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 DUANE ZABEL,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 TRANSPORTATION,
 Respondent.
 Case No. 82-137-PC
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission as an appeal from a one day suspension without pay. Respondent DOT has objected to the authority of the Commission to hear this matter, arguing that the appeal was not timely filed. Both parties have filed letters in support of their positions. The findings that follow appear to be undisputed. Because neither party has requested an evidentiary hearing or suggested that any jurisdictional facts are in dispute, they have waived any right to a jurisdictional hearing.

FINDINGS OF FACT

1. On April 26, 1982, appellant was notified that he was to be suspended without pay for one day, effective May 6, 1982.

2. The suspension letter stated in part:

If you feel the above disciplinary action was taken without just cause, you may appeal it in accordance with Section 230.44(1)(6), Wisconsin Statutes, to the State Personnel Commission, One West Wilson Street, Madison, Wisconsin 53702, provided your written appeal is made within thirty (30) days after the effective date of this action, or within thirty (30) days after receiving notice of it, whichever is later.

3. The Commission's correct street address is 131 West Wilson Street.

4. In a letter addressed to the Commission at One West Wilson Street, the appellant sought to appeal his suspension. Appellant's letter was dated June 2, 1982 and was postmarked in Green Bay on June 3, 1982.

5. The envelope to appellant's letter indicates that it was forwarded from One West Wilson Street to the Commission's office at 131 West Wilson Street.
6. The Commission actually received appellant's letter on June 9, 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. Due to its own action of providing appellant with the incorrect address for the Commission, the respondent DOT is equitably estopped from arguing that the appeal is untimely filed.

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[rise] 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 provided the wrong address for filing his appeal with the Commission. He complied with the instructions that were given to

him, his letter was postmarked June 3, 1982 and the 30 day limit was to run out on June 7, 1982. The appellant clearly relied and acted upon respondent's instructions. If DOT was now allowed to repudiate the instructions given in its April 26, 1982 letter, the appellant would be prevented from obtaining administrative review of the respondents suspension decision. The appellant would obviously be aggrieved by such a lack of review.

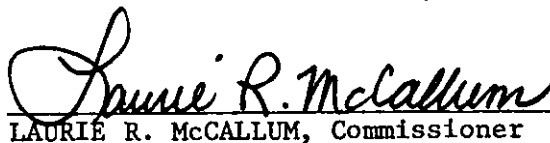
Based on the record, the Commission concludes that the action of DOT in this matter constitutes a manifest abuse of discretion in that by giving appellant the wrong address, respondent was acting in a manner that might reasonably be expected to have influenced the conduct of the appellant and to have mislead him.

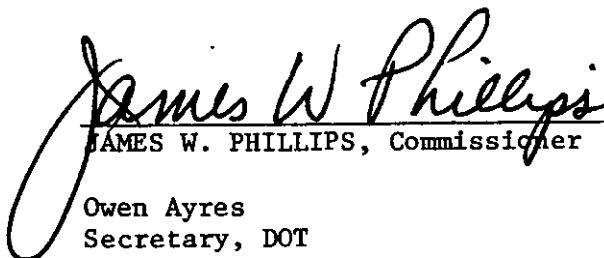
ORDER

Respondent DOT is equitably estopped from asserting a jurisdictional objection based upon 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

Parties

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