

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 SHAREN SNYDER, *
 *
 Appellant, *
 *
 v. *
 *
 DEPARTMENT OF HEALTH *
 AND SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 79-139-PC *
 *
 * * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of a probationary discharge which is before the Commission on respondent's motion to dismiss for failure to file a timely appeal. The essential facts relative to jurisdiction are not in dispute.

FINDINGS OF FACT

1. The appellant's probationary employment at Lincoln Hills School as a Youth Counselor 1 was terminated on or about December 15, 1978.
2. The appellant's appeal letter was received by the Commission on June 1, 1979.
3. The collective bargaining agreement between the state and AFSCME, Council 24, WSEU, AFL-CIO, effective September 11, 1977 - June 30, 1979, of which the Commission takes official notice, applies to the Youth Counselor 1 classification and provides for a limited hearing rights for released probationary employes, Article IV, §10, Article X; and a 30 day limit on filing grievances, Article IV, §1.

CONCLUSIONS OF LAW

1. This appeal was not timely filed and must be dismissed.

OPINION

Section 230.44(3), Stats., requires that appeals be filed within 30 days of the effective date of the action appealed or of the date of notice, whichever is later. Since the appellant's probationary employment was terminated in December 1978, she obviously had notice at that time of the action. Her appeal, filed June 1, 1979, was filed more than 30 days thereafter.

The appellant questions whether §230.44(3) applies. Even if it did not, the union contract also provides a 30 day limit on filing grievances, and this has been applied to appeals of probationary terminations. See Dziadosz et al v. DHSS, Wis. Pers. Commn. No. 78-32-PC (10/9/78); Request for Declaratory Ruling, Wis. Pers. Bd. No. 75-206 (8/24/76).

The appellant also states that at the time of her termination she was told by certain union officials that she had no appeal rights. While if the appellant had been misled as to her appeal rights by the respondent, a case of equitable estoppel to raise this timeliness objection might be made out, the acts of the union officials cannot be attributed to the respondent.

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ORDER

This appeal is dismissed as not timely filed.

Dated: Nov. 8, 1979. STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

AJT:jmg

10/9/79