

STATE OF WISCONSIN

PERSONNEL COMMISSION

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STEVEN MAYER, DAVID W. BARNABO,
 TIM FARRELLY, BILL BECKER and
 SETH NEWMAN,

Appellants¹,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 and Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,

Respondents.

Case No. 95-0002-PC

* * * * *

RULING ON RESPONDENTS' MOTION TO DISMISS

A prehearing conference was held in the above-noted case on April 17, 1995, at which time a motion to dismiss was raised by respondents based on respondents' perception that the appeal was untimely filed. The parties agreed to a briefing schedule with the final brief due on June 23, 1995, but appellants filed no written arguments.

Respondents' brief included information regarding the merits of this appeal. Such information may relate to a summary judgment motion, but not to the timeliness issue which is the sole question presented for resolution. Accordingly, information relating to the merits of this appeal is not included in this ruling.

Some of the information recited in the BACKGROUND section below was agreed to by the parties at the prehearing conference and was recited in the written conference report dated April 17, 1995. Other information was included in respondents' brief and was unchallenged by appellants. Accordingly, all information recited below appears to be undisputed.

BACKGROUND

1. All appellants transferred from one institution operated by the Department of Health and Social Services (DHSS) to another. Specifically, they transferred from Central Wisconsin Center (CWC) to

¹ Angela Metier who initially was part of this appeal was dismissed as a party by Commission order mailed on May 16, 1995.

Mendota Mental Health Institute (MMHI) on April 24, 1994, classified at the Resident Care Technician-1 (RCT-1) level. They then commenced a 6-month permissive probationary period. Appellants say they expected to be reclassified to RCT-2, effective October 24, 1994 (after the 6-month probationary period), yet reclassification did not occur until an effective date of January 22, 1995.

2. The appellants submit a written reclassification request to DHSS personnel in October 1994. Nor did they file an appeal with the Commission within 30 days of October 24, 1994, the date they claim they should have been reclassified to the RCT-2 level. In fact, their appeal was not received by the Commission until January 3, 1995.
3. Furthermore, appellants' written reclassification requests to DHSS personnel were not made until January 19, 1995, which occurred after they filed the instant appeal. The requests ultimately were granted with an effective date of January 22, 1995. The date upon which these requests were granted varies, as shown in the chart below.

<u>Appellant</u>	<u>Date Reclass Request Granted</u>
D. Barnabo	Feb. 1, 1995
B. Becker	Jan. 31, 1995
T. Farrelly	Unknown date after Feb. 6, 1995 ²
S. Mayer	Unknown date after Feb. 6, 1995
S. Newman	Unknown date after Feb. 6, 1995

4. The information provided to the Commission does not indicate the date upon which each appellant received notice of the reclassification decision made. Of course, appellants could not have received such notice until after the date their reclass request was granted, as shown in the chart above.
5. DHSS made the reclass decisions based on powers delegated to DHSS from the Secretary of the Department of Employment Relations (DER). Such delegation was made by written agreement between DER and DHSS, dated December 22, 1992.

² The exact date the reclasses were granted for Farrelly, Mayer and Newman are unknown because the reclass forms submitted by each party do not contain the final authorization signature and date of the DHSS Secretary.

6. Appellants did not file any appeal with the Commission after DHSS made the decision to grant their reclassification requests.

DISCUSSION

This is an appeal of a reclassification decision delegated to DHSS by the Secretary of the Department of Employment Relations (DER). The reclassification denial decision is an appealable action pursuant to s. 230.44(1)(b), Stats.

The time limit for filing appeals of reclassification decisions is stated in s. 230.44(3), Stats., as shown below in pertinent part:

(3) TIME LIMITS. Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later . . .

Appellants say they expected reclassification October 1994, yet they did not file an appeal until January 3, 1995, which is more than 30 days after the effective date of the expected action. However, appellants did not submit a written request for reclassification in October 1994, and, consequently, DHSS personnel did not notify appellants in writing that appellants' reclassification would not occur in October 1994. Accordingly, the 30-day appeal period did not commence in October 1994. Heath & Mork v. DOC & DHSS, Case No. 93-0143-PC (6/23/94) at p. 5, citing Piotrowski v. DER, 84-0010-PC (3/16/84) at p. 2. Also see, ER 3.04, Wis. Admin. Code.

Appellants received written notice of the effective date of their reclassification in late January or in February 1995. The appeal filed with the Commission preceded their receipt of written notice and, therefore, was filed prematurely. However, appellants made it clear at the prehearing conference held on April 17, 1995, that they wished to continue to contest the effective date of their reclassification to RCT-2. (See Conference Report dated April 17, 1995.) Such reaffirmation is sufficient to cure any procedural defect caused by the premature nature of the filed appeals. Heath & Mork, Id., at p. 5 citing Hoefl v. Carballo & Knoll, 74-37 (State Personnel Board, 5/24/76).

ORDER

Respondents' motion to dismiss is denied. Accordingly, a status conference will be held in the near future to establish the issue and date for hearing.

Dated July 24, 1995.


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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