

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 SUSAN SPILDE, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
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 Case No. 86-0040-PC *
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. Respondent contends both that the appeal was untimely filed and that it arises from a decision that is not reviewable by the Commission. The parties have filed briefs. The essential facts relating to jurisdiction do not appear to be in dispute and are set forth below.

FINDINGS OF FACT

1. In 1980, while employed as a Program Assistant 1 with the Bingo Control Board in the Department of Regulation and Licensing, appellant submitted a written request for review of her position description to William Dusso.

2. In 1981, appellant submitted a written request for reclassification along with a revised position description which she drafted to Wilma Morris, her immediate supervisor.

3. Appellant's supervisor did not agree that her position had the duties and responsibilities of a higher classification.

4. Appellant then submitted the reclassification request and her proposed position description to Sue Adix, Deputy Secretary and Personnel

Officer for the Department. Deputy Secretary Adix verbally notified appellant that Morris did not feel Spilde's position warranted reclassification. Neither Morris nor Adix responded to appellant's reclassification request in writing, and it appears the matter was never referred to DER despite the fact it appears the reclassification transaction was not one that was delegated to the Department of Regulation and Licensing.

5. No one informed appellant of her right to appeal or the proper procedure to follow. A Department of Regulation and Licensing Management Manual in effect in 1981 did not provide appellant any guidance for appeal or information regarding any other recourse available to her. Appellant did not pursue the matter any further at that time.

6. In September of 1982 or 1983, appellant assumed a position as a Program Assistant 1 within the Division of Enforcement.

7. On March 7, 1985, appellant wrote to Barbara Nichols, Secretary of the Department of Regulation and Licensing, requesting a review of the matter. Specifically, appellant asked for "an audit of my duties for possible reclassification of my position at the time of my original request."

8. Secretary Nichols referred the request to the respondent. Robert J. Belongia, Executive Personnel Officer in respondent's Division of Classification and Compensation issued a written denial on February 12, 1986. Specifically, Belongia wrote that "we have determined that a classification action in 1985 is inappropriate." Belongia explained that "the lack of an actual reclassification request precludes any action or consideration suggested by your March, 1985 letter."

9. On March 14, 1986, appellant filed a timely appeal with the Commission.

CONCLUSION OF LAW

The Commission has subject matter jurisdiction.

OPINION

At a prehearing conference held on June 11, 1986, before Dennis P. McGilligan, Chairperson, the parties agreed to brief the following jurisdictional issues:

1. Is the appeal timely filed?
2. Was there an effective receipt of a request for reclassification?
3. If there was an effective receipt of a request for reclassification, was it canceled when she changed positions?

Timeliness

The first issue then is whether the appeal was timely filed.

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).

Respondent argues "whether the subject of the appeal is the appellant's classification or the 'decision' of Robert J. Belongia, executive personnel officer, contained in the February 12, 1986 memo, the appeal was untimely filed." Appellant contends that she filed on the thirtieth day after the Belongia's February 12th memo. Appellant claims that this was

the only written notification that she received regarding her 1981 reclassification request, and that she had no knowledge of her right to appeal or the proper procedure she should follow prior to 1985.

The Commission agrees with the appellant's position. The rules require that respondent give appellant a written response to her reclassification request. Chapter ER-Pers 3.03(3), Wis. Adm. Code. The only written notification that appellant received regarding her 1981 reclassification request came on February 12, 1986. The appellant filed her appeal on March 14, 1986, which was the thirtieth day. Therefore, contrary to respondent's assertion, her appeal was timely under §230.44(3), Stats., noted above.

Receipt of Reclassification Request

The next issue is whether there was an effective receipt of appellant's reclassification request.

Respondent argues that there was no effective receipt of a reclassification request from appellant since the necessary materials for such a request, including an accurate Position Description signed by both the appellant and her supervisor, were not developed. Respondent also points out that a reclassification request was not submitted to the Personnel Office of the Department of Regulation and Licensing or the State Division of Personnel. However, the respondent was unable to cite any authority in support of this position. Nor is the Commission able to find anything in the statutes or rules requiring submission of documents as argued by respondent. Appellant did submit a written request for reclassification along with her employe-drafted revised position description. She was not told that she had to do anything else. Absent department guidelines, statutory language or administrative rules to the contrary it would be

unreasonable to require anything more from appellant. This is particularly true where, as here, the respondent did not process appellant's reclassification request in accordance with the rules.

Mootness

Citing Chapter ER-Pers. 3.03(4), Wis. Adm. Code, respondent argues that appellant's reclassification request was cancelled when she left her position. In this regard, respondent maintains that appellant terminated from pay status in the position which she wished to have reclassified to take a position at the Bingo Control Board in September, 1983 prior to the establishment of an effective date for the reclassification.

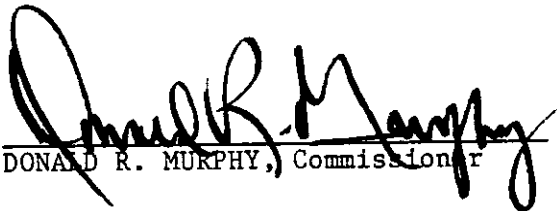
Chapter ER-Pers 3.03(4), Wis. Adm. Code provides that requests for reclassification are cancelled when the employe "resigns, retires or is terminated from pay status in the position prior to the effective date of the requested action." In light of this language, the respondent's arguments beg the question. The fact appellant left her position is not important. She made her request for reclassification in 1981 and did not leave the position until 1983. According to the rules, if appellant left her position prior to the effective date (1981), then the request would be cancelled. This did not occur.

ORDER

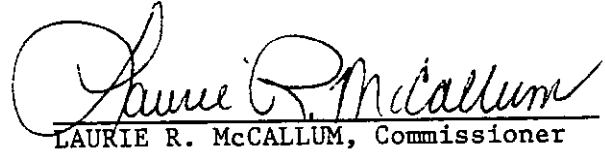
Respondent's motion to dismiss is denied.

Dated: October 9, 1986 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

DPM:jmf
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LAURIE R. McCALLUM, Commissioner