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 TERRILL J. MARXER,
 Appellant,
 v.
 Administrator, DIVISION OF
 MERIT RECRUITMENT & SELECTION,
 Respondent.
 Case No. 86-0070-PC
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), Stats., of the handling of an examination for Officer 3-CP-DHSS-Statewide. By Interim Order dated May 29, 1986 the Commission framed the issue for hearing as follows:

Whether the respondent violated §230.16(1)(a), Stats., by denying the appellant permission to compete in a promotional examination for the Officer 3 classification on or about March 21, 1986.

Hearing in the matter was held on June 23, 1986, before Dennis P. McGilligan, Chairperson. At the close of the hearing the parties made oral argument.

FINDINGS OF FACT

1. On or about February 12, 1986, the Department of Health and Social Services posted a promotional announcement for the position of Officer 3-CP-DHSS-Statewide. The announcement had an application deadline of 4:00 p.m., February 28, 1986 and indicated by underlining that the applications had to be received by Dennis Huett, Merit Recruitment and Selection in his office by the aforesaid time and date. (Emphasis Supplied)

2. The appellant applied for the Officer 3 position noted above on an

applicant registration form which he signed on February 14, 1986. According to his testimony, he mailed the application to Huett on or about that same date. Respondent DMRS received the application on March 3, 1986 at 11:06 a.m.

3. The appellant was prevented from taking the exam on March 21, 1986 because of his untimely application.

4. The policy established by respondent DMRS with respect to late applications is not to process them. Respondent DMRS received 472 applications for the position in question on time and processed them. Respondent received 8 late applications including appellant's for this position and did not process any of the late ones.

5. Dennis Huett, a Personnel Specialist 6 for respondent DMRS, has handled the Officer 3 recruitment the past two years and has not processed any late applications during this period.

6. Respondent DMRS' policy not to process late applications as set forth in Findings #3, #4 and #5, above, is motivated by the following considerations:

a. Cost. Respondent processes approximately 120,000 job applications in a year. About 3% of those applications are late. Late applications must be hand inserted into a scanner to be processed--a costly step if you are talking about almost three thousand late applications each year.

b. Administrative convenience and efficiency. The application deadline is normally established for the minimum amount of time necessary to set up and administer an exam including the exam locations, number of tests, proper notice etc. Respondent also wishes to provide timely registers to state departments and agencies. By processing late applications, the respondent would be less assured of processing exams in a timely and efficient manner. Two to four weeks is normally the period of time necessary following the application deadline to set up and administer the test.

7. On April 21, 1986, appellant filed a timely appeal of respondent DMRS' decision denying appellant permission to compete in the promotional exam for Officer 3 held on March 21, 1986.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), Stats.

2. The appellant has the burden of proof.

3. The subject matter of this appeal is controlled by the legal standard set forth in §230.16(1)(a), Stats.:

The administrator shall require persons applying for admission to any examination under this subchapter or under the rules of the administrator to file an application with the division in a reasonable time prior to the proposed examination.

4. The appellant has the burden of establishing that respondent DMRS violated §230.16(1)(a), Stats., by denying the appellant permission to compete in a promotional exam for the Officer 3 classification on March 21, 1986 because appellant's application was late.

5. The appellant has not satisfied his burden of proof.

6. Respondent DMRS did not violate §230.16(1)(a), Stats., by denying the appellant permission to compete in the promotional exam for the Officer 3 classification on March 21, 1986.

OPINION

The question before the Commission is whether the respondent violated §230.16(1)(a), Stats., by denying the appellant permission to compete in a promotional examination for the Officer 3 classification on March 21, 1986.

Section 230.16(1)(a), Stats. provides as follows:

The administrator shall require persons applying for admission to any examination under this subchapter or under the rules of the administrator to file an application with the division in a reasonable time prior to the proposed examination.

Appellant does not challenge the legality of the statute itself or the requirement contained therein that persons applying to take an exam file an application with the respondent "in a reasonable time prior to the proposed

examination." Rather, appellant argues that it was not his fault his application was untimely, that the policy was not applied uniformly and that he should have been allowed to take the exam.

The record is undisputed that appellant filed his job application after the deadline. The record is also undisputed that the promotional announcement clearly indicated an application deadline. Appellant offered no evidence that he did not have a reasonable amount of time from the date of posting and prior to closing of the announcement to submit his application. Instead, appellant blames the U.S. mail system for not delivering his application on time. Appellant testified that he mailed his application on the same date he signed it. If so, it took over 2 weeks for his application to be delivered. The Commission finds this difficult to believe. Appellant offered no testimony or evidence to corroborate this statement and the record contains no indication that other applicants had similar problems with the mail system in filing applications for the position in question. Therefore, appellant's testimony will not be credited, and this argument is rejected.

Appellant argues that respondent processed other late applications. However, appellant gave no specific examples in support of this contention. The respondent, on the other hand, offered better evidence that late applications were not processed, particularly with respect to the Officer 3 position. In addition, the record is undisputed that none of the eight late applications for the exam in question were processed. Therefore, the Commission rejects this claim of appellant's.

Respondent does not process late job applications. Respondent offered two creditable reasons for this policy: cost and administrative efficiency. (see Findings of Fact Number 6) Appellant tried unsuccessfully at hearing to rebut these contentions.

Appellant claims that it would not have been too difficult or costly to process his late application and allow him to take the exam. On an individual basis that may be true. However, respondent receives thousands of late applications each year, and has a uniform policy of not processing them based on cost and administrative considerations. These are legitimate reasons for the respondent's policy. Appellant offered no persuasive reason to create an exception in his case.

Appellant had over two weeks to file his application on a timely basis. He failed to do so. Based on same, and all of the foregoing, the Commission finds that the answer to the issue is NO, respondent did not violate §230.16(1)(a), Stats., by denying the appellant permission to compete in a promotional exam for the Officer 3 position on March 21, 1986.

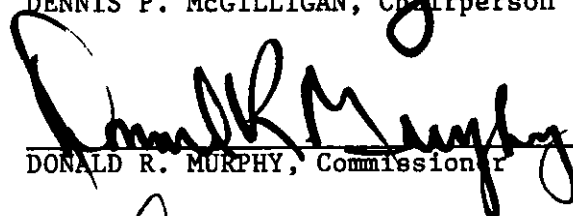
ORDER

The action of the respondent DMRS is affirmed and this appeal is dismissed.

Dated: August 20, 1986

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

DPM:vic
VIC03/2

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