

appeal from Westgerdes & James v DER, 94-0017-PC,
6/23/94, rehrq denied 8/10/94.

X
(misc
jud red)

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

CHIPPEWA COUNTY

THOMAS JAMES,

Petitioner,

vs.

MEMORANDUM DECISION
94 CV 299

STATE OF WISCONSIN PERSONNEL
COMMISSION

and

JON LITSCHER, Secretary,
Department of Employment Relations,

Respondents.

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PERSONNEL COMMISSION

The respondents in this case seek dismissal for lack of subject matter jurisdiction of Thomas James petition for judicial review of the Personnel Commission's decision that affirmed his reclassification of his civil service job with the State of Wisconsin. The issue is whether James' prior petition for rehearing operated to extend the time to file a petition for judicial review. Because the time limits are strictly construed, the court is compelled to rule in favor of respondents.

The facts are uncontroverted. James administratively challenged his job classification. The Commission denied a motion by the Department of Employment Relations to dismiss his administrative appeal, and requested additional information from James regarding whether another position classification better described his duties. Although James was not represented by counsel on his administrative appeal, he was not sent a copy of this decision, and consequently did not submit the requested information. (There were several other

appellants, but only James and one other had proceeded without counsel.) Ultimately, the Commission denied James' administrative appeal, serving notice of its decision by mail on June 23, 1994.

On July 12, 1994, James mailed a petition for rehearing alleging that he had not known of the request for submission of the additional information. The Commission received this petition for rehearing on July 14, 1994, 21 days after the Commission had mailed its decision to him. The Commission dismissed this petition for rehearing on August 10, 1994, because it had been filed one day late. On September 7, 1994, James commenced this action for judicial review.

Section 227.53(1)(a)2, Stats. requires that a petition for judicial review be filed within 30 days of the date of service of the Commission's final order. Service is computed from the date the final order is mailed. A petition for rehearing extends the time to request a judicial review to "30 days after service of the order finally disposing of the application for rehearing," or "30 days after the final disposition by operation of law of any such application for rehearing." Sec. 227.53(1)(a)2, Stats. Because James filed his request for judicial review more than 30 days after the Commission served its decision denying his administrative appeal, the crucial issue is whether the late filed petition for rehearing extends the deadline for filing a petition for judicial review to 30 days from the Commission's decision that it had no authority to hear James' petition for rehearing.

I conclude that because the petition for rehearing was filed late, James is in the same position as if he had never filed the petition for rehearing. Sec. 227.49, Stats. requires that a petition for rehearing be filed within 20 days. If a petition is filed after that time, the Commission may not consider it. Thus, a late petition puts that party in the same position as

a party who never files a petition for rehearing. Therefore, James was required to file his request for judicial review within 30 days of June 23, 1994. Because he did not do this, this court has no subject matter jurisdiction to hear this case.

The results of the law in this case are harsh. James is the victim of two-day mail service from Chippewa Falls to Madison, although mail from Madison to Chippewa Falls often arrives overnight. Had James lived closer to Madison his petition may well have arrived on time. Persons who live in distant parts of Wisconsin often have less time to file petitions for rehearing because of slower mail delivery to and from them as compared to someone living in or near Madison. Thus, parties living in some parts of Wisconsin may suffer both from a later receipt of a Commission's decision, and a necessity to mail their petitions for rehearing earlier than persons who live in or close to Madison. Perhaps the legislature will address this inequity someday.

Nevertheless, the respondents' motion to dismiss is granted. The Commission's attorney shall prepare the order.

Dated this 5th day of January, 1995.

BY THE COURT,

RODERICK A. CAMERON
CIRCUIT JUDGE