

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 TINA MARIE TOTH, *
 *
 Appellant, *
 v. *
 *
 Secretary, DEPARTMENT OF *
 INDUSTRY, LABOR AND HUMAN *
 RELATIONS; and Secretary, *
 DEPARTMENT OF EMPLOYMENT *
 RELATIONS, *
 *
 Respondents. *
 *
 Case No. 84-0009-PC *
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 * * * * *

INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on the respondents' motion to dismiss on the grounds that the appeal was not timely filed. The parties were provided an opportunity to file briefs. The findings set out below are based on documents in the Commission's files.

FINDINGS OF FACT

1. On December 6, 1983, the appellant received a denial of her request to reclassify her position from Job Service Assistant 2 to Job Service Assistant 3.

2. On January 10, 1984, the Commission received a letter from the appellant seeking to appeal the denial of her request. The letter was dated December 20, 1983, was addressed to "Personnel Commission, P.O. Box 7855, Madison, Wisconsin 53707," and stated:

I wish to appeal your denial of my reclassification from Job Service Assistant 2 to Job Service Assistant 3 dated November 23, 1983 which I received on December 6, 1983.

3. The Commission's correct address is Suite 803, 131 West Wilson Street, Madison. The address found on the appellant's letter of appeal and

its envelope is the post office box of the Department of Employment Relations.

4. The letter's envelope was postmarked December 21, 1983 and was received and date-stamped by the Department of Employment Relations on December 22, 1983. The letter then made its way to the State of Wisconsin Personnel Board where it was date-stamped on January 9, 1984. The address on the envelope was finally changed to the Commission's correct address and the letter reached the Commission on January 10, 1984.

CONCLUSIONS OF LAW

1. Pursuant to §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 respondent DER's failure to promptly forward the letter appeal once received on December 22, 1983, the respondents are equitably estopped from arguing that the appeal was untimely filed.

OPINION

The time limit for filing an appeal with the Commission is established in §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 sent in her letter of appeal just fourteen days after she was notified that her reclassification request had been denied. The letter of appeal was addressed to the Personnel Commission at P.O. Box 7855 in Madison, which is actually the address of the respondent Department of Employment Relations. The letter reached DER on December 22, 1983. Had DER corrected the address and forwarded the letter to the Commission by January 5, 1984, the appeal would have met the 30 day time limit established in §230.44(3), Stats. DER also could have contacted the appellant and asked her what to do with the letter. Instead, the letter was ultimately forwarded to the Personnel Board, even though the letter was clearly directed to the Personnel Commission and even though the contents of the letter clearly indicated that it was an appeal of a reclassification decision and therefore a matter within the Commission's jurisdiction rather than the Board's jurisdiction. It apparently took DER two and one-half weeks to forward the letter to the Personnel Board which in turn took just one day to forward the letter to the proper addressee, the Personnel Commission. It should also be noted that the appellant's name and home address were on the envelope.

Given the circumstances of this case, DER's conduct of not forwarding the appellant's letter to the Commission for the two-week period from December 22, 1983 through January 5, 1984 constituted an abuse of discretion. The respondent's inaction can reasonably be expected to have influenced the appellant. Had DER advised the appellant that the letter was improperly addressed, the appellant could have sent another letter of

appeal with the Commission's correct address and still have complied with the 30 day limit.

The appellant also argues that she was given the wrong address for filing her appeal:

On December 20, 1983, I sent my appeal letter which stated "I wish to appeal your denial of my reclassification from Job Service Assistant 2 to Job Service Assistant 3 dated November 23, 1983 which I received on December 6, 1983". Prior to mailing the appeal letter, I called the Personnel Department in Madison and asked for the mailing address. I was told P. O. Box 7855, Madison, Wisconsin 53707. I subsequently mailed the letter and it was postmarked December 21, 1983.

In light of the Commission's conclusion that DER's inaction upon receiving the letter of appeal constitutes sufficient basis for estopping the respondents from raising a timeliness objection, it is unnecessary for the Commission to consider whether a second basis for equitable estoppel exists in this case.

ORDER

The respondents are equitably estopped from asserting a jurisdictional objection based upon the timeliness of the letter of appeal in this matter.

Dated: January 29, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

KMS:jat


DENNIS P. MCGILLIGAN, Commissioner

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