

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ELIZABETH BONG,
 ANDREA SEEMANN,

 Appellants,

 v.

 DEPARTMENT OF INDUSTRY,
 LABOR AND HUMAN RELATIONS,

 Respondent.

 Case No. 79-167-PC

 * * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

These appeals were filed pursuant to s.230.44(1)(d), Wis. Stats., protesting alleged impropriety in the hiring process after certification of candidates for the position of Community Services Assistant 2-Trainee, in the Manpower Services Division of the Department of Industry, Labor and Human Relations. Respondent has moved to dismiss the appeals as untimely and as failing to allege an illegal act or abuse of discretion under s.230.44(1)(d), Stats. With respect to appellant Seemann alone, respondent also challenges standing to raise a claim.

FACTS

1. On May 18, 1979, after certification, both appellants interviewed for the position of Community Services Assistant 2-Trainee.

2. Appellant Bong filed an appeal with the Commission on June 22, 1979, in which she alleges that during her May 18, 1979 interview, the DILHR employe conducting the interview told her that the position involved a great deal of travel on short notice and that the DILHR employe told her

that she would have to decide on the spot whether she wanted the job, whereupon appellant stated that she could not accept the job and, still during the interview, signed a statement to that effect which statement had been typed by the interviewer's secretary.

3. In appellants' response to respondent's motion to dismiss, Ms. Bong asserts that because she did not realize until May 23, 1979, "what had occurred," her appeal is timely filed; and that because she signed the statement of May 18, 1979, she did not receive official notice of the hiring decision for the position in question.

4. An employe of respondent mailed a letter to Ms. Seemann on May 22, 1979, informing her that she had not been appointed to the position in question; on the same day a letter was sent to the successful candidate for the position confirming both DILHR's offer and the candidate's acceptance of the position.

5. Ms. Seemann filed her appeal on June 28, 1979, and concedes in her response to respondent's motion to dismiss that her appeal is "untimely with regard to existing statutes."

CONCLUSIONS OF LAW

1. The appeals of Ms. Bong and Ms. Seemann were not timely filed in accordance with s.230.44(3), Wis. Stats.

2. The Personnel Commission lacks subject matter jurisdiction over these appeals.

OPINION

Ms. Seemann concedes that her appeal was untimely, but raises what she characterizes as extenuating circumstances to persuade the Commission to

accept jurisdiction. Neither the failure of the DILHR to inform Ms. Seemann of her appeal time nor the apparently incorrect advice given her by her union steward is proper basis for a Commission finding of estoppel against respondent's motion to dismiss. Since respondent has no obligation to inform appellant of appeal procedures, the failure to so inform Ms. Seemann does not constitute a legal or equitable ground for taking jurisdiction of her appeal. Any misinformation appellant may have received from her union steward does not operate as a valid estoppel claim against respondent. Estoppel operates against the party who induced reliance by another, but does not operate against third parties who did not participate in the transaction.

Ms. Bong asked the Commission to read s.230.44(3), Wis. Stats., to say that the time she "realized what had taken place," May 23, 1979, is the point at which the 30 day limit began to run. Respondent in its brief in support of the motion to dismiss pinpoints May 23, 1979, as the day after the effective date on which the position was filled. Therefore both appellant and respondent rely on the same date to commence the 30 day period of s.230.44(3), Wis. Stats. The 30th day after May 23, 1979, was June 21, 1979. The appeal period expired on June 21, 1979. Therefore, Ms. Bong's appeal of June 22, 1979, was untimely as a matter of law. Although in this instance there is no controversy as to the actual date from which the appeal period began to run, the rationales of the parties differ as to why the particular date should be used. The Commission therefore for the benefit of appellants cites a prior decision, Ziegler v. DHSS and Division of Personnel, 78-26-PC and 78-27-PC (11/78), wherein it stated that "this statutory language s.230.44(3), Wis. Stats. precludes using as the date to start the running of the time

for appeal the date of the employee learned of a fact that lead him or her to think that an earlier transaction was unfair."

ORDER

1. The appeals of Ms. Bong and Ms. Seemann are hereby dismissed as untimely.

Dated Nov. 8, 1979

STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee, Commissioner