

APR 15 1987

COURT OF APPEALS
DECISION
DATED AND RELEASED

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party may file with the Supreme Court a petition to review an adverse decision of the Court of Appeals pursuant to s. 89.02(1), within 30 days hereof, pursuant to s. 89.02(1).

No. 86-1067

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

NOTICE
This opinion is subject to future re-issuance. If published the version will appear in the next issue of The Reporter.

JOHN N. PETERS,

Petitioner-Appellant

RECEIVED

v.

STATE PERSONNEL COMMISSION,

APR 27 1987

Respondent.

Personnel
Commission

APPEAL from an order of the circuit court for Brown county: RICHARD GREENWOOD, Judge. Affirmed.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. John N. Peters appeals an order affirming the Wisconsin Personnel Commission's dismissal of his appeal of a personnel decision. In his pro se brief, Peters argues that the commission erroneously determined that it lacked subject matter jurisdiction. Peters also argues that the commission failed to follow proper procedures. The commission, however, vacated its original dismissal order, but Peters failed to pursue his appeal. We therefore do not review the issues he raises, but conclude that the commission's ultimate denial of his rehearing request was proper. Accordingly, we affirm the order.

Peters is a Plant Industry Inspector 2 for the Department of Agriculture, Trade and Consumer Protection. His personnel director notified him that, based on a survey, he had been reclassified to a different pay range, which increased his salary by \$.07 per hour. The notification advised him that if he wished to appeal "this reallocation," he was to submit a written request to the State Personnel Commission.

Claiming that he should have been classified at a higher pay range, Peters followed the instructions and filed an appeal with the commission. On December 10, 1984, the commission dismissed the appeal for lack of subject matter jurisdiction.¹ On December 18, Peters requested another hearing. On January 16, 1985, the commission responded by vacating its order of dismissal, granting a rehearing, and ordering Peters within twenty days, to list "those classifications that better identify his position than Plant Industry Inspector 2 classification." Peters did not do so, nor did he provide any explanation for not complying with the order. On February 13, the commission dismissed the appeal for lack of prosecution.

On October 1, 1985, Peters filed a second petition for rehearing. The petition was denied on October 31.

Peters then appealed to the circuit court, which affirmed the commission's orders.

Peters first asks us to review the commission's order of December 10, 1984, dismissing the appeal for lack of subject matter jurisdiction. Although Peters makes a persuasive argument in support of his contention that the commission has subject matter jurisdiction, we are unable to review this issue because, at Peters' request, the commission vacated this order and it no longer has legal effect.

The commission's next order, dated February 13, 1985, dismissed Peters' case for non-prosecution. We are also unable to review this order because no petition for review in circuit court was filed within thirty days. See Johnsonville Sausage, Inc. v. Wisconsin Dept. of Revenue, 113 Wis.2d 7, 9, 334 N.W.2d 269, 271 (Ct. App. 1983); sec. 230.87, Stats.; sec. 227.16, Stats.² We note, however, that its dismissal was proper because it is incumbent upon a litigant to pursue a statutory appeal to its conclusion. Kosmatka v. DNR, 77 Wis.2d 558, 568, 253 N.W.2d 887, 892 (1977).

The only order of the commission that we are able to review is the denial of Peters' subsequent request for a

rehearing.³ This denial was proper because Peters' request was not filed until seven months after service of the order, and not within the required thirty days. Section 227.12(1), Stats.⁴

By the Court.--Order affirmed.

Not recommended for publication in the official reports.

A P P E N D I X

¹ The commission concluded that the survey resulted in reassignment, not a reallocation, and that the commission therefore had no jurisdiction to review it under secs. 230.09 and 230.44, Stats. Section 230.45, Stats.

² Section 227.16, Stats., is now renumbered as sec. 227.53, Stats.

³ The order was dated October 31, 1985, and Peters filed his petition to review in circuit court within 30 days of the order. See sec. 227.16, Stats., now renumbered sec. 227.53, Stats.

⁴ Section 227.12(1), Stats., has now been renumbered as sec. 227.49, Stats.