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DONALD HOLT, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*  
TRANSPORTATION and \*  
Administrator, DEPARTMENT \*  
OF MERIT RECRUITMENT AND \*  
SELECTION, \*

Respondents. \*

Case No. 88-0022-PC \*

\* \* \* \* \*

DECISION  
AND  
ORDER

Respondent has moved to dismiss the above matter as untimely filed. The parties have been provided an opportunity to file briefs. The following facts appear to be undisputed.

FINDINGS OF FACT

1. In November of 1987, respondent DOT issued a promotional announcement for the position of State Patrol Captain. The announcement set forth the following information regarding qualifications:

Candidates must have sufficient training and experience to demonstrate that the skills and knowledge necessary to perform the tasks upon appointment have been acquired. Prospective candidates should evaluate their own training and experience in relationship to the tasks performed and the knowledge required upon appointment, prior to applying. Typically the skills and knowledge required would be obtained as the result of at least 2 years of responsible management and supervisory law enforcement experience. Previous work should have included program planning, implementation and administration; analysis of operations; supervision of subordinates including scheduling, training, performance evaluation, and administering corrective discipline.

2. Appellant, who has served more than six years as a State Patrol Lieutenant, applied for the promotion.

3. An oral examination was conducted of the applicants on or about January 7 and 8, 1988.

4. A certification of eligibles was prepared on January 13, 1988, and on the same date the applicants were informed of their examination results.

5. On January 21, 1988, after having learned that he had not been certified as an eligible for further consideration, the appellant wrote the following memo to the Administrator of the Division of State Patrol:

I have learned that six applicants plus one protected class employe have been certified to be considered for appointment to the two vacant positions of State Patrol Captain. One of those so certified is Trooper 3, Ronald Discher.

The "promotional announcement" published for this position in November of 1987, enumerated the "knowledge and qualifications" required to be eligible to compete for this position. There was no requirement that the candidates submit documents or other information that their qualifications met those minimum levels.

I am challenging Trooper Discher's admission to the examination as his training, experience and job knowledge does not meet the minimums specified. I believe that he was inappropriately allowed to participate because he lacks these very essential prerequisites.

6. On February 2, 1988, appellant received a reply to his January 21st memo. The reply was prepared by respondent DOT's Bureau of Personnel and included the following statement:

The selection process used for Captain did not include screening based on training and experience (other than certification as a law enforcement officer). An oral examination was administered to all candidates to evaluate necessary knowledges and skills.

7. Two of these candidates certified were promoted to the position of State Patrol Captain effective February 14, 1988.

8. On March 4, 1988, appellant filed a letter of appeal with the Commission entitled "Appeal of Division of State Patrol Captain's Promotional Examination Process Conducted January 6 & 7, 1988, Pursuant to 230.44, Wis. Stats." The letter stated, in part:

The Division of State Patrol's promotional process does not comply with the applicable provisions of Chapter 230, Wis. Stats., as they relate to promotion on merit with proper consideration of training, experience and fitness for the position and does not provide employees with reasonable opportunities for career advancement. The examination

process is merely a method of arbitrarily eliminating candidates instead of a method of selecting the best qualified candidates.

This last Captain's examination process is typical of the many that have been conducted over the past several years; however, on a Captain's promotional examination conducted in 1983 applicants were required to submit a record of their experience in certain job related areas before they were allowed to take the examination.

The appellant's letter alleged inadequacies in the promotional process beginning with the promotional announcement and extending to the certification of eligibles.

#### OPINION

The respondent DMRS moved to dismiss the appeal contending it failed to meet the requirements of §230.44(3), Stats., which provides:

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 ....

Appellant contends he was "unaware that applicants were not screened for their training and experience until February 2, 1988" (Brief, p. 2) and so the 30 day period (based on notice) did not commence until February 2nd. Appellant also contends the effective date for the action was February 14, 1988, which was when the two promotional appointments became effective.

The Commission has consistently held that receipt of the notice of exam results triggers the commencement of the 30 day filing period for appealing examination content or process. Royston v. DVA & DMRS, 86-0222-PC, 6/4/87; Schuler v. DHSS & DP, 81-0012-PC, 4/2/81; Schleicher v. DILHR & DP, 79-0287-PC, 8/29/80. In the present case, the appellant participated in the examination process, was aware of the questions asked during that process and was aware of the results of that process by January 13, 1988. By January 21, 1988, appellant had concluded that at least one of the certified eligibles lacked the specific minimum training, experience

and job knowledge. While the appellant may not have learned until February 2nd that "applicants were not screened for training and experience," the time for appeal does not commence from the date the appellant learns of facts that lead to the belief that the transaction was unfair. Bong & Seeman v. DILHR & DP, 79-0167-PC, 11/8/79.

Even if, despite the above precedent, the appellant was considered not to have received notice until the February 2nd memo, his appeal would still be untimely because it was filed on the 31st day after February 2nd.

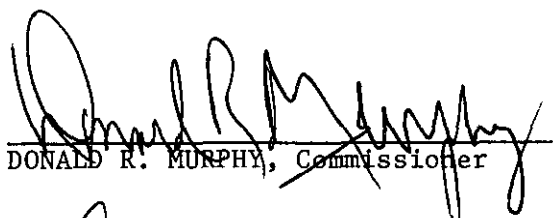
Therefore, the instant appeal of the examination process which resulted in the certification of eligibles for the position of State Patrol Captain, was untimely filed.

ORDER

This matter is dismissed as untimely filed.

Dated: May 18, 1988 STATE PERSONNEL COMMISSION

KMS:akw  
JGF002/1

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

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