

STATE OF WISCONSIN

PERSONNEL COMMISSION

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PATRICIA M. VAN ROOY

Appellant,

v.

Administrator, DIVISION OF
MERIT RECRUITMENT AND
SELECTION and Secretary,
DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS,

Respondents.

Case No. 84-0062-PC

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INTERIM
DECISION
AND
ORDER

This appeal is before the Commission on respondent DER's objection to subject matter jurisdiction. The parties, through their representatives, have filed briefs. Based on the briefs and various documents that have been filed, it appears that certain facts are not in dispute.

This is an appeal pursuant to §230.44(1)(a), stats., of an examination. The appellant received her score on March 24, 1984. She submitted her appeal to the Commission by a letter dated April 19, 1984, and mailed by certified mail. The envelope bears Sheboygan postmarks of April 23, 1984, and a Milwaukee postmark of April 22, 1984. It was addressed to the Commission's correct address, i.e.

State of Wisconsin
State Personnel Commission
Room 803
131 West Wilson Street
Madison, WI 53702

The certified mail return receipt shows a date of receipt of April 23, 1984, and was signed for by an individual whose last name is indecipherable

but whose first name is "Charles". Furthermore, although it is faint on the photocopy of the return receipt provided by the appellant to the Commission, there is clearly decipherable over the person's signature the imprint "Wisconsin Department of Revenue." The appeal letter did not reach the Commission until April 25, 1984. The last day for timely filing with the Commission pursuant to §230.44(3), stats., was April 23, 1984.

Based on the foregoing apparently undisputed facts, it could only be concluded that the USPS erroneously delivered the appeal letter to the Wisconsin Department of Revenue (DOR) on April 23, 1984, and that subsequently it was re-routed to this Commission, not arriving until April 25, 1984.

Section 230.44(3), stats., provides in part as follows:

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 later... (emphasis added).

The effect of the underscored language is to make the 30 day time limit jurisdictional in nature - i.e., the Commission lacks the authority to hear an appeal if it is not filed within 30 days. See, e.g., State of Wisconsin ex rel D.O.A. v. Personnel Board, Dane Co. Circuit Court No. 149-295 (1976); Odau v. Personnel Board, 250 Wis. 600 (1947); Richter v. DP, Wis. Pers. Commn. No 78-261-PC (1979). The fact that an employe may have mailed the appeal within the time limit does not make the appeal timely; it must actually be received by the Commission within 30 days. Van Laanen v. Wettengel, Wis. Pers. Bd. No. 74-17 (1975); Morgan v. Knoll, Wis. Pers. Bd. No. 75-204 (1976); Richter v. DP, supra.

In the case at hand, the appellant made a good faith effort to file her appeal in a timely fashion. She not only addressed the letter correctly, she went so far as to send it by certified mail. Through no

fault of her own, her letter was misdelivered and did not reach the Commission until after the 30 day period had run. While the Commission believes it is an unfortunate result, it is of the opinion that on the basis of the foregoing facts and the above-cited authorities it has no choice but to dismiss this appeal for lack of jurisdiction. Although the Commission believes it would be preferrable as a matter of the policy behind the civil service law to extend jurisdiction to cases like this where the appellant made a reasonable effort to file her appeal in a timely fashion, this would require a change in the statutes.

The appellant's representative has requested an evidentiary hearing on the facts relating to jurisdiction in the event the Commission were to rule on the basis of the pre-existing record that the appeal was not timely filed. Since the factual matters relating to jurisdiction appear to be undisputed, it is unclear what purpose would be served by holding such a hearing. However, if the appellant desires a hearing, she should submit a request in writing, indicating which material facts relating to jurisdiction she contests or would attempt to prove.

ORDER

If the appellant desires an evidentiary hearing on jurisdiction, she should request the same in writing within 20 days of the date of this order, indicating which material facts relating to jurisdiction she contests or would attempt to prove. If no such request is received, the Commission will dismiss this case for lack of jurisdiction for the reasons set forth above.

Dated: July 19, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jab


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

Parties:

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Ms. Kathryn Anderson
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