

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SCOTT J. BOUCHE,

Appellant,

v.

Chancellor, UNIVERSITY OF
WISCONSIN-MILWAUKEE, and

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 96-0095-PC

* * * * *

DECISION
AND
ORDER

This appeal is before the Commission on consideration of whether it should be dismissed because of untimely filing of the §PC 3.02, Wis. Adm. Code, filing fee.

This is an appeal pursuant to §230.44(1)(b), Stats., of a reallocation. The appeal was filed with the Commission on July 11, 1996, unaccompanied by the filing fee required by §230.45(3), Stats., and §PC 3.02, Wis. Adm. Code. In a letter to the appellant dated July 12, 1996, the Commission advised as follows:

The Commission must receive within 30 calendar days from the date of this letter (by August 12) either the filing fee of \$50.00, or an executed hardship affidavit. Failure to meet this requirement will result in dismissal of your appeal.

Subsequently, the Commission received the filing fee by mail on Tuesday, August 13, 1996. The envelope enclosing the filing fee had been postmarked in Milwaukee on Thursday, August 8, 1996.

The Commission's address, as printed in the Wisconsin Administrative Code (§PC 2.01 (note)) and on its stationery, utilizes a 53702 zip code. This is the "state" zip code for state agencies in Madison. United States mail addressed to the Commission at the 53702 zip code is not delivered by the U.S. Postal Service directly to the Commission. Rather, it is delivered to the Department of

Administration (DOA), which delivers it to the Commission (as well as other entities within state government).

On August 13, 1996, the Commission checked with DOA and was advised by a DOA supervisor that, due to staffing shortages, the DOA mail room did not process any incoming mail addressed to the 53702 zip code on either Friday, August 9, 1996, or Monday, August 12, 1996.

The questions are whether under these circumstances it must be concluded the filing fee was not filed in a timely manner and whether the appeal must be dismissed on that basis.

The relevant subsections of §PC 3.02, Wis. Adm. Code, are as follows:

(2) Except as provided under sub. (6), the commission may take no action to resolve an appeal for which the payment of a fee is required until the commission receives the fee or hardship affidavit as required under this section.

(3) Payment of fees.

* * * *

(b) How fees are paid. Fees shall be paid by money order, certified, check, cashier's check or bank check made payable to the "State Treasurer of Wisconsin" and must be received, whether in person or by mail, at the commission's offices. Fees may not be paid in cash, by personal check or in installments.

* * * *

(5) Time limits for paying fees. (a) Requirements at time of filing. Except as provided under par. (b), the fee or the hardship affidavit for filing an appeal shall be received by the commission at the time the appeal is filed.

(b) Exceptions; time limits. 1. If an appeal is filed without each appellant enclosing either the fee payment or hardship affidavit, the commission shall send each remiss appellant a letter advising of the requirement to either pay or to submit a hardship affidavit.

2. A fee payment meeting the requirements of sub. (3)(a) and (b), received by the commission within 30 days of the date appearing on the commission's letter mailed under subd. 1, will be considered a timely paid fee. . . .

(6) Effect of failing to timely file fee payment or hardship affidavit. The commission shall dismiss without prejudice the appeal of any appellant who has failed to submit the required fee payment or hardship affidavit within the time limits under sub. (5).

Rather than elect to have its mail delivered by the postal service to a post office box or to its offices directly, the Commission has elected (by the use of the 53702 zip code) to have its mail delivered by the postal service to DOA, which in turn delivers it to the Commission. The distinction between state agencies can become blurred when viewed in a functional context.¹ Delivery of a piece of mail to another state agency is not considered under most circumstances to be equivalent to delivery to the Commission, *see, e.g., Van Rooy v. DMRS & DILHR*, 84-0062-PC, 7/19/81 (appeal mistakenly delivered by postal service to Department of Revenue rather than Commission not deemed filed with the Commission). However, where the Commission is utilizing another agency to process its mail, additional considerations are called into play.

For example, assume the Commission utilized a post office box for its mailing address and had a Commission employee pick up its mail each day. If, due to staffing shortages, the mail were not picked up for two days, it is hard to imagine that someone would be considered to have missed a deadline for submitting something to the Commission by mail if the piece of mail had been sitting in the post office box during this period. When the Commission is relying on another state agency to receive and distribute its mail, that agency is acting on behalf and in place of the Commission with respect to the receipt of mail from the postal service.² Therefore, since the Commission infers that it would have received the filing fee in a timely manner but for DOA's failure to have processed its mail on August 9 and 12, 1996, it concludes that the delivery of the filing fee to DOA was, under these circumstances, equivalent to delivery to the Commission.

¹ For example, the Commission observed in *Phillips v. DHSS and DETF*, 87-0128-PC-ER, 482 N.W. 2d 121, 3/15/89; *aff'd* other grounds, *Phillips v. Wis. Pers. Comm.*, 167 Wis. 2d 205 (Ct. App. 1992), a state agency which exercises authority with respect to state employment can be considered to function for certain purposes as the employer of a state employee notwithstanding that the employee nominally is employed by a different agency; *e.g.*, DETF functions as the employer to the extent it administers the state employee health insurance program.

² An agency relationship can be created for purposes of service of process. *CJS Process* §39. Although this case does not involve the service of process *per se*, filing fees can be submitted by mail, and the circumstances here are analogous.

ORDER³

The appellant's filing fee is accepted as timely submitted. This matter is to be processed as a properly filed and fee-paid appeal.

Dated: October 29, 1996 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:lrm


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Scott J. Bouche
Physical Plant Svcs
UW-Milw.
PO Box 413
Milwaukee, WI 53201

Jon Litscher
Secretary, DER
PO Box 7855
Madison, WI 53707

John H. Schroeder
Chancellor, UW-Milw.
1738 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

³ In part because the Commission raised on its own motion this question of whether the filing fee was timely filed, it resolved the issue without a formal evidentiary hearing. Either party has the right to submit a motion for an evidentiary hearing, which, if granted, could result in reconsideration of this order.