

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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DAVID WING,

Appellant,

v.

DEPUTY DIRECTOR, BUREAU OF PERSONNEL,  
and PRESIDENT, UNIVERSITY OF WISCONSIN,

Respondents.

Case No. 77-63

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# OFFICIAL

INTERIM OPINION AND ORDER

### NATURE OF THE CASE

This is an appeal pursuant to s. 16.05(1)(f), Stats., of a reallocation. The respondents have raised a question as to the timeliness of the appeal and a hearing was held on that issue. The parties have stipulated that the hearing examiner could render a final decision on that question. Following the hearing, respondent Weaver moved to reopen the hearing on the ground of newly-discovered evidence.

### FINDINGS OF FACT

1. At all relevant times the appellant has been employed at U.W.-Stout with permanent status in the classified service.
2. As a result of a personnel management survey, the appellant was reallocated from administrative budget and management analyst 5 to budget and management analyst 4 with an effective date of November 8, 1976.
3. A copy of the reallocation notice (Respondents' Exhibit 11) was placed in a sealed envelope addressed to the appellant and was placed on appellant's desk in his office at approximately 2:30 p.m. on March 4, 1977.
4. At the time this letter was placed on appellant's desk, the appellant was seated at his desk with his back to the desk talking on the telephone.

5. The person delivering the letter placed the letter on appellant's desk and left without saying anything.

6. Appellant opened this envelope and date stamped the reallocation notice on March 7, 1977.

7. The appellant appealed the reallocation to the personnel board in a letter (Appellant's Exhibit 12, p. 2) received by the board on March 22, 1977.

#### CONCLUSIONS OF LAW

1. While the respondents have the burden of proceeding as the parties objecting to jurisdiction, the appellant has the burden of proof as to all matters including jurisdiction.

2. The appellant was "notified" of the reallocation pursuant to s. 16.05(2), Stats., on March 7, 1977.

3. The appeal was received within 15 days thereafter and therefore was timely filed.

4. The personnel board has jurisdiction over this appeal.

5. The motion to reopen the hearing filed May 9, 1978, relates to evidence which is cumulative to the issue of timeliness.

#### OPINION

The deposit of the sealed envelope on appellant's desk on March 4, 1977, under the facts and circumstances found here, did not constitute notification to the appellant within the meaning of s. 16.05(2), Stats. See Boeck v. State Highway Comm., 36 Wis. 2d 440, 444 (1967):

. . . it can be said as a general rule in the absence of the statutory provision, that service of notice would not become effective until the party received it. In Hotel Hay Corp. v. Milner Hotels, Inc. (1949), 255 Wis. 482, 486, 39 N.W. 2d 363, this court held:

" . . . As stated in 46 C.J., Notice, p. 559, sec. 69,--  
"In the absence of custom, statute, estoppel, or express contract stipulation, when a notice, affecting a right, is

sought to be served by mail, the service is not effected until the notice comes into the hands of the one to be served, and he acquires knowledge of its contents. . . . ' See also In re Leterman, Becher & Co. (2d Cir. 1919), 260 Fed. 543, 548." (Emphasis supplied.)

See also Burk v. Commissioner of Motor Vehicles, 8 Wis. 2d 620, 626 (1959):

"'Notice' means information actually communicated to the person to be notified."

The 15-day time limit on appeals contained in s. 16.05(2), Stats., is a very restrictive provision. It is of short duration, jurisdictional in nature, acts to cut off the board's power to review appeals, see Odau v. Personnel Board, 250 Wis. 600 (1947), and has a substantial effect on the employe's interests. It would be inappropriate to deviate from the relatively strict construction of notification procedure as set forth in the above supreme court cases.

The appellant objected to respondents' motion to reopen on a number of grounds. Inasmuch as, in the opinion of the examiner, the evidence presented at the hearing supports the above findings which reflect the version of notification presented by respondents, further evidence on this question by respondents would be cumulative, and there is no need to consider the other objections.

ORDER

The respondents' objection to subject matter jurisdiction on the ground that the appeal was not timely filed is overruled. The respondent's motion to reopen the hearing on the timeliness question is denied.

Dated: May 26, 1978.

STATE PERSONNEL BOARD

Anthony J. Theodore  
Anthony J. Theodore  
Hearing Examiner