EVERTON,

Appellant,

v.

MANUEL CARBALLO, Secretary,
Department of Health & Social
Services, and VERNE KNOLL,
Deputy Director, State Bureau
of Personnel,

Respondents.

Case No. 75-81

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OFFICIAL

INTERIM
OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, WILSON and DEWITT, Board Members.

NATURE OF THE CASE

This is an appeal pursuant to the statewide unilateral grievance procedure and S. 16.05(7), Wis. stats. The Respondents have contended that this appeal is untimely and that there is no subject matter jurisdiction.

FINDINGS OF FACT

These findings are based on uncontradicted matter in the record to date. The Appellant is a state employe in the classified service. On June 3, 1975, she filed a step 1 grievance complaining of the denial of her request for reclassification from Typist II to Clerk III by the Department of Health and Social Services central personnel office. This was denied and on June 4, 1975, Appellant filed a step 2 grievance. This was denied and on June 11, 1975, Appellant filed a step 3 grievance. On July 7, 1975, Appellant filed an appeal in the Board office. At this point the grievance had still not been acted on at the third step. On November 11, 1975, the Appellant received an answer to the third step grievance and was notified that she would be reclassified to Statistical Clerk retroactive to May 11, 1975.

CONCLUSIONS OF LAW


Respondents attempt to characterize this as an appeal of a second step grievance and thus premature, citing our decision in Battalio v. Carballo, No. 75-129, 3/22/76. However, in this case the Appellant

appealed the second step denial to the third level of the grievance procedure. Following the failure of the employer to respond at the third step of the grievance procedure, she filed her appeal with this Board. She did not appeal the second step denial directly to the Board as was the case in Battalio. Even if the Appellant's appeal were characterized as premature, this is not jurisdictional inasmuch as any appeal provisions involved are not provided by statute. The Respondents cite the fifteen day limitation set forth in S. 16.05(2), but that only applies to appeals pursuant to S. 16.05(1)(e) or (f), neither of which is present here. Inasmuch as the third step was decided while this appeal was pending, we conclude that this has cured whatever defect may have been present at the time the appeal was filed. In the absence of a statutory requirement, we are not prepared to hold that the Appellant was required to have filed another appeal following the step 3 decision when she had already filed an appeal after the employer initially had failed to decide the third step of the grievance.

ORDER

The Respondent's position is interpreted as a motion to dismiss and is denied.

Dated April 19, 1976. STATE PERSONNEL BOARD


Perry L. Julian, Jr., Chairperson