

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DONALD T. DONAHUE,  
 Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 AGRICULTURE, TRADE AND CONSUMER  
 PROTECTION, and Administrator,  
 DIVISION OF PERSONNEL.  
 Respondents.  
 Case No. 79-189-PC

\* \* \* \* \*

INTERIM  
DECISION

This is an appeal of a reclassification. The only dispute is as to the effective date. At the prehearing conference the respondent objected to the timeliness of appellant's request for an effective reallocation date of July 2, 1978.

In support of its objection respondents contend that as a result of a personnel management survey the appellant's position was reallocated from Consumer Protection Investigator 2 to Regulation Compliance Investigator 2 effective July 2, 1978, that the appellant received the reallocation notice on July 31, 1978, and never appealed that decision. Respondents further state that on June 19, 1979, the appellant's reclassification request was denied, that the appellant received that decision on July 10, 1979, and filed an appeal on August 1, 1979, and that the appellant's position was reclassified to Regulation Compliance Investigator 3 effective September 9, 1979. See letter-brief dated December 14, 1979.

The appellant does not dispute these facts but argues that:

"Only after he heard that other employees within and without his unit were being reclassified from Regulation Compliance Investigator 2 to 3 did he obtain a copy of the Job Standards and discover that he too should have been classified.

In a similar case the Personnel Board, predecessor to the Personnel Commission held that an employee's reclassification appeal was not barred by his failure to object to the classification itself at the time the Board approved the Director's recommendations on it because the Appellant had no notice of the Board's considerations of the matter. See Ryczek v. Wettengel, 73-26, 7/3/74. See letter brief dated November 26, 1979.

The holding in the Ryczek case does not apply here. The appellant in the instant case did have effective notice of the reallocation. He is arguing that it was not until later that he learned of facts that lead him to believe that the reallocation was improper. The appeal time set forth in §230.44(3), Stats., commences from the effective date of the transaction or the date on which the appellant receives notice of the transaction, whichever is later. It does not commence from the date that the appellant learns of facts which leads to the belief that the transaction was improper. See Bong & Seeman v. DILHR, 79-167-PC (11/8/79).

The appellant also argues that he had requested a reclassification prior to the implementation of the survey and, in essence, that this provides an independent basis for his effective date claim. However, he states in his appeal letter filed August 1, 1979:

"On March 20, 1979, I received a written denial of my request. This denial was based on what I feel to be an erroneous evaluation of my job performance, and was not in accordance with rules established by the personnel commission."

The appellant did not file an appeal of this denial but states he requested an audit of his position by the DATCP personnel director.

Under these circumstances there is no basis for a claim for an effective date of July 2, 1978, nor, for that matter a date prior to March 20, 1979.

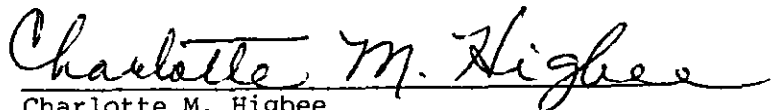
ORDER

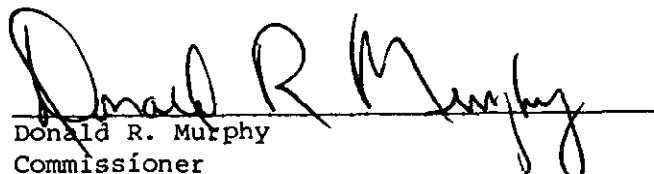
It is ordered that this matter proceed to hearing on April 15, and 16, 1980, at 9 a.m., in Room 803, 131 West Wilson Street, Madison. This will be a class 3 proceeding pursuant to §230.44(1)(b), Stats. The issue for hearing will be:

"Whether or not the decision of the administrator to reclassify the appellant's position from Regulation Compliance Investigator 2 to Regulation Compliance Investigator 3 effective September 9, 1979, was correct, and if not, what is the appropriate effective date after March 20, 1979.

Dated: March 21, 1980.

STATE PERSONNEL COMMISSION

  
Charlotte M. Higbee  
Commissioner

  
Donald R. Murphy  
Commissioner