

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JUDY LaROCHE,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,
and Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 85-0227-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on respondent DHSS' motion to dismiss for lack of jurisdiction due to untimely filing. The following findings appear to be undisputed. Neither party requested a hearing on the motion. The parties filed written arguments on the matter.

FINDINGS OF FACT

1. The appellant is employed by respondent DHSS as an Officer 3 at the Dodge Correctional Institution.
2. According to a memo dated June 7, 1984 from Jack T. Kestin, Personnel Manager for respondent, appellant was denied her Officer 2 rating "because I was on LWOP from 5-13-83 to 8-6-83, and would not be eligible for Officer 2 until 8-5-84."
3. On July 22, 1984, appellant was promoted to Officer 3. At this time appellant took the aforesaid promotion "and dropped the idea of ever getting my 2 rating" because she assumed Kestin had made the correct decision back in June, 1984, in denying her Officer 2 rating.

4. In October of 1985 appellant learned that she might have been eligible to receive her Officer 2 rating July 18, 1984, 4 days before she started at the Officer 3 level. Her failure to receive her Officer 2 rating prior to promotion to Officer 3 was due in her opinion to a miscalculation of her LWOP time. Appellant spoke several times with Kestin regarding the matter during October/November, 1985.

5. By memo dated November 22, 1985, Kestin informed appellant her reclass request to Officer 2 was untimely. He indicated that she could appeal the matter to the Personnel Commission.

6. On December 9, 1985, appellant filed an appeal with the Commission.

CONCLUSION OF LAW

This matter was not timely filed.

OPINION

Pursuant to §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). In other words, filing after the 30 day period cuts off the authority of the Commission to hear an appeal. State of Wisconsin ex rel DOA v. Personnel Board, Dane County Circuit Court, Case No. 149-295 (1976).

In the present case, respondent DHSS points out that a decision to deny appellant's reclassification was made in June, 1984, and she was aware of this decision. Since appellant did not file an appeal of this denial

until December 9, 1985, it appears on the face of it that the appeal was not timely filed and the Commission therefore lacks subject matter jurisdiction.

Appellant argues, however, that the question of whether or not she had achieved Officer 2 status was never considered by respondent DHSS until November 22, 1985. Appellant contends that it was this adverse decision that is being appealed.

The record does not support this contention. It is clear from the contents of the correspondence between the appellant and respondent DHSS that in point of fact respondent DHSS was being asked to reconsider its position on reclassifying appellant to Officer 2 and correct its past error in denying this reclass.¹ It is also clear that the respondent DHSS refused to do so because the time had run for appeal of the earlier decision.² Under such circumstances, it is further clear that

¹ In a memo dated November 28, 1985, but submitted December 3, 1985, to respondent DHSS appellant stated:

I believe I was mislead by the information written on that memo of June 7, 1984, and was denied my Officer 2 reclassification because of an Administrative error, and that I am entitled to all the wages I've lost because of this error since 7-18-84 and that I'm entitled to having my hourly rate of pay brought up to date immediately which would include .229 cents per hour for the Officer 2 relclass, .779 cents per hour instead of the .771 cents per hour that I received when I was promoted and given the 10% increase in pay, which comes to .251 cents per hour from 7-22-84 through 11-23-85, and .266 cents per hour from 11-24-85 until this is settled.

² In a memo dated November 22, 1985, Jack T. Kestin on behalf of respondent DHSS stated:

The question of reclass should have been raised earlier. We may have been able to change the date of your promotion if the issue had been raised. It is too late for us to change it now.

consideration of the November 22, 1985, letter as a "decision" of respondent DHSS on the reclass issue which occurred in June of 1984 would be a "bootstrap" attempt to circumvent the 30 day period for appeal set forth in §230.44(3), Stats. Therefore, this argument of appellant must be rejected. See Junceau v. DOR & SP, 82-112-PC (10-14-82); Chapman v. DILHR, 79-247-PC (8-19-80); affd., Chapman v. Pers. Commn., Dane Co. Cir. Ct. No. 80CV5422 (9-8-81).

Appellant also relies on Conley v. DHSS & DP, 83-0075-PC (9-28-83) to support her position. In her brief appellant states:

The situation is very similar to that in Conley v. DHSS (83-0075-PC, 9/28/83). In that case the appeal of a reclassification was held to be timely where it was filed within thirty days of the receipt of the notice of the reclassification even though approximately two years earlier the respondent had advised the appellant that he would not have the minimum two years experience as an Officer 1 until some date in 1982.

However, the Conley case can be distinguished from the instant dispute. In that case the Commission pointed out:

The letter referred to did not inform the appellant that his position would be reclassified effective January 10, 1982; it merely stated that he would have the required two year minimum period as an Officer 1 as of that date. In any event the §230.44(3) 30 day period of limitations begins to run from the effective date or the date of notice, whichever is later. It seems clear that the actual effective date, which was appealed within 30 days, was May 1, 1983. Conley, supra at page 2.

In the instant case the appellant received notice that she would not be reclassified to Officer 2 on June 7, 1984, and it is this decision which she failed to timely appeal.

ORDER

This matter is dismissed due to lack of subject matter jurisdiction.

Dated: April 30, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

DPM:jmf
CHRIS/2

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