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RANDAL LOVELL,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS, and  
Secretary, DEPARTMENT OF  
REVENUE,

Respondents.

Case No. 90-0240-PC

\* \* \* \* \*

RULING  
ON  
MOTION  
TO  
DISMISS

On July 2, 1990, appellant Randal Lovell brought an appeal against the Department of Employment Relations of its decision reallocating his position from Auditor 4 to Revenue Auditor 5. At a prehearing telephone conference held September 10, 1990, appellant; Ms. Teel Haas, Attorney, DER; and Mr. Kevin Cronin, Attorney, DOR, appellant's employer, sorted through various allegations. The discussions were inconclusive, additional information was sought by appellant and a status conference was scheduled in 30 days.

On October 11, 1990 another telephone conference was held. It became apparent appellant did not seek to contest the aforesaid reallocation but rather was concerned with an earlier classification matter. The substantive issue for hearing was framed as follows:

Whether the Department of Revenue's decision to deny appellant's request in October 1987 for reclassification of his position from Auditor 4 to Auditor 5 or Administrative Assistant 5 was correct.

Subissue: Whether appellant made a formal request to DOR in October 1987 for reclassification of his position.

DOR raised the question of jurisdiction. Later, in accordance with the motion schedule, respondent filed a motion to dismiss appellant's appeal, and the parties have filed arguments.

Respondent contends the Personnel Commission lacks subject matter jurisdiction to consider Mr. Lovell's appeal under §230.44(1)(b), Stats., because he did not file a reclassification request and thus respondent did not make an appealable reclassification decision under §230.09(2)(a), Stats.

In support of its position, respondent submitted affidavits of Tom Marx, Chief of Personnel Services, Bureau of Human Resource Services, DOR; David Prucha, Personnel Specialist 4, Bureau of Human Resource Services, DOR; and S. R. Danielson, Revenue Administrator 2, appellant's supervisor during this period. These affidavits, with attached exhibits, establish:

1. In 1987, DOR required supervisors to submit formal reclassification requests, which included a copy of employee's current and previous P.D., a current organization chart and reclassification request form DER-PERS 37.
2. During October 1987, appellant and his supervisor discussed reclassification of appellant's position and appellant requested a reclassification.
3. S. R. Davidson, appellant's supervisor, submitted appellant's P.D. to the bureau director for review, but never submitted a formal request for reclassification of his position.
4. By letter dated February 1, 1988, appellant was informed by respondent's Bureau of Human Resource Services -- David Prucha, Personnel Specialist 4 -- that his position description, signed October 28, 1987, was correctly classified as an Auditor 4.

In response to respondent's submission set forth above, appellant contends by letter and attachments that J. E. De Young, who supervised him in his trainer capacity, requested a change in his P.D. and reclassification. Appellant stated in his letter that J. K. Leidiger was assigned the task of drafting a new P.D. and requesting reclassification. Appellant and Danielson were to review the newly drafted P.D. and return it to Leidiger. In support of these assertions, appellant submitted as Attachment 1, a memo dated October 20, 1987, from J. K. Leidiger to S. R. Danielson. The pertinent language is as follows:

Enclosed is a new Position Description prepared for Randall Lovell at the request of J. E. De Young. If you and Randy agree with the proposed Position Description, sign it and return it to me and I will have it reviewed by Personnel to determine if that position is properly classified.

Further, appellant contends that respondent's reclassification policy directive was not in his handbook and he relied on Mr. De Young, Leidiger, and Danielson to follow proper reclassification procedures.

After having considered the parties' arguments and factual contentions, the Commission concludes that it lacks jurisdiction over this case, regardless of whether or not it were to conclude that there was an insufficient request for reclassification made in 1987, as respondent DOR argues. If the Commission were to rule against respondent and in favor of appellant on this issue, the fact remains that it is undisputed that appellant received a memo dated February 1, 1988, from DOR Bureau of Human Resources advising him that his position was correctly classified, and he never filed an appeal within 30 days after having received that memo. Therefore, even assuming there had been a legally cognizable denial of a reclassification request, appellant did not comply with the 30 day filing requirement set forth in §230.44(3), Stats. It has been held repeatedly that this filing requirement is jurisdictional in nature

and that the Commission lacks the authority to consider an appeal that is untimely filed, Richter v. DP, Wis. Pers. Commn. No. 78-261-PC (1/30/79); State of Wisconsin ex rel DOA v. Personnel Board, Dane Co. Cir. Ct. 149-295 (1976).


Failure to have advised appellant of his appeal rights does not alter this result, see Bong & Seemann v. DILHR & DP, Wis. Pers. Commn. No. 79-167-PC (11/8/79)

("Since respondent has no obligation to inform appellant of appeal procedures, the failure to so inform Ms. Seemann does not constitute a legal or equitable ground for taking jurisdiction of her appeal.") Therefore, this appeal must be dismissed.

ORDER

This appeal is dismissed for lack of subject matter jurisdiction as untimely filed.

Dated: December 13, 1990 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:rcr

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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