

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOHN THOMPSON,

Appellant,

v.

DEPARTMENT OF HEALTH
AND SOCIAL SERVICES,

Appellant,

Case No. 79-98-PC

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DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal of the termination of probationary employment which is before the Commission on the respondent's objection to the timeliness of the appeal. The parties have filed briefs on the question of timeliness and the following Findings are based on matters which appear to be undisputed.

FINDINGS OF FACT

1. At all material times the appellant has occupied positions in the classified civil service of the State of Wisconsin which have been subject to the relevant collective bargaining agreements between the State and the WSEU, AFSCME, Council 24 (Security and Public Safety).
2. The appellant originally was hired as an Officer I at the Oak Hill Correctional Institution.
3. By letter dated October 9, 1978, the appellant was promoted to an Officer III at the Wisconsin Correctional Camp System and was required to serve a six months promotional probationary period.
4. By letter of January 30, 1979, from the superintendent of the

Wisconsin Correctional Camp System, the appellant was notified of the termination of his probationary employment, and the restoration to his Officer I classification at Oakhill, effective February 4, 1979.

5. The aforesaid letter contained the following paragraph:

"In accordance with Article IV, Section 10 of the Union Agreement, the retention or release of probationary employes shall not be subject to the grievance procedure. They do, at the discretion of the Personnel Board have the right to a hearing before the Personnel Board."

6. On February 9, 1979, the appellant, on the advice of the union local 3021 president, filed a contract grievance relative to his probationary termination.

7. On April 6, 1979, the appellant met with Don Foley, DHSS Employment Relations Specialist, with respect to the grievance, and Mr. Foley indicated that the subject matter of the grievance was not subject to the grievance procedure.

8. The appellant filed an appeal with this Commission on April 20, 1979.

CONCLUSIONS OF LAW

1. The time limit for filing appeals of probationary terminations with the Commission is 30 days.

2. The appellant failed to file an appeal of his termination with this Commission within 30 days of either the date of the termination or his notice thereof.

3. The failure of the appellant to file a timely appeal is not attributable to the respondent and collateral estoppel does not lie against the respondent.

OPINION

In Dziadosz v. DHSS, Wis. Pers. Commn. case no. 78-32, 37, 89, 108-PC, (10/9/78), the Commission reaffirmed the declaratory ruling rendered by its predecessor agency, the State Personnel Board, in case no. 75-206 (8/24/76). In that ruling the Board held that the time for appeals of probationary termination was 30 days as set forth in the contract under Article IV, Section 1, paragraph 36.

In this case the respondent explicitly informed the appellant in his termination letter that the matter was not grievable under the contract but that there was a discretionary hearing possible before the Personnel Board. However, the appellant chose to ignore this admonition and file a contractual grievance. He did not file with this Commission until after the respondent informed him at their grievance meeting that the matter was non-grievable.

It is understandable that the appellant may have been confused to some extent by the reference in the termination letter to the Personnel Board. At the time of the letter §111.91(3), Stats., which provides for the possibility of contractual agreements permitting limited review of certain non-bargainable matters, had been amended to substitute the Personnel Commission for the Personnel Board. However, the letter did repeat the contract language, and what is clear from the letter and the contract, Art IV, §10, is that: " ... the retention of probationary employees shall not be subject to the grievance procedure" (emphasis supplied).

Therefore, in the opinion of the Commission, the failure of the appellant to file a timely appeal with the Commission is not attributable

to the respondent and the respondent is not estopped from raising the
timeliness issue, and the failure to file in a timely manner should not
be excused on other grounds.

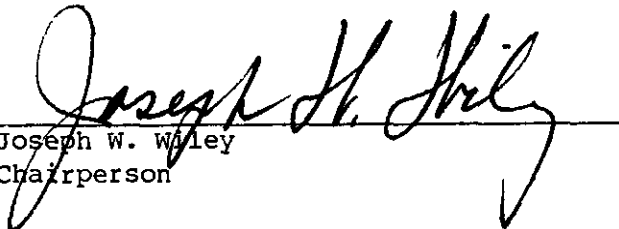
ORDER

This appeal is dismissed as not timely filed.

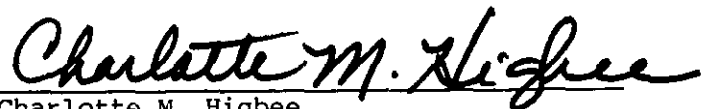
Dated:

June 12, 1979.

STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

AJT:jmg

6/7/79