

STATE OF WISCONSIN

PERSONNEL COMMISSION

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THOMAS A. VAN BEEK,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 96-0072-PC

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RULING ON APPELLANT'S REQUEST FOR
WAIVER OF REQUIREMENTS UNDER
s. PC 3.02, WIS. ADM. CODE

The Commission received the above-noted appeal on June 3, 1996, contesting the Department of Employment Relation's (DER) decision to deny his reclassification request. He had requested reclassification of his position from Engineering Technician-Transportation-3 (ETT-3) to either CADDs Specialist (CS) or Engineering Specialist Transportation (EST). By letter dated June 4, 1996, the Commission informed Mr. Van Beek that his appeal was subject to the fee payment provisions of s. PC 3.02, Wis. Adm. Code. The Code became effective on June 1, 1996, and required either payment of a \$50.00 filing fee or an executed hardship affidavit. Mr. Van Beek questions whether the unique circumstances of his appeal should result in waiver of the fee requirement.

FINDINGS OF FACT

1. Mr. Van Beek initially requested reclassification of his position by sending a memo dated April 10, 1995, to his employing agency's (Department of Transportation - DOT) personnel office. DOT had no delegated authority from DER to make a final decision, but did conduct an initial review which lead DOT to conclude that reclassification was unwarranted. Mr. Van Beek filed an appeal of DOT's interim opinion on February 2, 1996 (hereafter referred to as the "Prior Appeal"), to which the Commission assigned case number 96-0011-PC. The Prior Appeal, however, was filed prematurely because DER had not yet had an opportunity to review the matter and to issue a final decision.

2. A prehearing conference was held on February 27, 1996, to discuss the Prior Appeal. The resulting Conference Report included the following statement:

The parties agreed that this matter should be dismissed without prejudice so that DER could consider and decide the appellant's pending reclassification request. If aggrieved by that decision, the appellant may then file an appeal within the statutory time period.

3. The Commission dismissed the Prior Appeal by Order dated March 22, 1996, "based upon the agreement of the parties as set forth in a prehearing conference report issued on February 27, 1996".
4. DER issued its decision denying Mr. Van Beek's reclassification request by letter dated May 20, 1996. His appeal of DER's decision was received by the Commission on June 3, 1996, in an envelope bearing a postmark of May 31 "PM", 1996. The Commission assigned case number 96-0072-PC to this new appeal (hereafter, referred to as "Present Appeal"), and by letter dated June 4, 1996, informed him of the need to tender either a \$50 filing fee or an executed hardship affidavit within 30 days (by July 5, 1996).
5. On June 5, 1996, Mr. Van Beek telephoned the Commission and spoke with Commissioner Rogers asking whether he really had to pay the \$50.00 filing fee. Commissioner Rogers' note of the conversation indicates that she explained that the new rule went into effect with appeals filed on and after June 1, 1996, and that his Prior Appeal was dismissed as premature. He agreed that his prior appeal was filed prematurely. He asked whether he was covered by the fee requirement or not. Commissioner Rogers indicated she felt his appeal was subject to the fee requirement, but encouraged him to file written arguments for consideration by the full Commission. According to the file note, Commissioner Rogers explained the reason for the fee rule (to discourage non-meritorious claims) and why the fee could not be paid by personal check. She further emphasized the importance to submit written arguments before the Commission's meeting on June 19, so the matter could be resolved before the payment due date of July 5, 1996. She also emphasized that the due date is measured by Commission's receipt of the fee payment or executed hardship affidavit.

6. Mr. Van Beek requested exemption from the fee requirement of s. PC 3.02, Wis. Adm. Code, by letter dated June 6, 1996. The text of his letter is shown below.

I am seeking exemption from the new \$50 filing fee which went into effect June 1. After speaking with (Commissioner Rogers) (on) June 5, it is my understanding the fee was not originated to deter cases such as mine.

Other reasons:

I filed a similar appeal Feb. 1, 1996, the result of that appeal was a conference call with representatives from your office, DER & DOT and myself. After this call it was decided it would be proper to appeal to DER, therefore, I withdrew my appeal to the Personnel Commission. Why was I not notified sometime between Feb. 1 and say May 25, of the upcoming fee situation? I would expect any of the three groups listed above should have notified me of the impending rule change.

I sent my appeal May 31, had June 1 not been on a Sat. you likely would have received it by the June 1, deadline.

I have been setting up this appeal for over two years. It wasn't something that just came along with the last denial letter from DER. About one year ago I received from your office, a copy of the Sannes v. DER case, which is similar to mine. In part, this is why I have intended to file an appeal with the personnel Commission after exhausting all other means for proper classification.

Please notify me on June 19 of your decision. I will be gone on vacation June 20 - July 1. If I am not notified on June 19, and have to pay the fee, July 1 may be late notice to make the July 5 deadline, given the July 4 holiday.¹

DISCUSSION

Mr. Van Beek first argues that the filing fee requirement of s. PC 3.02, Wis. Adm. Code, was not "originated to deter cases such as mine". It is true that the rule was enacted, at least in part, to discourage filing of clearly non-meritorious claims; such as claims over which the Commission clearly has no

¹ Commissioner Rogers telephoned appellant in the early afternoon of June 19, 1996, and informed him of the Commission's ruling, as he had requested. He was informed that the written decision would follow in about 10 days. She then provided the same notice to DER by telephoning Kristine Chilsen.

jurisdiction. It does not appear that Mr. Van Beek's appeal falls into this category. The rule applies to all appeals filed on and after June 1, 1996, regardless of the claim's merit and without opportunity for exceptions or waiver (other than the filing of an executed hardship affidavit).

Mr. Van Beek wonders why he was not notified by the Commission, DOT or DER "sometime between Feb. 1 and say May 25, of the upcoming fee situation." Neither DOT nor DER had any obligation to notify Mr. Van Beek of the potential of a new Commission administrative rule. The Commission fulfilled its statutory notice requirements (beginning as early as October 1995) which included public hearing, legislative review and more. The draft rule was submitted to the legislature on January 8, 1996, and it was not until 60 days later that the Commission knew the Legislature requested no changes.

Mr. Van Beek next argues that his appeal should be considered as filed prior to June 1, 1996, because it was postmarked on May 31, 1996 and the Commission likely would have received it prior to June 1, 1996, if June 1st had not fallen on a Saturday. The Commission rejects this argument. The postmark indicates he mailed his appeal in the afternoon of Friday, May 31, 1996. It is unreasonable to expect mail delivery on the same afternoon. Delivery on the following date (June 1, 1996) would have been subject to the new fee filing requirements even if June 1, 1996, had not fallen on a Saturday.

ORDER

The appellant's request for waiver of the filing fee requirements is denied.

Dated June 25, 1996.

JMR

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner