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VERNON SHARPE,

Appellant,

v.

Secretary, DEPARTMENT OF
ADMINISTRATION and,
Administrator, DIVISION OF
PERSONNEL,

Respondents.

Case No. 82-117-PC

* * * * *

INTERIM
DECISION
AND
ORDER

This matter is an appeal from a reclassification decision. The respondent has objected to the Commission's asserting any jurisdiction in this matter, arguing that the appeal was untimely filed. Inasmuch as both parties have filed written statements of their position and neither party has requested an evidentiary hearing or suggested that any jurisdictional facts are in dispute, they have waived any right they may have had to a jurisdictional hearing.

FINDINGS OF FACT

1. In a memo dated March 18, 1982 from Thomas Herman, Assistant Personnel Director, DOA, the appellant was notified that respondent DOA had determined that his position was properly classified at the Printing Technician 2 level rather than the Printing Technician 3 level:

Based on a careful review of Mr. Sharpe's position and the class specifications, our determination is that the most appropriate classification for this position (at the time it was submitted for reclass) is the classification of Printing Technician 2.

If Mr. Sharpe disagrees with our determination, he may refer this action to the State Personnel Commission for further review. Such a request must be submitted to our office in writing within 30 calendar days of receipt of this letter and must include the reason(s) why this action is felt to be inappropriate.

2. The respondent Division of Personnel has delegated its authority over the Printing Technician 2 and 3 classifications to the Department of Administration.

3. In a memo from the appellant to Thomas Herman dated April 15, 1982 and date stamped as being received on April 16, 1982, the appellant sought to refer Mr. Herman's "action and determination to the State Personnel Commission for further review."

4. The appellant's memo was ultimately submitted to the Commission on May 12, 1982.

CONCLUSIONS OF LAW

1. Pursuant to s.230.44(3), Wis. Stats., an appeal must be received by the Commission within thirty days of the action taken or notification of the action, whichever is later.

2. The Department of Administration is equitably estopped from arguing that the appeal is untimely due to the express instruction to submit any review request to its office.

OPINION

The time limit for filing an appeal with the Commission is established in s.230.44(3), Wis. Stats. As was stated in the recent case of Goeltzer v. DVA, Case No. 82-11-PC (5/12/82):

If an appeal is not 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, the appeal "may not be heard." This provision is considered jurisdictional in nature and a late filing cuts off the Commission's authority to hear an appeal. See, e.g., Maegli v. Schmidt, 74-6 (1/20/72): State of Wisconsin ex rel DOA v. Personnel Board, Dane County Circuit Court, No. 149-295 (1976).

The only circumstances under which this result can be avoided are those which give use to an equitable estoppel. Equitable estoppel has been defined as "the effect of voluntary conduct of a party whereby he or she is precluded from asserting rights against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct." Porter v. DOT, 78-154-PC (5/14/79). In order to establish estoppel against a state agency, "the acts of the state agency must be proved by clear and distinct evidence and must amount to a fraud or a manifest abuse of discretion." Surety Savings & Loan Assn. v. State of Wisconsin (Division of Highways), 54 Wis. 2d 438, 195 N.W. 2d 464 (1972).

In this case, the appellant was specifically notified by DOA that:

Such a request for further review of the reclassification action must be submitted to our office in writing within 30 calendar days of receipt of this letter and must include the reason(s) why this action is felt to be inappropriate. (Emphasis added.)

The Commission concludes that appellant's reliance on this statement was justified.

The appellant did in fact comply with the requirements set out in the March 18th memo when he submitted his April 15th memo to Mr. Herman, DOA's Assistant Personnel Director, on April 16, 1982.

If DOA were now allowed to repudiate the instructions given in the March 18th memo, the appellant would be barred from obtaining review of the underlying reclassification decision. The appellant would clearly be aggrieved by such a lack of review.

On the record before it, the Commission concludes that the action of DOA in this matter amounts to a manifest abuse of discretion.

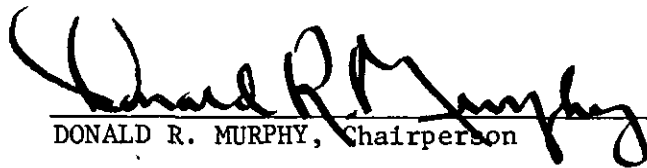
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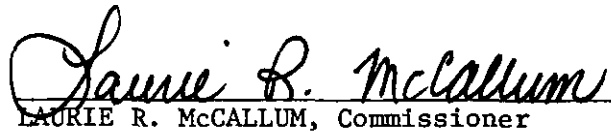
ORDER

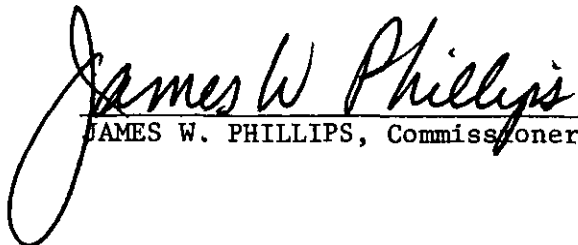
Respondent DOA is equitably estopped from asserting jurisdictional objection based on the timeliness of the letter of appeal in this matter.

Dated: July 26, 1982

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

KMS:ers

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