

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

VICTOR A. GIRENS, *

Appellant, *

v. *

Administrator, DIVISION OF *

MERIT RECRUITMENT & SELECTION, *

and Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES, *

Respondents. *

Case No. 87-0167-PC *

* * * * *

DECISION
AND
ORDER

On September 4, 1987, appellant filed a letter of appeal with the Personnel Commission "regarding the hiring of the Superintendent of Buildings and Grounds 5 position at Winnebago Mental Health Institute." On November 18, 1987, respondent Division of Merit Recruitment and Selection (DMRS) and respondent Department of Health and Social Services (DHSS) each filed a motion to dismiss this appeal for lack of subject matter jurisdiction on the basis that it was not filed in a timely fashion.

The following facts appear to be undisputed:

1. Appellant's letter of appeal states, in pertinent part:

"My protest lies essentially with the test vehicle or the test interpretation."

* * *

"...I was disappointed and surprised to understand that I was not going to be interviewed for the position."

"After reviewing the certification list of applicants for the position, I believe there are persons on that list who do not possess the qualifications that you stipulated in your letter."

"Under these circumstances I feel that I have been discriminated against via your test vehicle and/or your methods for obtaining information regarding valid qualifications."

2. In his brief, appellant states:

"I believe my complaint was not untimely."

"It would be impossible to file a complaint before I had anything to complain about! Once I knew who was on the certification list, I wrote my complaint immediately."

3. The September 7, 1986, Current Opportunities Bulletin announced a Superintendent of Buildings and Grounds 5 vacancy for the Oshkosh/Waupun area. The appellant took and passed the examination with a score and rank of 74.8 and 35 respectively. On or about December 29, 1986, the appellant was sent a notice of examination results.

4. On or about March 18, 1987, the DHSS's Bureau of Personnel and Employment Relations sent all the persons on the register a letter asking them, basically, (1) if they were interested in the Superintendent of Buildings and Grounds 5 vacancy at the WMHI and (2), if so, to submit additional information relating to their qualifications. The reason for the letter was that a new register (in effect, a subset of the existing register) of candidates with special qualifications was to be established for the WMHI vacancy.

5. The appellant was interested and submitted the additional information as requested. The DHSS, through its Personnel Office and the Chief Engineer for all DHSS institutions, evaluated the submissions of all of the candidates that responded to the March 18, 1987, letter. The candidates were evaluated as qualified or not qualified for the WMHI vacancy. The candidates that were evaluated "qualified" were then ranked according to their rank on the register. The appellant was ranked 9th on the new register and was not certified, and accordingly, was not interviewed.

6. Appellant was informed of his rank and that he would not be interviewed for the subject position in April of 1987.

Section 230.44(3), Stats., provides:

"(3) Time Limits. 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 Personnel Commission has consistently held that this 30-day filing requirement is jurisdictional in nature, i.e., that the Personnel Commission does not have the authority to hear an appeal unless it is filed within this 30-day limit. Richter v. DP, Case No. 78-261-PC (1/30/70); Newberry v. DER, Case No. 87-0066-PC (1987).

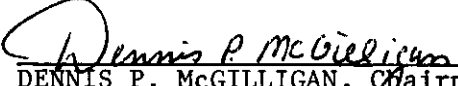
In this case, it is clear that the actions of respondents which appellant is appealing are the decisions regarding the relative qualifications of the candidates who expressed an interest in the subject position and the resulting decision not to certify appellant for the position. Appellant acknowledges that he was notified that he was not certified in April of 1987. Appellant clearly did not file his appeal within 30 days of such notification and his appeal is, therefore, untimely.

Appellant argues that he filed his appeal within 30 days of his discovery of which candidates were certified for the position. However, the operative date for purposes of s. 230.44(3), Stats., is the date of respondent's actions or the date appellant received notice of such actions, not the date that appellant learned of a fact that led him to believe that such actions were flawed. (See Seemann and Bong v. DILHR, Case No. 79-167-PC (11/8/79)).

ORDER


This appeal is dismissed.

Dated: February 1, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson

LRM:rcr
RCR03/01


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

Parties:

Victor A. Girens
1227 Jackson
Oshkosh, WI 54901

Dan Wallock
Acting Administrator
DMRS
P.O. Box 7855
Madison, WI 53707

Tim Cullen
Secretary, DHSS
P.O. Box 7850
Madison, WI 53707