

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

STEVE BUTLER, et al.,

Appellants,

v.

DEPARTMENT OF INDUSTRY, LABOR &
HUMAN RELATIONS and DEPARTMENT
OF EMPLOYMENT RELATIONS

Respondents.

Case No. 79-138-PC

* * * * *

INTERIM
DECISION
AND
ORDER

NATURE OF THE CASE

Appellants filed appeals with the Personnel Commission alleging impropriety in the design and scoring of an examination given to fill an Administrative Assistant 5 position with DILHR. Respondent objected to subject matter jurisdiction based on lack of timeliness of the appeal. The matter has been submitted to the Commission on briefs of the parties. This decision and order only goes to the jurisdictional question.

FACTS

1. Appellants' appeal letter was received by the commission on June 4, 1979.
2. Respondent, on April 17, 1979, mailed to appellants their respective grades and rankings in the examination.

CONCLUSIONS OF LAW

1. The appeals were not timely filed in accordance with the requirements of s.230.44(3), Stats.

2. The burden of persuasion is on appellant to show by the greater weight of credible evidence, that respondent is equitably estopped from objecting to the lack of timeliness of the appeal due to actions of respondent which constitute fraud or a manifest abuse of discretion.

3. Appellant Butler has met the burden of persuasion, and respondent is estopped from raising a defense based on the lack of timeliness of the appeals.

4. The Commission has jurisdiction of this appeal.

OPINION

The appeal letter questions the validity of the examination and the objectivity of the panel which scored applicant's examinations. Therefore, the latest date which would commence the running of the 30-day limit in s.230.44(3), Stats., would be the date on which appellants were notified of their scores. Respondent mailed the test scores on April 17, 1979. (See affidavit of Judith Burke, attached to respondent's brief on Motion to Dismiss). Butler received the notice no later than April 20, 1979. (Exhibit A, Respondent's brief). The date of filing of appeal was more than 30 days after notice of the actions appealed. Since these facts are not controverted by appellant, he argues a defense of equitable estoppel against respondent's invocation of the statute of limitations attack on jurisdiction.

Respondent correctly points out the defense of equitable estoppel is generally not as freely accepted against a government agency as against a private party. Department of Revenue v. Moebius Printing Co., 89 Wis.2d 610, 638(1979); Ryan v. Department of Revenue, 68 Wis.2d 467, 470-71(1975).

As this principle has been applied in the cited cases, estoppel arguments succeeded against parties who should have become suspicious of respondent's actions and whose reliance on erroneous information or misapplication of law was clearly misplaced. In this case however, Butler's reliance on a DILHR employe's erroneous application of s.230.44(3) Stats., was not misplaced. In addition, Butler acted with reasonable promptness and filed the appeals approximately two weeks before the supposedly correct deadline. The erroneous information given to Butler by an agency employe, acting in his official capacity, is sufficient to prevent respondent from relying on the untimeliness of the appeal to oust Commission jurisdiction.

Respondent argues that Butler's apparently exclusive reliance on the erroneous advice, without further investigation, shows a lack of reasonable care and he is therefore prevented from invoking equitable estoppel against respondent. This would be the case only if Butler's original reliance were unreasonable, and it was not unreasonable. Where the appellant's reliance was reasonable, estoppel may properly be invoked. Barbara Porter v. DOT, 78-154-PC (5/79); Pulliam and Rose v. Wettengel, 75-51 (11/75). All the necessary elements of estoppel are present in this case; inequitable conduct of respondent, good faith reliance by appellant, irreparable harm to appellant caused by his reliance. Ryan v. Department of Revenue.

ORDER

Respondent's motion for Order Dismissing Appeal is hereby denied.

Dated Nov. 8, 1979

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee, Commissioner