

4. In a letter dated January 30, 1985, Mr. Cimino submitted Mr. Witthoft's request to Ms. Barbara Horton, Administrator of the Division of Classification and Compensation, Department of Employment Relations.

5. In a letter dated February 15, 1985, the appellant was notified that her position was reclassified from Program Assistant 4-Confidential to Management Information Technician 3 (PR 6-10) with an effective date of June 10, 1984.

6. On February 19, 1985, DER verbally requested that the reclassification of the appellant's position not be processed until February 28, 1985, so that they could have time to respond to the request to create a Management Information Technician (MIT)-Confidential series.

7. Mr. Cimino responded to DER's request by issuing a memo dated February 20, 1985, directed to Ms. Horton:

Yesterday I discussed with Bob Belongia and Kris Randal the review Bob was performing regarding the merits of Eau Claire's request to create a confidential MIT series. As requested, we have withheld the processing of this reclass (PA 4-Conf to MIT 3) pending DER's decision. In light of this hold, I asked the payroll supervisor at Eau Claire for the last possible date which would allow the processing of this reclass on the 6A payroll (March 14th paycheck). I was informed that Eau Claire needs to know DER's decision, at least verbally, on Thursday, February 28.

The appellant was provided a copy of this memo during the last week in February, 1985.

8. Respondents subsequently declined to create an MIT-Confidential series and appellant's reclassification to MIT-3 was processed by UW-Eau Claire on or before February 28, 1985.

9. In a letter dated March 27, 1985 and directed to the Administrator, Division of Classification and Compensation, DER, the appellant sought to appeal

the results of the reclassification audit of my position that I received on February 15, 1985. Later, I received written communication that the processing of the reclassification was withheld pending a decision on creating a confidential classification for the Management Information Technician class. I have had no written communication on the outcome of that decision.

The preliminary results of the audit were to reclassify my position from Program Assistant 4-Confidential, to Management Information Technician 3. Mr. Jim Cimino, Personnel Specialist, UW-System Administration conducted the audit.

The letter was forwarded to the Personnel Commission which received it on April 9, 1985.

OPINION

Pursuant to s.230.44(3), Stats., there is a 30 day time limit for filing appeals to the Commission:

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. . .

The 30 day time limit has been interpreted by the Commission to be jurisdictional in nature, and mandatory rather than directory. Richter v. DP, 78-0261-PC (1/30/79). Because the effective date of this transaction was in June of 1984, the focus is on the date of notification.

The parties disagree as to the date of the final decision in this matter, and, as a consequence, they disagree as to the date the appellant was notified of the final decision. The respondent argues that the appellant was notified of the reclassification decision via the February 15th letter and a contemporaneous official notice setting forth the procedures for appealing the action. The appellant contends that the timeliness of her appeal should be based on the date she received notice of the respondents' decision not to create an MIT-Confidential series. The parties disagree as to the date the appellant actually received notice of the latter decision.

The respondents' decision embodied in the February 15th letter, if viewed in a vacuum, would clearly constitute a final decision appealable to the Commission under s.230.44(1)(b), Stats. The appellant received two written notifications of the decision, one of which provided instruction for filing an appeal.

However, just a few days after that decision was made, the respondents directed that the processing of the reclassification be halted in order to obtain a decision from DER regarding the creation of a MIT-Confidential series. The appellant was made aware of the respondents' action in this regard. The only implication possible from the delay in processing is that if DER had decided to create a new MIT-Confidential series, the decision to reclassify appellant to the MIT-3 level would not have gone into effect. So even though respondents at one time had issued what would have been a final decision, they withdrew it (thereby causing it to be a preliminary rather than a final decision), pending a determination of a related matter. Once a decision was rendered on the related matter, the respondents reconfirmed the initial reclassification decision. The 30 days for filing the appeal therefore began when the appellant was notified of the decision reaffirming, or finalizing, the preliminary decision.

This result is consistent with the Commission's decision in Schein v. DHSS, 79-0370-PC (5/15/80). In that case, the appellant had not been selected to fill a vacant position. She contacted the personnel manager for the institution involved, asking for directions about appealing the process used to interview for the position. The personnel manager wrote that he would be willing to discuss the interview process with the appellant:

After our discussion, if you do not feel that we have responded to your concerns and wish to proceed with the appeal, the procedure is as follows. . .

The appellant filed an appeal within 10 days after her meeting with the personnel manager but more than 30 days after the decision not to select.

The Commission ruled:

Consideration of appellant's claim that she made a timely appeal to the Commission centers upon the point in time when the respondent notified appellant of its final decision regarding the method in which the appellant was interviewed for the teaching job at Waupun. It is noted in Finding of Fact 4 that [the personnel manager], i.e. respondent's representative, requested the appellant to discuss with him for concerns about the interview, after which, if dissatisfied, she could appeal to the Commission. At best this language of the latter read together with the instructions given for appeal is equivocal. As in Van Laanen v. State Personnel Board, Dane County Cir. Ct., Case No. 145-395, it is not inconsistent with the possibility that the matter was still pending until a future discussion between the parties.

It is our opinion that [the personnel manager's] statements at the December 19, 1979, meeting with appellant were dispositive of respondent's position about appellant's interview and time for appeal commenced on that date.

See also, Adams v. DHSS, 83-0050-PC (8/17/83).

It is unclear from the documents in the file when the appellant was notified that respondents had lifted the hold on the preliminary decision to process her reclassification, thereby making the decision final. Respondents argue it was on or about February 28th. Appellant contends it was April 1, 1985. In order to determine this question, the Commission will schedule an evidentiary hearing on respondents' motion to dismiss. The parties will be contacted before the hearing as scheduled.

ORDER

A ruling on respondents' motion is deferred until additional evidence on the motion has been received.

Dated: June 18, 1985

STATE PERSONNEL COMMISSION

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DENNIS P. MCGILLIGAN, Chairperson

Donald R. Murphy
DONALD R. MURPHY, Commissioner

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