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CLIVE R. ADAMS,
 Appellant,

v.

Secretary, DEPARTMENT OF
 HEALTH & SOCIAL SERVICES,
 Respondent.

Case No. 83-0050-PC

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INTERIM
 DECISION
 AND
 ORDER

The respondent filed a motion to dismiss this appeal arguing that the appeal was not filed within the thirty-day time limit. A briefing schedule was established. The facts set out below appear to be undisputed and are based upon the briefs and attached documents.

FINDINGS OF FACT

1. Appellant applied for a position as Institution Aide 3 with the Mendota Mental Health Institute (MMHI), a facility operated by the respondent department.
2. By letter dated January 10, 1984 from Dorothy Schulz, personnel assistant at MMHI, the appellant was informed that he was not selected.
3. Appellant subsequently had conversations with Linda Reivitz, Secretary of DHSS and with another state employe in which he expressed concerns about the Aide 3 hiring process and asked to be placed back into the process.
4. Several weeks later, appellant was invited to undergo a medical examination for the Aide 3 positions.
5. On February 8, 1983, the appellant received a letter from Dennis Dokken, Personnel Director at MMHI, advising the appellant as follows:

Based upon the medical information provided to me and the recommendation of our physicians, the decision has been made not to consider your candidacy any further at this time.

6. On February 11, 1983, the appellant submitted a letter to Ms. Reivitz, asking her to explore several concerns the appellant had regarding the medical examination. The letter stated, in part, as follows:

This letter is an appeal and formal request to DHSS to re-examine my situation with respect to MMHI and the Institution Aide-3 position.

No formal charges or appeals to the Personnel Commission [have] been initiated. I think DHSS deserves the right and chance to resolve this matter as expeditiously as possible.

7. In a letter dated February 38, 1983, and signed by Ms. Reivitz, the respondent reviewed the concerns raised by the appellant, summarized the results of an investigation carried out by the department and concluded:

My review of this matter indicated that the Mendota Mental Health Institute did not act improperly or discriminated against you. I trust this will answer your concerns in this matter.

8. On March 25, 1983, the appellant filed a letter of appeal with the Commission seeking review of the appointment decision.

CONCLUSION OF LAW

This appeal was timely filed with the Commission.

OPINION

The respondent's motion to dismiss is founded upon the time limit established in §230.44(3), Stats., which provides:

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 latter ...

The Commission has previously ruled that the statutory time limit is mandatory rather directory and is jurisdictional in nature. Richter v. DP, 78-261-PC (1/30/79).

The facts recited above establish that there were three separate decisions made with respect to selecting the appellant for one of the Institution Aide 3 positions. The first decision was embodied in the January 10th letter from Dorothy Schulz, the second was in the February 8th letter from Dennis Dokken and the third was in Secretary Reivitz's letter dated February 38th. The respondent argues that Mr. Dokken's letter and decision mark the beginning of the thirty day time limit established in §230.44(3), Stats. However, the respondent has failed to show why the Dokken letter is a more appropriate starting point than the Schulz letter. The Commission is unaware of any significant distinction between the Schulz and Dokken letters that would justify having one and not the other commence the thirty day period.

The only clear difference between the three letters when viewed together is that the Reivitz letter was written by the Secretary of the Department who clearly has the authority to render the agency's final decision. Therefore, it is the letter from Secretary Reivitz which is to be considered the final decision of the Department and which commenced the thirty day period for filing an appeal.

The appellant's letter of appeal was filed within thirty days of the final decision and, therefore, was timely filed.

The respondent cites Junceau v. DOR & DP, 82-112-PC (10-14-82) to support its argument that the thirty day time limit began to run upon receipt of the February 7th letter from Mr. Dokken. In Junceau, the appellant had in 1982, asked the Administrator of the Division of Personnel to reconsider a 1979 decision with respect to salary upon regrade. The Commission did not allow the appellant to use the 1982 request for review to the Administrator to serve as a basis for filing an appeal of the 1979 decision:

[I]t is clear from the contents of the correspondence between the appellant and the Administrator that on point of fact the Administrator was being asked to "... reconsider your position on this matter and correct your past error ...," (emphasis added), and that the Administrator refused to do so because the time had run for appeal of his earlier decision. Under such circumstances, it is clear that consideration of the April 19, 1982, letter as a "decision" of the Administrator on the regrade issue which occurred in 1979-81 would be a "bootstrap" attempt to circumvent the 30 day period for appeal set forth in §230.44(3), Stats.

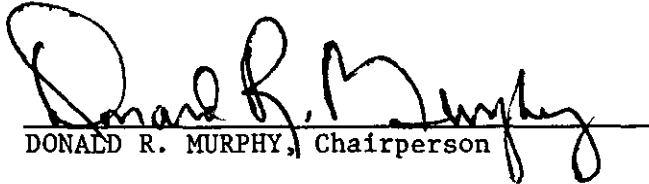
In contrast to Junceau, the appellant in the instant case had requested the Secretary to reconsider a decision made by one of her subordinates, Mr. Dokken, rather than of the Secretary, herself. The two cases are clearly distinguishable on that basis.

ORDER

Respondent's motion to dismiss is denied.

Dated: August 17, 1983

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


DENNIS P. MCGILLIGAN, Commissioner

KMS:ers

Parties

Clive R. Adams
207 W. Washington Ave., #337
Madison, WI 53703

Linda Reivitz
Secretary, DHSS
P.O. Box 7850
Madison, WI 53707