
 NANCIE YOUNG,
 Appellant,
 v.
 Administrator, DIVISION OF
 PERSONNEL,
 Respondent.
 Case No. 81-7-PC

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DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), Wis. Stats., of the denial of a reclassification request. The respondent moved to dismiss the appeal for lack of subject matter jurisdiction on the ground that the appeal had not been timely filed. Because there was a dispute as to the jurisdictional facts, an evidentiary hearing was held on the motion.

FINDINGS OF FACT

1. At all times material hereto, the appellant has been employed in the classified civil service of the State of Wisconsin.
2. On December 8, 1980, the appellant received written notice from the respondent of the denial of her reclassification request, see Appellant's Exhibit #1.
3. This denial was appealed by letter dated January 7, 1981, Respondent's Exhibit #1, which contained in material part the following statement:

"In the letter received on December 8, 1980, from Marian Walluks, State Division of Personnel, denying my request for reclassification, it states, 'If you do not agree with our decision in this matter, you must appeal in writing to the State Personnel Commission within 30 days of your receipt of this letter.'

In accordance with that directive, I hereby formally appeal the decision of the State Division of Personnel."

4. This letter, Respondent's Exhibit #1, was date-stamped "Received January 8, 1981, Personnel Commission" by the Personnel Commission clerical staff.

5. The Personnel Commission clerical staff made an entry in the Commission document log that said letter was received "1/8/81."

6. The Personnel Commission office policy has been to date stamp all incoming documents on the date they are received with that day's date.

7. The appellant had been aware that it was essential that her appeal be received by the Commission not later than January 7, 1981.

8. Respondent's Exhibit #1 was hand-delivered to the Commission's office by the appellant on January 7, 1981.

CONCLUSIONS OF LAW

1. This appeal was timely filed in accordance with §230.44(3), Wis. Stats.

2. The Commission has jurisdiction over this appeal.

OPINION

The appellant testified that she hand-delivered the appeal letter to the Commission on January 7, 1981. She testified that she had been well aware of the 30-day time limit for filing appeals and that January 7th was the last day for filing appeals. She further testified that she had delayed filing her appeal because she had been hopeful that the matter might have been resolved, but that an attempt to have arranged a meeting on January 5th had been unsuccessful.

Two of the Commission's clerical staff testified. No testimony was elicited as to whether they recalled the date the appeal document was received. They both testified that the office procedure has been to date stamp all incoming documents on the date received with that day's date, that they had been told of the importance that this be done, and that they attempted to do so in each case.

In the opinion of the Commission, the date a document is stamped received by the Commission is not conclusive as to the actual date of receipt. Compare, Boston Old Colony Ins. v. Intl. Rectifier Corp., 91 Wis. 2d 813, 284 N.W. 2d 93 (1979). The appellant has the burden of proof on all issues, including jurisdiction, and must prove by the preponderance or greater weight of the evidence that her appeal was filed in a timely fashion.

The Commission was impressed by the appellant's testimony that she had been well aware of the importance of filing her appeal within 30 days and by January 7, 1981, and that she had been careful to have

filed it personally on that date. While the Commission's office practice has been to stamp documents the date they are received no such system is infallible. In the opinion of the Commission, the appellant has established by a preponderance of the evidence that the appeal letter was filed on January 7, 1981, and thus was timely.

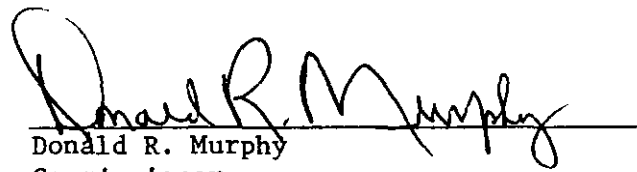
ORDER

The respondent's motion to dismiss this appeal as untimely, dated February 23, 1981, is denied.

Dated June 3, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Chairperson


Donald R. Murphy
Commissioner

AJT:mek
Parties:

Ms. Nancie Young
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