

se is untimely regardless of whether the Commission received the appeal April 17 or April 20.

Inasmuch as the 30 day time limit set forth in §230.44(3), Stats., is considered mandatory and jurisdictional in nature, Richter v. DP, 78-261-PC (1/30/79), this case must be dismissed to the extent it constitutes an appeal of the examination under the civil service code pursuant to §230.44(1)(a), Stats. However, the 30 day time limit contained in §230.44(3), Stats., applies only to appeals involving the subject matter contained in §230.44, Stats., (including §230.44(1)(a), Stats.):

"Any appeal filed under this section [§230.44] may not be heard unless the appeal is filed within 30 days.."

Section 230.44(3), Stats., goes on to provide that:

"[I]f the appeal alleges discrimination under subch. II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred."

Since Mr. LaRose characterizes the hiring decision as "discriminatory" in his appeal and in his brief on timeliness "contends that the decision was based on discrimination under subch. II of 111," the appeal is timely as to this allegation or charge of discrimination. See Sprenger v. UWGB, 85-0089-PC-ER (1/24/86). Mr. LaRose will be sent a complaint form to fill out and submit and this matter will be deemed amended into a complaint of discrimination under §111.375(2), Stats., once the completed complaint form has been filed.

ORDER

To the extent that this matter constitutes an appeal pursuant to §230.44(1)(a), Stats., of the examination conducted by the respondent, the motion to dismiss is granted, and it is dismissed based on the conclusion of law that it was not timely filed. This dismissal is final as to the appeal but does not limit Mr. LaRose's right to file a formal complaint of discrimination within the normal statutory period for doing so.

Dated: August 26, 1992 STATE PERSONNEL COMMISSION

AJT:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must

serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.