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 *
 WILLIAM J. HANSEN, *
 *
 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 AGRICULTURE, TRADE AND *
 CONSUMER PROTECTION, *
 *
 Respondent. *
 *
 Case No. 87-0092-PC *
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DECISION
AND
ORDER

This matter is before the Commission on the respondent's motion to dismiss. The parties have been provided an opportunity to submit written arguments. The findings set out below appear to be undisputed.

FINDINGS OF FACT

1. Appellant is employed by respondent's Food Division as a Compliance and Technical Services Officer in the Central Office - Madison.
2. Appellant's supervisor is Gary J. Bauer.
3. On May 20, 1987 respondent sent appellant by certified mail an original signed copy of a letter of suspension dated May 19, 1987. The suspension letter stated in relevant part:

This is notification that pursuant to the authority vested in me, you are suspended without pay from your position as a Compliance and Technical Services Officer, in our Food Division, Central Office - Madison, for ten (10) days. This suspension begins at the end of the work day Thursday, May 21, 1987, and ends at the end of the work day on Thursday, June 4, 1987. You are to return to work on Friday, June 5, 1987 and report to your supervisor, Gary J. Bauer, at the Madison Central Office at 7:45 a.m. for work assignment.

The U.S. Postal Service was unable to deliver this notice of suspension and subsequently returned it to the respondent.

4. During the afternoon of May 21, 1987, Mr. Bauer hand delivered to the appellant a carbon copy of the May 19th suspension letter. The carbon copy was unsigned but was otherwise identical to the original that was mailed to Mr. Hansen. On that day, Mr. Bauer also discussed the contents of the suspension letter with the appellant.

5. Appellant's ten-day suspension period expired on June 4, 1987. He returned to work on Monday, June 8, 1987. On that date, Mr. Bauer hand delivered the signed May 19th suspension letter that the respondent had earlier been unable to deliver by certified mail.

6. On July 3, 1987, appellant filed a letter of appeal with the Commission seeking review of the ten-day suspension.

OPINION

The appellant contends that the unsigned copy of the suspension letter given him on May 21, 1987, was not the "official notice" of the suspension and that the 30-day period for filing his appeal did not commence until he received the signed version on June 8, 1987.

The time limit for filing an appeal of a disciplinary decision under s. 230.44(1)(c), Stats., is established in s. 230.44(3), Stats.:

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....

This 30-day time limit is mandatory rather than discretionary and is jurisdictional in nature. Richter v. DP, 78-261-PC, 1/30/79.

Notice date

The first issue raised by this appeal is whether the unsigned suspension letter provided the appellant with "notice" of the suspension.

Pursuant to s. 230.34(1)(b), Stats.:

No suspension without pay shall be effective for more than 30 days. The appointing authority shall, at the time of any action under this section, furnish to the employe in writing the reasons for the action.

The facts of this case show that the appellant received an unsigned copy of the suspension letter and was verbally informed of the contents of the letter on May 21, 1987. It was not until after the period of the suspension had concluded that he received a signed copy of the suspension letter.

The statutes do not require that the disciplinary letter be actually signed by the appointing authority. Here there were no circumstances which raised a reasonable question as to whether the unsigned letter was genuine or was final. The absence of a signature on the letter presented to the appellant on May 21st did not alter the notice actually provided by that document, which fulfilled the statutory notice requirement for disciplinary actions.

Effective date

Although it was not identified by the appellant, the case also raises the issue of what the "effective date" is for a multiple-day suspension. If the effective date is considered the first day of the suspension period, the July 3rd filing date would be more than 30 days thereafter. However, if the effective date were held to be the last date of the suspension period, the appeal would be timely.

The Commission concludes that the effective date for the appellant's ten-day suspension was the first date on which the suspension became operative or valid rather than on the last day of the suspension period.

According to 51 Am Jur 2d 679 (Limitation of Actions):

All statutes of limitation use some sort of terminology to describe when the period of limitation commences to run and, generally speaking, it is of the essence that, as to causes of action, time begins to run under such statutes when, and only when, the cause or right of action has accrued or arisen. Apart from any statutory exceptions and subject to the qualifications discussed in the

following sections, the statute of limitations begins to run immediately upon the accrual of the cause of action.

Some difficulty may be encountered, however, in determining when the cause or right of action is to be considered as having accrued. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion.

There is little question that absent any notice of the suspension the appellant still could have filed his appeal on the first day of the suspension period and it would not have been premature.

If the effective date of a suspension were held to be the last day of the suspension, it would place in issue the effective date of other personnel actions. For example, a discharge decision clearly commences its effect on one day but also has an effect for each succeeding day. The 30-day time limit for filing appeals would become meaningless if a discharged employee were permitted to file an appeal in 1987 based on the effect a 1984 discharge decision had to prevent the former employee from being employed on any given day in 1987. This analogy supports the view that a personnel action can have only one effective date rather than a period of effective days during which the 30-day period continuously commences.

The Commission realizes that the dismissal of this appeal may seem like a harsh result, but the wording of §230.44(3), Stats., leaves it to no choice but to dismiss appeals that are not timely filed, even if it is only a matter of a day or two. The courts have ruled the Commission has no authority to entertain an appeal that is not timely filed. State of Wisconsin ex rel. DOA v. Personnel Board, Dane Co. Cir. Ct. No. 149-295 (1976).

ORDER


The respondent's motion to dismiss is granted.

Dated: October 7, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

KMS:rcr
RCR02/1


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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