

RECEIVED *appeal from Kelling v. DHSS/000*
87-0042-PC, 3/12/91

SEP 30 1991

Personnel
Commission

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

KENNETH A. KELLING, Petitioner

MEMORANDUM DECISION

-vs-

Case No. 91 CV 175

WISCONSIN PERSONNEL COMMISSION, Respondent

The petitioner appeals a decision of the State Personnel Commission denying his request that he be paid the difference between the salary discussed in a job interview and the salary authorized at the time of hire. The State has moved to dismiss the appeal asserting that the petition was not served on the Commission within the statutory period.

The procedures for perfecting an appeal of a Wisconsin Personnel Commission decision are found at Section 227.53 of the Wisconsin Statutes. That section provides that petitions for review must be served and filed within thirty days after service of the agency decision. The thirty day period for serving and filing begins on the day after personal service or mailing of the decision. 227.53(1)(a)2.

In this case the Commission's decision dated the 12th of March, 1991, was mailed the same date to the petitioner's attorney of record. Thus, the thirty day period for serving and filing the petition commenced on the 13th of March, 1991.

The petition was filed with the Court on the 12th of April, 1991, but was not served on the Commission until the 15th of April, 1991. The thirtieth day was the 11th of April. In this case the petition was filed on the thirty-first day and served on the thirty-fifth day.

The petitioner asserts the thirtieth day was the 12th of April, a Friday. The petitioner contends that the failure to serve the Commission on Friday was caused by the necessity of obtaining an authenticated copy from the Court to serve on the Commission. There simply were not enough hours in the day to get the authenticated copy of the petition from the Manitowoc County Clerk of Courts and deliver it to Madison for service during business hours. The petitioner concludes that in the spirit of 990.01(4) he should at least have until the following Monday to serve the commission.

990.001(4)(b) provides that in calculating time periods one excludes counting as the last day a Sunday or other legal holiday. It has no bearing on this case however. Even if Friday, the 12th of April, was the thirtieth day instead of the thirty-first it is neither a Sunday or legal holiday. Therefore the provisions of 990.01(4)(b) even it could be applied in this case are not invoked.

Finally, this case is governed by the decision in Johnsonville Sausage v. Revenue Department, 113 Wis. 2d 7. In

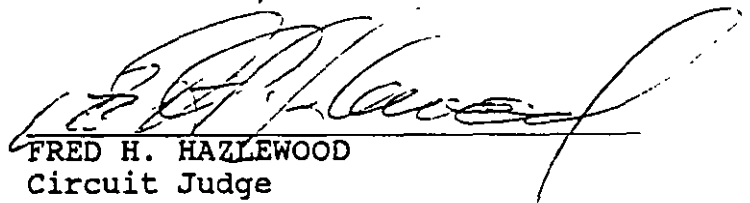
that case the Court of Appeals rejected the idea that time limits specified in Chapter 227 are affected by the method of calculation outlined in Section 990.001(4). Section 227.53(a)2 specifically provides that the thirty day period for "service and filing...commences on the day after personal service or mailing of the decision...".

The specific language of the statute governing the procedure in this matter leads to no other conclusion but that the petition was filed one day late and served four days late.

The Court concludes, therefore, that the petition was not filed and served within the thirty day time limits required by statute. Therefore, this Court is without jurisdiction to consider the appeal.

Dated this 25th day of September, 1991.

BY THE COURT,



FRED H. HAZLEWOOD
Circuit Judge