

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

JACQUELIN ATKINSON, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*

INDUSTRY, LABOR AND HUMAN \*

RELATIONS and Secretary, \*

DEPARTMENT OF EMPLOYMENT \*

RELATIONS, \*

Respondents. \*

Case No. 86-0042-PC \*

\* \* \* \* \*

RULING

ON

REQUEST FOR

RECONSIDERATION

This matter is before the Commission on the appellant's request for reconsideration.

In a decision and order dated May 14, 1986, the Commission concluded that the appeal of a reallocation decision was untimely. Appellant contends that her position should have been reclassified rather than reallocated. She was notified on or about June 6, 1985 of the reallocation decision but contends she relied on statements by her supervisor that reclassification could not be achieved via an appeal of the reallocation decision. However, in November of 1985, the appellant learned that another employe had appealed her reallocation and had successfully obtained a reallocation. In January of 1986, appellant's supervisor asked respondent DILHR's personnel office if anything could still be done to pursue reclassification. On January 30th, the Personnel Office said that the statutory appeal period had run and they were "unable to take further action." The Commission held:

Without examining the applicability of an equitable estoppel theory to the period prior to November of 1985, the appellant had no more than 30 days thereafter to file her appeal.

She failed to file within that period, so the appeal filed in March of 1986, must be considered untimely.

Appellant's request for reconsideration states, in part:

Neither my supervisor or myself knew that the 30 days would again apply in November after we learned that this action could be appealed.

My supervisor mentioned she would look into this and I relied totally on her in this matter. Considering that that time of year is our heaviest workload, I feel we acted as rapidly as possible.

In the correspondence rec'd by William Komarek on 1/30/86 he never mentioned anything about additional 30 days after we became aware of appeal rights.

All in all I feel I have become more and more misinformed about this whole case.

I would like reconsideration on this decision.

Pursuant to §227.49(3), Stats.,<sup>FN</sup> rehearings may only be granted where there is a material error of law or fact or upon the "discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence."

Here, the appellant now contends that once she knew she could appeal the decision not to reclassify her position, she relied upon her supervisor's statement that the supervisor would look into it. This new contention does not fit within any of the three enumerated bases for granting a petition for rehearing. Instead, the appellant seeks to have the Commission adopt additional facts in the absence of newly discovered evidence.

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<sup>FN</sup> The provisions relating to rehearing were renumbered by 1985 Wisconsin Act 182 from §227.12(3), Stats., to §227.49(3), Stats., effective April 22, 1986.

Even if the appellant's contention could now be considered by the Commission in deciding the merits of respondent's motion to dismiss, reversal of the Commission's May 14th decision and order would be unwarranted.

The appellant's new contention draws our focus to the various other periods of more than 30 days in length that occurred prior to the filing of the appeal on March 18, 1986. One such period commenced on the date (January 30, 1986) of a memo from Mr. Komarek of DILHR's Personnel Office which made it clear that there was nothing more that respondent DILHR would do in terms of reviewing the reallocation decision. Mr. Komarek's memo does not meet the standard necessary to establish estoppel against a state agency, "a fraud or a manifest abuse of discretion", as established in Surety Savings & Loan Assn. v. State of Wisconsin (Division of Highways), 54 Wis. 2d 438, 195 NW 2d 464 (1972). Therefore, even if the appellant had been able to establish that equitable estoppel should apply as to the period from June 6, 1985 to November, 1985 and November, 1985 to January 30, 1985, she has failed to do so with respect to the period commencing January 30, 1986. The appellant did not file an appeal within the 30 days after January 30th, so the appeal filed on March 18th is untimely.

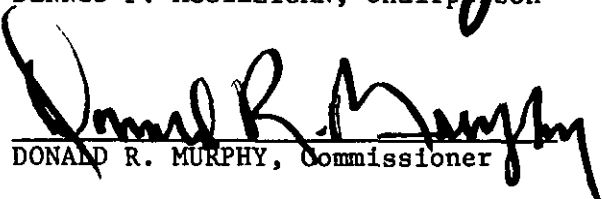
For the reasons set out above, the Commission issues the following

ORDER

The appellant's request for reconsideration is denied.

Dated: June 12, 1986 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

KMS:jmf  
ID4/2

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