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 *
 LORI GENSCH, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondent. *
 *
 Case No. 87-0072-PC *
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 * * * * *

DECISION
 AND
 ORDER

This matter is before the Commission on the respondent's motion to dismiss on the grounds that the appeal was not timely filed. The parties were provided an opportunity to file briefs. The findings set out below are based on documents in the Commission's files.

FINDINGS OF FACT

1. On behalf of the appellant, the University of Wisconsin-Milwaukee asked the respondent to reallocate the appellant's position from Administrative Assistant 4 (PR01-13) to Education Services Assistant 3 Supervisor (PR01-14).

2. By memorandum dated April 1, 1987, Mary Jo Hewett (Executive Personnel Officer for respondent) to Barbara Faucett, Director of Personnel for UW-Milwaukee, the reallocation request was denied.

3. On the memorandum Mary Jo Hewett is identified as an employe of respondent DER as noted above. A copy of the aforesaid April 1, 1987, memorandum was received by the appellant on April 7, 1987. The last paragraph of the April 1, 1987, memorandum reads as follows:

If you or Ms. Gensch wish to appeal this decision, you must file a written statement with the Personnel Commission within

30 days of receipt of this determination. The Commission is located at 121 E. Wilson St., Madison, WI 53702

4. By letter dated May 5, 1987, the appellant appealed the reallocation denial to the State Personnel Commission. The letter (and presumably the envelope in which it was mailed) was addressed as follows:

Personnel Commission
Mary Jo Hewett
Executive Personnel Officer
121 E. Wilson Street
Madison, WI 53702

5. The appeal letter was received by the respondent on May 7, 1987. The respondent's mail officer put the letter in Mary Jo Hewett's mail. On May 7, 1987 Hewett was vacationing in Florida. She returned the following week and the day after she became aware of the May 5, 1987 letter she had it hand-delivered to the Commission. The Commission received the appeal letter on May 14, 1987.

CONCLUSION OF LAW

The appeal was not timely filed, and the Commission lacks subject-matter jurisdiction over this case.

DECISION

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).

While it is true that the appellant sent her appeal letter to respondent within the 30 day time period, it was not filed with the Commission until after the time period had expired.

The Commission has found that equitable estoppel is, as a matter of law, available to prevent the State from arguing that an appeal is untimely filed in accordance with §230.44(3), Stats. See Ferguson v. DOJ and DP, 80-245-PC (7/22/84) and the cases cited thereunder. See also Goeltzer v. DVA, 82-11-PC (5/12/82) and Toth v. DILHR, 84-0009-PC (2/29/84). For equitable estoppel to apply to the State, the acts or omissions of the agency must constitute fraud or a manifest abuse of discretion and there must be justifiable reliance by the appellant. On the facts of this case, the Commission finds that equitable estoppel cannot be applied. In this case, the appellant's letter was received by the respondent on the last day of the appeal period. In addition, the person to whom the letter was addressed and to whom the letter was directed by the employe who handles the mail was in Florida. She did not return until well after the appeal period had run. Finally, right after she became aware of the May 5, 1987 letter she had it hand-delivered to the Commission. There is nothing in these facts which amounts to fraud or a manifest abuse of discretion on the part of respondent.

Appellant argues that the aforesaid memo from Barbara Faucett to Mary Jo Hewett denying her reallocation misled her into sending the appeal letter to respondent. However, the turndown memo clearly indicated that any appeal should be sent within 30 days of receipt to the Personnel Commission at 121 E. Wilson Street, Madison, Wisconsin. Nowhere in said memo does it indicate that Mary Jo Hewett is an employe of the Personnel Commission.

Appellant also makes the following statement in her brief:

It is overwhelming to me that my tax dollars are paying this attorney to prepare a seven page brief regarding his

interpretation of time. Furthermore, if his opinion is upheld without allowing me the opportunity to have this case heard, I as a state employee and tax payer question the due process of fair and equal treatment under the civil service procedures.

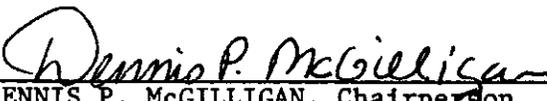
However unfair it may appear to be, dismissal of this appeal is dictated by §230.44(3), Stats., as consistently interpreted by this Commission, the predecessor Personnel Board, and the courts. Any action in this matter other than dismissal would clearly be beyond the Commission's authority. Therefore, while the Commission believes this result is unfortunate, it must dismiss this appeal.

ORDER

This matter is dismissed due to lack of jurisdiction.

Dated: July 8, 1987

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


LAURIE R. McCALLUM, Commissioner

DPM:vic
VIC02/2

Parties

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