

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 JAMES WICHMAN,  
                     Appellant,  
 v.  
 DIVISION OF PERSONNEL,  
                     Respondent.  
 Case No. 79-41-PC  
 \* \* \* \* \*

OPINION  
AND  
ORDER

NATURE OF THE CASE

Respondent has objected to jurisdiction of the Commission based on an untimely appeal by the appellant. The parties have filed written statements which provide the basis for the following findings.

ISSUE

Did appellant file a timely appeal of his denial of a reclassification to Job Service Specialist 4?

FINDINGS OF FACT

1. By letter dated December 19, 1978, addressed to appellant at his place of work, he was given notice of the denial of his reclassification request.

2. Appellant stated in his appeal letter to the Commission that he did not receive the denial letter until his return from vacation the first week in January. The first work day in January was the 2nd. Appellant's leave time indicates he was not on vacation or sick any of the days in the first week of January.

3. Appellant states in his written argument that he received

the letter either the first or the second week of January, 1979.

4. Appellant wrote an appeal dated January 31, 1979 and it was received by the Personnel Commission on February 8, 1979. This is a period of 34 days from the last day of the first week in January.

#### CONCLUSION OF LAW

1. This case is properly before the Personnel Commission under §230.45, Wis. Stats.

2. The burden of proof is upon the appellant to prove by the greater weight of evidence that appellant's appeal was timely.

3. Section 230.44(3), Wis. Stats., provides in part:

"Any appeal filed under this section may not be heard unless the appeal is 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 ...."

4. The appellant has not met that burden of proof.

#### OPINION

Although the appellant has made some very salient points in his brief about the unfairness of the filing system to state employes who are unfamiliar with it, the Commission has no authority to waive the statutory requirement. An attempt is being made to correct some of this problem with the issuing of new rules of the Commission.

This whole case must rest on appellant's own letter of appeal when he stated that he did not know of the denial until his return from vacation the first week in January. Even in his own brief he isn't sure it wasn't the first week. Since he was at his place of employment for four days that week, it is only reasonable for the Commission to accept the fact that he did in fact learn of the denial by Friday,

January 5, 1979. Therefore, his appeal received on February 8, 1979 is untimely and the Commission lacks jurisdiction to hear the merits of this case.

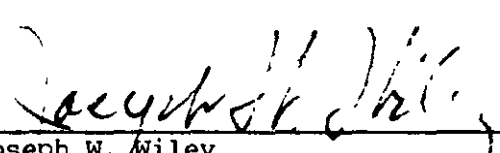
ORDER


This appeal is dismissed for lack of jurisdiction by the Personnel Commission.

Dated:

July 5, 1979.

STATE PERSONNEL COMMISSION

  
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Joseph W. Wiley  
Chairperson

  
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Charlotte M. Higbee  
Commissioner

EDD:jmg

6/11/79