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MARIE CARLIN, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

EMPLOYMENT RELATIONS, and *

Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES, *

Respondents. *

Case No. 94-0207-PC *

* * * * *

RULING ON MOTION

On July 19, 1994, respondents filed a motion to dismiss for lack of timeliness. A hearing on the motion was held on October 6 and 24, 1994, before Laurie R. McCallum, Chairperson. The following findings are based on the hearing record and are made solely for the purpose of deciding this motion.

1. Appellant has been employed by respondent DHSS for 30 years at Mendota Mental Health Institute (MMHI).
2. There are two methods by which MMHI employees receive their pay: by personal receipt of their paycheck at the work site or through the mail, or by the electronic deposit of their paycheck directly to a bank account. Those who opt for electronic deposit receive written confirmation of the deposit by means of a form entitled "electronic deposit advice." This form is also referred to as an "electronic stub." This electronic stub is distributed to employees in appellant's unit at MMHI through the same means as a paycheck. Appellant received her pay through the electronic deposit method.
3. Some time in 1993 or 1994, appellant requested a reclassification of her position. Some time prior to May 26, 1994, Judith Muller, Payroll and Benefits Specialist 3, MMHI, contacted appellant by phone to advise her that her reclassification had been approved and that she would include the relevant paperwork in appellant's pay envelope on May 26, 1994. Appellant

requested of Ms. Muller that her pay envelope with this paperwork included in it not be routed through normal distribution channels, and advised Ms. Muller that she would stop by the MMHI personnel office to pick it up. Ms. Muller and others in the MMHI personnel office routinely honor requests such as this.

4. May 26, 1994, was a pay day, i.e., a day when paychecks and electronic stubs are made available for distribution to MMHI employees. Appellant had a meeting that afternoon which did not end until after 5:00 p.m. By that time, the MMHI personnel office was closed for the day.

5. On May 27, 1994, appellant got called away from work at 2:30 p.m. and did not have an opportunity to pick up her pay envelope.

6. Appellant did not work at MMHI on May 28 (Saturday), May 29 (Sunday), and May 30 (Memorial Day holiday), 1994.

7. Appellant picked up her pay envelope with the reclassification notice and other relevant paperwork on Tuesday, May 31 or Wednesday, June 1, 1994.

8. Appellant filed this appeal of the effective date of the subject reclassification action with the Commission on June 30, 1994.

Section 230.44(3), Stats., requires that an appeal such as that under consideration here be filed within 30 days of the effective date of the action, or 30 days after the appellant is notified of the action, whichever is later. The Commission has consistently held that this 30-day time period is jurisdictional in nature, i.e., that the Commission lacks the authority to hear an appeal not filed within this 30-day period, and that "filing" means "receipt." §PC 1.02(10), Wis. Adm. Code. See also Richter v. DP, 78-261-PC (1/30/79); Brady v. DER, 91-0085-PC (9/19/91).

In filing its motion, respondents presumed that appellant had received her pay envelope with the enclosed reclassification notice and related paperwork on payday, i.e., May 26, 1994. However, the record shows that appellant had a clear recollection of requesting that her pay envelope be held in the personnel office until she had a chance to pick it up, and that she didn't pick it up until May 31 or June 1, 1994. Respondents were unable to successfully rebut this testimony by appellant, i.e., no other witnesses had a clear recollection relating to these events, no exhibits successfully demonstrated that appellant had notice earlier than May 31, 1994, and the record shows that the sequence of events related by appellant would have

been consistent with MMHI operating procedures. As a consequence, the Commission concludes that appellant filed her appeal within the 30-day filing period.

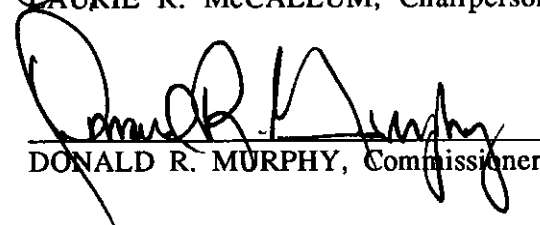
Order

Respondents' motion to dismiss is denied.

Dated: December 22, 1994 STATE PERSONNEL COMMISSION

LRM:lrn


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JULY M. ROGERS, Commissioner