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RUTH SHADE,  
 Appellant,

v.

Secretary, DEPARTMENT OF REVENUE,  
 & Administrator, DIVISION OF  
 PERSONNEL,

Respondents.

Case No. 79-111-PC

\* \* \* \* \*

OFFICIAL

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Wis. Stats., of the denial of a reclassification request. The respondents have moved to dismiss the appeal on the grounds that the appeal was not timely filed. A hearing was held by the Commission on July 25, 1980 on the question of timeliness only. The findings which follow are based on the testimony and evidence presented at the hearing and the briefs submitted by the parties.

FINDINGS OF FACT

1. The appellant requested a reclassification from Clerk 3 to Clerk 4 upon assuming a new position with the Department of Revenue on April 10, 1978 after having been informed that the new position she was assuming had been reallocated to Clerk 4 as the result of a clerical survey.

2. Appellant was informed by her supervisor, Lloyd Girard, that she would have to serve a six-month probationary period in her new position before a reclassification request could be submitted on her behalf.

3. A reclassification request was submitted on her behalf on February 2, 1979.

4. Appellant was offered a new position with the Department of Revenue, that of Tax Representative Assistant, on February 26, 1979 and assumed the position on March 26, 1979.

5. Appellant's reclassification request from Clerk 3 to Clerk 4 was withdrawn by the agency on March 1, 1979 after the agency learned that she was accepting the new position of Tax Representative Assistant. However, appellant was never officially informed of this fact by any supervisor from the agency.

6. Appellant filed an appeal with the Commission on April 24, 1979 after becoming aware that the person who replaced her on her old job as Clerk 3 had been reclassified as a Clerk 4.

7. Appellant discovered for the first time that her reclassification request had been withdrawn at a prehearing held on this case on June 24, 1979.

#### CONCLUSIONS OF LAW

1. In order for an appeal to be considered timely filed under §230.44(3), Wis. Stats., it must be "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...." (Emphasis added.)

2. The language of §230.44(3), Wis. Stats., with respect to the 30-day filing period is mandatory as opposed to directory.

3. The appeal was timely filed and the Commission has jurisdiction to hear this appeal.

OPINION

Respondent states that the reclassification request for Ms. Shade, which was to become effective as of March 25, 1979, was withdrawn by the agency on March 1, 1979 when it was learned that Ms. Shade had accepted her new position of Tax Representative Assistant effective March 27, 1979. Respondent contends that since appellant did not file her appeal with the Commission until April 24, 1979, more than 30 days after she left her Clerk 3 position, this appeal should be dismissed.

Respondent cites Mary Ziegler et al. v. Department of Health and Social Services and Division of Personnel, Case No. 78-26-PC and 78-27-PC, when the Personnel Commission stated:

"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 employe learned of a fact that lead him or her to think an earlier transaction was unfair..."

Ziegler et al. is distinguished from this case, however, in that in Ziegler the appellants filed appeals protesting their denial of admission to an examination for promotion only after someone else had been given the promotion and not within 30 days after they had been notified that they had been denied admission to the exam.

In the instant case, appellant contends, and respondent does not deny, that she was not notified that her reclassification request had been withdrawn until after she filed her appeal. Withdrawal of a reclassification

request by an agency is in effect the denial of a request for reclassification. The Wisconsin Personnel Manual, Chapter 332, Appendix A, III, B, 3, states:

"Reclass Request Denied -- a. Delegated Action (and non-Delegated Actions) -- notify the incumbent in writing of the decision..."

Since in this case, the respondent does not deny that it never officially notified appellant of the denial of her reclassification request, it cannot now claim that she had only 30 days after she accepted a new position to file an appeal protesting an action she did not know had taken place at that point in time.

ORDER

Respondent's motion to dismiss this appeal due to lack of subject matter jurisdiction is denied.

Dated Nov. 4, 1980

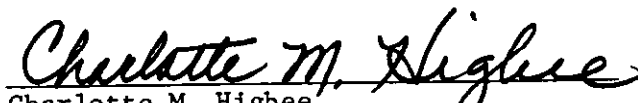
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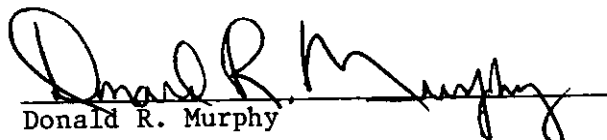
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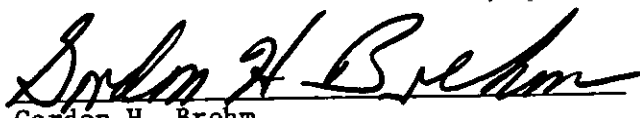
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