

STATE OF WISCONSIN

STATE PERSONNEL BOARD

LINDA BRESNAHAN,

Appellant,

v.

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

Respondents.

Case No. 75-82

JUDY DISALVO,

Appellant,

v.

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

Respondents.

Case No. 75-165

VIVIAN JAMISON,

Appellant,

v.

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

Respondents.

Case No. 75-205

Before: DEWITT, Chairperson, WILSON, WARREN, and MORGAN, Board Members.

OFFICIAL
INTERIM
OPINION AND ORDER

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NATURE OF THE CASES

These consolidated cases involve denials of requests for reclassification. These reclassification requests were processed through the departmental non-contractual grievance procedure. The respondents have taken the position that the grievances were not appealed in a timely manner to the fourth step (personnel board). The relevant facts relating to the timeliness issue are not in dispute and will be set forth for each employee.

BRESNAHAN

She filed a third step grievance on June 9, 1975. Having had no response at that time she filed a letter with this Board dated July 3, 1975, which we received. The letter contained, in part, the following:

"I am writing to you because I have filed a third step grievance with the Department of Health and Social Services but they have not as yet scheduled a meeting and I am afraid that if I do not submit this letter I will lose my appeal rights due to a 'timeliness' issue."

The letter went on to discuss her duties and responsibilities and stated "I am requesting approval of my reclassification to a Typist 3."

The decision by the Secretary of the Department was made October 7, 1975, and received by appellant on November 13, 1975. She wrote another letter to this Board appealing the third step decision dated December 2, 1975, which was received December 4, 1975.

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On these facts, the timeliness issue is controlled by our decision in Everton v. Carballo, Wis. Pers. Bd. 75-81 (4/19/76). In that case the appellant also was pursuing reclassification through the grievance procedure. She filed at the third step on June 11, 1975, and then filed an appeal with this Board on July 7, 1975, when there had been no action on her grievance at the third step. She did not file a second appeal when her grievance was answered at the third step on November 11, 1975. We held that the procedure followed by appellant was not fatally defective:

"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 15 day limitation set forth in sec. 16.05(2), but that only applies to appeals pursuant to sec. 16.05(1)(e) or (f), neither of which is present here. Inasmuch as the 3d 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 3d step of the grievance."

Although in the instant case the appellant argues that an appeal of a reclassification denial is conceptually an appeal of an action of the director or his designee pursuant to Section 16.05(1)(f) and that therefore the time requirements of Section 16.05(2) apply, and bar the appeal, we do not agree. In the first place, the department processed this case under the grievance procedure without raising any question about the appropriateness of this course, and even now only raise it in the context of a timeliness argument. Even if this

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matter is viewed conceptually as an act of the director through the application of Section 16.03(2), Stats., "Any delegatory action taken hereunder by any department head may be appealed to the personnel board under sec. 16.05," we do not believe that it would be improper to process such an appeal through a grievance procedure.¹ In that case, the time requirements of the grievance procedure would apply. Even if the time requirements of Section 16.05(2) were to be utilized, the principle expressed in the Everton case could also apply.

DISALVO

She filed a grievance seeking reclassification. This was denied at the first two steps and she filed at the third step on July 2, 1975. She wrote to the Personnel Board on August 5, 1975. This letter contained an inquiry as to the status of her grievance. She subsequently was notified orally on November 13, 1975, and in writing on November 14th, that her request for reclassification had been turned down at the third step on October 7, 1975. She then appealed that decision by letter dated November 28, 1975, which was received by this Board on December 1, 1975.

In this case we cannot interpret appellant's August 5, 1975, letter as an appeal letter inasmuch as it simply was a request for a report on the status of her grievance. However, the appeal at

¹We note that the Department of Health and Social Services' grievance procedure provides for appeals to the Personnel Board of functions "which the Director of Personnel has affirmatively delegated to the department."

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the fourth step was timely based on the grievance procedure. It provided, see steps 3 and 4, that "If the grievance is within these exceptions and you are not satisfied with the Secretary's decision, you may within 15 days; submit your problem in writing to the Personnel Board."² In this case the problem was submitted within 15 days since the letter was sent on November 28, 1975, which is within the limitation. For that matter, the appeal was received within 15 days since the 15th day following receipt of the notice of denial was November 29, 1975, a Saturday. We take official notice of the fact that the Personnel Board Office was not open on Saturdays at that time. Pursuant to Section 990.001(4)(c), Stats., under such circumstances the filing "may be done on the next succeeding day which is not a Sunday or a legal holiday." This would bring the last day for filing to the next Monday, December 1, 1975.

²The grievance procedure contained in the "official" departmental document, Manual of Instructions and Administrative Orders-Personnel, Department of Health and Social Services, DBM-Pers-24, Employee Relations, Chapter XIII, varies somewhat from the pamphlet entitled "Departmental Grievance Procedures" distributed to employees. However, state employees are entitled to rely on information supplied by management concerning appeal rights, see Pulliam and Rose v. Wettengel, Wis. Pers. Bd. 75-51 (November 25, 1975), and we therefore make reference to the pamphlet supplied by management, which contains a more liberal time limit for fourth step appeals. See also the Jamison discussion, below.

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JAMISON

She filed a grievance seeking reclassification. This was denied at the first two steps and she filed at the third step on July 2, 1975. She wrote to the Personnel Board on August 5, 1975, inquiring as to the status of her grievance. Subsequently she was notified orally on November 11, 1975, and in writing on November 12, 1975, that her request for reclassification had been turned down at the third step. She appealed that decision by letter dated November 28, 1975, which was received by this Board on December 3, 1975.

As in the case of Ms. DiSalvo, we conclude that Ms. Jamison's letter of August 5, 1975, cannot be construed as an appeal letter. However, her appeal was submitted in a timely manner under Section 990.001(4)(b), Stats., which provides that:

"If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day."

Here, the 15th day following receipt of the notice of denial was November 27th, which was Thanksgiving. Accordingly, the last day for submission was the 28th.

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ORDER

The respondent's objections to the timeliness of these appeals
are overruled.

Dated February 23, 1977.

STATE PERSONNEL BOARD

A handwritten signature in cursive script that reads "Laurene DeWitt". The signature is written in black ink and is positioned above a horizontal line.

Laurene DeWitt, Chairperson