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PATRICIA JACKSON-WARD, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*

EMPLOYMENT RELATIONS, \*

Respondent. \*

Case No. 95-0021-PC \*

\* \* \* \* \*

DECISION AND ORDER

This matter is before the Commission on respondent's motion to dismiss the appeal as untimely filed. A telephone conference was held with the parties on April 4, 1995, and the parties agreed to the following statement of facts:

Respondent is pursuing its timeliness objection in this matter. Ms. Jackson-Ward (appellant) stated that she received notice of the reallocation decision with her September 1, 1994, paycheck. The effective date of the reallocation decision is August 7, 1994. Appellant stated that she mailed a letter of appeal to the Commission on or about September 26, 1994. There is nothing in the case file indicating the Commission received the appeal letter at that time. Appellant participated in a prehearing conference held on January 25, 1995 relating to the reallocation appeals filed by Dorsey, Walsh, Tribbey, Doro and Lund, case Nos. 94-0471, 475, 477, 478, 512-PC. The conference report for that conference includes the following language:

On January 23, 1995, Patricia Jackson Ward, the Transportation District Business Supervisor for DOT District 8, called the undersigned and said that she had also filed an appeal. She is sending a copy of her reallocation appeal to the Commission. To date, no record has been found of the Commission receiving a timely appeal from Ms. Jackson Ward. Therefore, at this time it is not known whether the Commission will exercise jurisdiction over her appeal. However, she was included in the January 25, 1995, conference in the event the Commission does assume jurisdiction and her appeal is consolidated with the others.

On February 3, 1995, the Commission received a letter of appeal from complainant. The letter was assigned Case No. 95-0021-PC. Appellant states that this letter, which bears postmarks of

January 31 and February 2, 1995, was submitted in response to the conference report issued in the Dorsey et al., matters.

The time limit for filing an appeal of a reallocation decision under §230.44(1)(b), Stats., is established in §230.44(3), Stats.:

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. . . .

This 30 day time limit is mandatory rather than discretionary and is jurisdictional in nature. Richter v. DP, 78-261-PC, 1/30/79. In the present case, the dispute relates to whether the Commission received the appeal within the 30 day period.

The appellant contends that "the Personnel Commission's record tracking process is not infallible and that the probability of [her] original appeal being lost by the Personnel Commission is very high." To support this contention, appellant refers to an appeal filed around the same time by a counterpart employe, Barbara Lund, and suggests that the Commission permitted the Lund appeal to proceed once Ms. Lund supplied a copy of the certified mail receipt for her letter of appeal, even though the Commission had no record of receiving the original appeal.<sup>1</sup> However, the case file in Lund v. DER, 94-0512-PC, contains the original letter of appeal from Ms. Lund, which is dated September 7, 1994, post-marked September 21, 1994, and bears a Personnel Commission hand stamp showing it was received by the Commission on September 23, 1994.<sup>2</sup> In contrast, the first (and only) appeal letter found in

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<sup>1</sup>The appellant also states that her counterparts had submitted documents to the Commission which were "either lost or misplaced and required our group to resubmit additional copies." The appellant has supplied no additional details regarding this statement. Assuming her statement to be accurate, this still does not show that her appeal was actually received by the Commission within 30 days of September 1st, rather than having been lost or misplaced in the postal system before having reached the Commission.

<sup>2</sup>A copy of the certified mail receipt also shows that the receipt was signed on September 23, 1994, by Todd Larsen, who is not an employe of the Personnel Commission. Mr. Larsen is presumably employed by the mail delivery service for state agencies that is operated by the Department of Administration.

Before she received written acknowledgement from the Commission that it had received her appeal, Ms. Lund may have contacted the Commission and may have been given incorrect information as to whether the appeal had been received. However, it is clear that the Commission actually received her

the appellant's case file was received by the Commission on February 3, 1995. While the Commission understands the appellant to state that she wrote and mailed her appeal within 30 days of when she was notified of the decision, the statute refers to when the appeal was "filed", which requires physical receipt by the Commission. Richter, supra.

The appellant has supplied no evidence that the Commission actually received her appeal within 30 days of September 1, 1994, which was when she received notice of the reallocation decision effective August 7, 1994. The file does not contain a copy of an appeal filed in 1994, nor has the appellant supplied any other evidence of the Commission having received the appeal. In a dispute as to jurisdiction, the burden of proof is on the party asserting jurisdiction. Allen v. DHSS & DMRS, 87-0148-PC, 8/10/88. Here, that party is the appellant.

The appellant also suggests that her appeal letter was lost because of her race: "Discrimination has a way of constantly imparting itself in the state's INFALLIBLE systems." One problem with this assertion is that the appellant has made no suggestion as to how someone intent on discriminating against racial minorities might have determined appellant's race from her appeal letter. There is nothing indicating appellant's race in her appeal letter which ultimately reached the Commission on February 3, 1995, and which presumably would reflect the same information found in the letter appellant states she sent in 1994.


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appeal on September 23rd as indicated by the stamp on the face of the document.

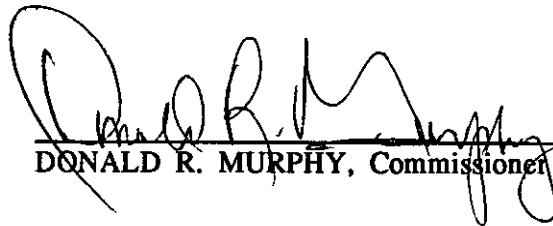
ORDER

This matter is dismissed as untimely filed.

Dated: April 28, 1995 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Patricia Jackson-Ward  
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Madison, WI 53719

Jon E. Litscher  
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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

2/3/95