

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 CARL G. RICHTER, *
 *
 Appellant, *
 *
 v. *
 *
 The Division of Personnel, *
 *
 Respondent. *
 *
 Case No. 78-261-PC *
 *
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), Wis. Stats. (1977), of the denial of a reclassification request. The respondent agency has moved to dismiss this appeal on grounds that the appeal was not timely filed. The parties have submitted arguments on this motion. The findings which follow are based on matters which appear to be undisputed.

FINDINGS OF FACT

1. The appellant's reclassification request was denied by memo dated September 20, 1978.
2. The appellant received said memo on October 11, 1978.
3. The appellant mailed to the Commission an appeal of this denial on November 10, 1978.
4. This appeal was received by the Commission on November 14, 1978.

CONCLUSIONS OF LAW

1. In order for an appeal to be timely filed under §230.44(3), Wis. Stats. (1977), it must be physically filed with the Commission as opposed to mailed within the time period.

2. The language of §230.44(3) with respect to the 30 day filing period is mandatory as apposed to directory.

3. Failure to file an appeal within the requisite time period deprives the Commission of jurisdiction over the subject matter of the appeal.

4. This appeal was not timely filed and the Commission lacks subject matter jurisdiction.

OPINION

The current statutory provision on the time period for filing appeals is §230.44(3), Wis. Stats. (1977):

"Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action or within 30 days after the appellant is notified of the action, whichever is later"

The language "may not be heard" very clearly means that the Commission can not proceed with a case if it is not timely filed; the time limit is jurisdictional in nature. See Qdau v. Personnel Board, 250 Wis. 600 (1947). Furthermore, this language means that the time limit is mandatory as opposed to directory in nature. Strict compliance is required. See State ex rel Werlein v. Elamore, 33 Wis. 2d 288, 293 (1967), Muskego - Norway C.S.J.S.D. No. 9 v. W.E.R.B., 32 Wis 2d 478, 483 (1967).

The next question is what is meant by the word "filed." It is not defined by the statute.

The Commission is operating at this time under the old Personnel Board rules. See §129 (4M), Chapter 196, Laws of 1977. These rules require that appeals be "received" within the statutory time period.

See § PB 1.01(3), WAC.

The appellant argues that this rule should not be followed because of a change in the statutory language covering the same subject. That is, §16.05(2), Wis. Stats. (1975), contained the following language:

"The board shall not grant an appeal ... unless a written request therefore is received by the board within 15 days"

Section 230.44(3), Wis. Stats. (1977), uses the terminology "is filed" in place of "is received."

The Commission agrees that to the extent that § PB 1.01(3) is a reflection of or relies on the repealed statute, §16.05(2), and is in conflict with the new statute, it should not be followed. Since the rule cannot provide independent guidance, another source must be consulted.

The Wisconsin Supreme Court interpreted the word "filed" in E. M. Boerke Inc. v. Williams, 28 Wis. 2d 627, 635 (1965):

"Webster's Third New International Dictionary defines 'file' 'to deliver (as a legal paper or instrument) after complying with any condition precedent ... to the proper officer'"

"To construe or define 'mailing' as 'filing' is to ignore the plain meaning of the word. Mailing merely initiates the process by which an article in the due course of the post will be delivered."

While in this case the court was construing contract language, the Court's decision is plain and emphatic, and the Commission can not ascertain any reason to reach a different result in interpreting this statutory language.

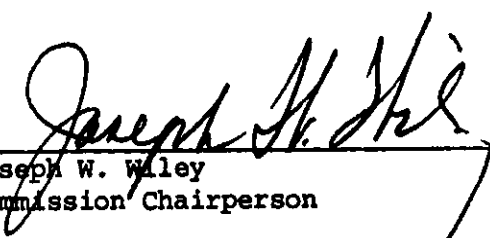
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ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: Jan 30, 1979.

State Personnel Commission



Joseph W. Wiley
Commission Chairperson



Charlotte M. Higbee
Commissioner

AJT:skv