

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 MARY ZIEGLER ET AL, *
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 Appellants, *
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 V. *
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 DEPARTMENT OF HEALTH AND *
 SOCIAL SERVICES and *
 DIVISION OF PERSONNEL, *
 *
 Respondents. *
 *
 Case Nos. 78-26-PC *
 and 78-27-PC *
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DECISION
AND
ORDER

NATURE OF THE CASES

These appeals relate to the selection process for a Fiscal Supervisor 3 position. The respondents raised certain objections as to the timeliness of the appeals and the standing of some of the appellants. Since the timeliness question is dispositive of these appeals, the Commission does not reach the standing issues. The parties are not in disagreement on the facts relating to the question of timeliness as set forth below.

FINDINGS OF FACT

1. No. 78-26-PC is an appeal filed with the Commission on March 22, 1978, of an individual non-contractual grievance submitted by Ms. Ziegler.
2. This grievance was as follows:

"Upon learning an Accountant 4 (pay range 14) had been accepted to the assessment center I applied and was rejected. See letter dated 5/6/77, attached. [This issue was removed from the appeal by stipulation at the prehearing conference.]

I applied for Fiscal Supervisor 3 on 10/11/77 and was rejected - see letter dated 10/24/77. Upon learning the Accountant 4 had been accepted I spoke with the Personnel Specialist and she would not reconsider the rejection. In fact she stated even if more information was submitted she would not change her decision. The accountant 4 received one of the three positions filled from the job announcement."

3. The appeal in 78-27-PC, filed March 22, 1978, was of a group non-contractual grievance on behalf of D. Alme, Wm. Christofferson, Mary Seymour, Sue Trautwein, and Mary Ziegler. Ms. Ziegler appeared as spokesperson for the group at the prehearing conference before the Commission.

4. This grievance was as follows:

"We, the undersigned with Auditor 4 classifications, request an exploration as to the recent promotion of John Meyer to Fiscal Supervisor 3, (Relief General Accounting Section), Chief, Reports and Analysis Section, when the attached 'turn-down' letters from Catherine Bohrman indicated we were not qualified (sample letters attached). J. M. was accountant 4 when he applied."

5. In September 1977, Ms. Ziegler applied for an examination for Audit Supervisor 3.

6. By letter of October 7, 1977, she was refused admission to the exam with the following language included:

"It appears that you do not have the two years of experience in supervising or directing very large and complex audits necessary to prepare you for this position. In order for experience to be qualifying for this position it must have been at the level of responsibility of such position as Auditor 5, Audit Supervisor 1, or their equivalent in state service.

If you have additional information regarding your experience relevant to these requirements, and you wish us to reevaluate your application, please forward the information to us immediately."

7. Ms. Ziegler submitted additional material but following further evaluation the Personnel Department again turned down her application in a letter dated October 12, 1977, which included the following:

"We have again reviewed your application and the additional material you submitted to us on October 10. On the basis of this information we find that your experience does not meet the requirements established for admission to this examination.

The announcement states the qualifications necessary to compete for the position of Audit Supervisor 3. In our letter of October 7 we provided you with specific examples of positions in which the tasks performed and experience gained prepare an employee for this position.

Employees in these qualifying positions actively participate in developing, recommending, and implementing program changes, policies, and general operating procedures. They also have auditing experience supervising or directing very large and complex audits and independently conducting large and complex audits of a critical or sensitive nature. In all instances they have significant responsibility for program and policy development.

It is the Bureau of Personnel's policy that employees in state service are assumed to be functioning at the level of their responsibilities. A comparison of the duties at your present classification plus the supplementary information you provided, indicates that you do not have the necessary experience to qualify you to compete for Audit Supervisor 3 at this time."

8. The examination for Fiscal Supervisor 3 (CP - H & SS - Chief General Accounting Section) was announced on October 10, 1977, in an announcement which contained the following training and experience requirements:

"QUALIFICATIONS: Training and Experience - Graduation from an accredited college or university with a degree in accounting and 2 years of responsible professional accounting or auditing experience directing a large and complex fiscal program; or comparable training and experience which will provide reasonable assurance that the knowledges and skills required upon appointment have been attained and that the tasks required at the full performance level can be accomplished within an appropriate period of time."

9. Appellants Ziegler, Seymour and Trautwein applied for this examination and were rejected on October 24, 1977, on the following or substantially the following grounds, and with the statement that additional information would be considered:

"It appears that you do not have the two years of experience in supervising or directing a large and complex fiscal program necessary to prepare you for this position. In order for experience to be qualifying for this position it must have been at the level of responsibility of such positions as Accountant 5, Auditor 5, Audit Supervisor 1, Fiscal Supervisor 1 or their equivalent in State Service.

If you have additional information regarding your experience relevant to these requirements, and you wish us to reevaluate your application, please forward the information to us by November 2.

10. These appellants did not submit additional information and were not admitted to the exam.

11. Ms. Ziegler learned on about October 28, 1978, that Mr. Meyer had been admitted to the Fiscal Supervisor 3 exam.

12. She immediately questioned the personnel specialist involved who told her that if a person in pay range 14 had been accepted it would have been based on prior experience. Ms. Ziegler stated that she had 25 years of experience. The personnel specialist would not reconsider her decision of October 12, 1977, rejecting Ms. Ziegler for an Audit Supervisor 3 examination.

13. Appellants Alme and Christofferson did not apply for the Fiscal Supervisor 3 position.

14. Appellant's Alme and Christofferson gave as their reasons for not applying that: "it was clearly stated that applications from persons in positions lower than Range 15 would not be accepted for the Range 17 positions," and the "refusal of their applications for a similar range 17 position.

15. Mr. Meyer was appointed to the position in question effective February 26, 1978.

16. Ms. Ziegler stated in her letter to the Commission dated October 3, 1978, addressing the objections of the respondent: "I maintain since Mr. Meyer was accepted to take the exam, I should also have been accepted."

CONCLUSIONS OF LAW

1. These appeals were not filed in a timely fashion and must be dismissed.

OPINION

While the language used in employee appeal documents should be liberally construed, see Oakley v. Commissioner of Securities, Wis. Pers. Comm.

No. 78-66-PC (10/10/78), that construction should be consistent with the ascertainable intent of the two appeals. It is apparent based on the language of the grievances and the other documents presented by the appellants that their appeals run to their denial of admission to the Fiscal Supervisor 3 exam. With respect to Mr. Meyer, their appeals concern not so much his admission to the exam but the fact that he was admitted when they were not. In any event, it is clear that the appeals run to the question of admission to the exam and not to Mr. Meyer's appointment following the examination.

These appeals, which were filed on March 22, 1978, clearly are untimely with respect to the rejection of the three appellants in October 1977. They are also untimely as to the two appellants who never applied, laying to one side the question of their standing, since under their theory of constructive denial that denial also would have occurred in October 1977.

The appellants have argued that the time for appeal should not begin to run until it was learned that Mr. Meyer had been accepted for examination. Both the statute then in existence, §16.05(2), Stats. (1975), and the current statute, §230.44(3), Stats. (1977), require that the appeal be filed within 15 and 30 days, respectively, after the "effective date" of the action or decision or after the appellant is notified of the action or decision, whichever is later. This statutory language precludes using as the date to start the running of the time for appeal the date the employee learned of a fact that lead him or her to think that an earlier transaction was unfair. In any event, it appears there was knowledge that Mr. Meyer was admitted to the exam as early as October 28, 1977, and these appeals are still untimely with respect to that date.

ORDER

These appeals are dismissed as untimely filed.

Dated: Nov 22, 1978.

Joseph W. Wiley
Joseph W. Wiley
Chairperson

Dated: Nov 22, 1978.

Edward D. Durkin
Edward D. Durkin
Commissioner

Dated: Nov. 22, 1978.

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner