

STATE OF WISCONSIN

PERSONNEL COMMISSION

DEANLOOK,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN SYSTEM (Whitewater)
and Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 88-0140-PC

DECISION
AND
ORDER

This appeal arises from respondents' decision to deny appellant's request to reclassify his position. A prehearing conference was held on January 13, 1989 at which time the representative for the respondents reserved the right to raise a jurisdictional objection based on the timeliness of the letter of appeal. Respondent subsequently filed a motion to dismiss contending that the appeal was untimely filed. Neither party requested an evidentiary hearing on the respondent's motion. The parties have been provided an opportunity to file written arguments and the following findings appear to be undisputed except as noted below.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the complainant was employed at the University of Wisconsin-Whitewater as a locksmith. At some time prior to October 25, 1988, the appellant requested reclassification of his position from Locksmith 2 to Locksmith 3.

2. On October 25, 1988, Gary Martinelli of the Office of Personnel Services/Employe Relations for the University of Wisconsin System mailed a letter to the appellant at his home address advising him that his reclass request had been denied and informing him of his opportunities for filing an appeal:

If you disagree with the decision that your position is properly classified, you are entitled to appeal it to the Personnel Commission pursuant to the provisions of s. 230.44(1)(b), Wis. Stats. The appeal must be in writing and should state the facts which form the basis of the appeal, the reason(s) you feel the action is improper, and the relief sought. This appeal must be received by the Commission within thirty (30) days of your receipt of this letter.

3. Also on October 25th, Mr. Martinelli mailed a copy of the same letter to the appellant's immediate supervisor, James Fuerstenberg, at a UW-White-water address. Mr. Fuerstenberg received the letter on October 26, 1988.

4. On November 29, 1988, the Personnel Commission received a letter of appeal from the appellant that was dated November 22nd and postmarked November 25th.

5. On January 23, 1989, during a telephone conversation with Mr. Martinelli, the appellant stated that he did not know the exact date he had received the denial letter but that it was received "on or after" October 27, 1988.

OPINION

The time limit for filing an appeal of a reclassification decision under §230.44(1)(c), Stats., is established in §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. In the present case, the sole dispute relates to the date on which the appellant was notified that his reclassification request had been denied.

Even though the appellant may have written and mailed his appeal within 30 days of when he was notified of the decision, the statute refers to when the appeal was "filed", which requires physical receipt by the Commission. Richter, supra. Because the Commission received the instant appeal on November 29, 1988, the latest day on which the appellant could have received

notice of the reclass denial and still have filed within the 30 day limit is October 30, 1988.

In a dispute as to jurisdiction, the burden of proof is on the party asserting jurisdiction. Allen v. DHSS & DMRS, 87-0148-PC, 8/10/88. Here, that party is the appellant. For the purposes of this decision, the Commission has accepted as accurate the appellant's description of what he said during the conversation he had on January 23rd with Mr. Martinelli¹. In contrast, Mr. Martinelli contends that during this conversation the appellant stated that, to the best of the appellant's recollection, he had "received [the reclass denial] on October 27, 1988."

The appellant simply does not provide the Commission a sufficient basis on which to conclude that he received the notice on Sunday, October 30th or on a later date. Because the appellant has the burden of proof and because he cannot provide any evidence to support a conclusion that he did not receive the denial letter on October 27th, the day after his supervisor received his copy, or on either of the following two days, the Commission must conclude that he has failed to sustain his burden.

In his brief, the appellant points out that he made an "honest attempt to file this appeal well before the 30 day time limit" and that he "did not realize that time limits are scrutinized to their maximum." As is noted above, the Commission has no discretion in applying the 30 day time limit for filing an appeal. After the 30 day filing period has run, the Commission simply lacks the authority to hear an appeal.

¹In his brief on the jurisdictional issue, the appellant first states:

In a recent phone conversation with Mr. Martinelli I stated to him that I did not know the exact day I received his denial letter, but that it was received on or after 10-27-88. . . . (Emphasis added)

Later on in the same brief, appellant wrote: "After receiving the denial sometime after 10-27-88, I sent out my appeal on 11-22-88. . . ." (Emphasis added). Even though the highlighted discrepancy is not determinative given the date the appeal was filed, the Commission has adopted the appellant's initial description as more accurately describing his recollection.

ORDER

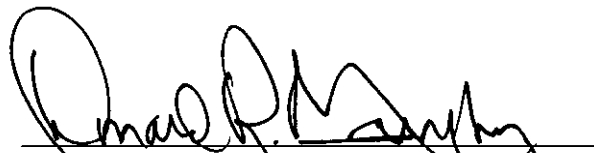
The respondents' motion to dismiss is granted and this matter is hereby dismissed for lack of subject matter jurisdiction.

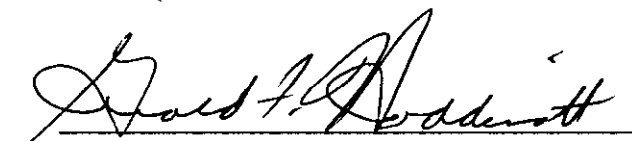
Dated: February 22, 1989

STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Dean Look
3126 North Street
East Troy, WI 53120

Constance Beck
Secretary, DER
P. O. Box 7855
Madison, WI 53707

Kenneth Shaw
President, UW-System
1700 Van Hise Hall
1220 Linden Drive
Madison, WI 53706