

STATE OF WISCONSIN

PERSONNEL COMMISSION

TONY HALLMAN,
Appellant,

v.

**Executive Director, WISCONSIN CON-
SERVATION CORPS, and
Secretary, DEPARTMENT OF ADMINI-
STRATION,**
Respondents.

**RULING ON MOTION
TO DISMISS**

Case No. 96-0146-PC

On November 11, 1996, respondent filed a motion to dismiss. The parties were permitted to file written arguments relating to the motion and the schedule for filing such arguments was completed on January 23, 1997. The factual findings upon which this ruling relies are based on information supplied by the parties and appear to be undisputed.

1. In a letter to appellant dated March 9, 1994, the executive director of the Wisconsin Conservation Corps (WCC) stated as follows, in pertinent part:

Congratulations on your appointment to the project position of Program Assistant 4, Field Support Specialist with the Wisconsin Conservation Corps. . . .

Your employment begins April 4, 1994. Your employment is complete at the end of the project, October 31, 1995. . . . Your project employment places you in the non-represented employee pay group. . . .

You are entitled to employee benefits and will be eligible to participate in state-sponsored insurance programs for health, life and income continuation, as well as participation in the state retirement program. You will receive paid leave, and if necessary, Workers Compensation benefits.

As a project employe, you are a temporary employe and do not acquire permanent civil service status. . . . If you accept an appointment to a permanent position in the classified service, your accrual of sick leave, vacation, and seniority begins again with that appointment. This project position does not become a basis for continuation of these benefits or for a determination of salary in a permanent position.

Several payroll and benefit documents need to be completed shortly after you begin this appointment. The Department of Administration, Bureau of Personnel staff conducts a New Employee Orientation Program to aid in completing these documents, to answer your questions, and to provide you an overview of the department's organization and activities. You are scheduled to attend this program as follows:

Benefits Briefing:

Date: Tuesday, April 5, 1994
Time: 1:00 - 2:15 p.m.
Room: 1034, 101 E. Wilson St.

2. Appellant prepared the following draft of a letter to the Chairperson of the Wisconsin Conservation Corps Board and dated the draft June 1, 1994:

On April 4 1994 I began my sixth (6th) year with the WCC. I also began working as a Field Support Specialist (Training Coordinator) on that same day. At orientation that I attended later that day with the Department of Administration, I was told that I was a new employee. I responded, "that is ridiculous, I have been working for WCC for five (5) years." The individual explained to me that the "SYSTEM" does not recognize my five (5) years of service, and that I will be treated as a new employee. I was also informed that I would have to pay for my own health insurance for three months at the cost to me of over \$600.00. I hereby request The WCC Board approve to continue all of the benefits that I have accrued while serving The Wisconsin Conservation Corps until such time that the SYSTEM benefits are equal to or greater than the benefits I had been receiving as a Crew Leader for WCC. The identical dilemma has been experienced by Paul Klien Field Support Specialist. Thank you for your consideration in this matter.

3. Appellant shared this draft with Randall Radtke, the Executive Director of the WCC on or after June 1, 1994. Mr. Radtke wrote as follows on the draft:

Tony,

This letter should come from me to the Board. I agree that it is an issue that should be addressed ASAP by the Board. Please see me so I can write the letter to the Board on your and Paul's behalf.

RJR

4. On October 2, 1996, appellant filed an appeal with the Commission of his "loss of benefits, loss of salary and loss of seniority." His letter of appeal stated as follows, in pertinent part:

A letter which I drafted, dated June 1, 1994 (copy enclosed) to the WCC Board was set aside with a note from the WCC Executive Director, stating that he agreed the issue should be addressed, and that he would handle same. Since that date I was under the impression that DOA was proceeding to take action to solve my dilemma.

Three weeks ago the WCC Executive Director announced his plans to resign his position with the WCC. That is the first time that I was aware nothing was proceeding with DOA regarding the resolution of this issue.

The only arguable basis for the Commission's jurisdiction over this appeal is §230.44(1)(d), Stats. Any appeal filed pursuant to §230.44, Stats., is subject to the filing requirements of §230.44(3), Stats., which states as follows, 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, . . .

Here, the effective date of the action is April 4, 1994, the date of appellant's appointment, and appellant acknowledges receiving notice of the action on April 4, 1994. As a result, in order to be considered timely, an appeal would have had to have been filed within 30 days of April 4, 1994. However, this appeal was filed on October 2, 1996, more than two years later.

Appellant argues by implication that respondent should be equitably estopped from asserting a timeliness objection since representations made by the WCC Executive Director led him to cease actively pursuing this matter. However, the information pro-

vided by the appellant himself shows that he did not bring this matter to the attention of Mr. Radtke until on or after June 1, 1994, more than 30 days after April 4, 1994. Hence, even if it were concluded that appellant ceased actively pursuing this matter as the result of his reasonable reliance on Mr. Radtke's representations, this reliance could not have occurred until after the 30-day time limit had already expired and Mr. Radtke's representations could not, therefore, have contributed to or led to the untimely filing.

Appellant also appears to be arguing that his lack of familiarity with the applicable filing requirements and respondent's failure to give him information about these filing requirements should excuse his untimely filing. However, lack of familiarity with the law does not toll a filing period. *See, e.g., Gillett v. DHSS*, 89-0070-PC-ER, 8/24/89. Furthermore, lack of information from an employer would not toll the filing period unless the employer had an affirmative obligation to provide such information. Appellant does not claim such an obligation exists here and the Commission is not aware of any such affirmative obligation on respondent's part. Finally, tolling of the filing period could occur if the employer misled an employee about the applicable filing requirements but such an allegation has not been made here.

It is concluded that this appeal was untimely filed and, as a result, should be dismissed. In view of this conclusion, it is not necessary to consider respondent's other arguments for dismissal.

ORDER

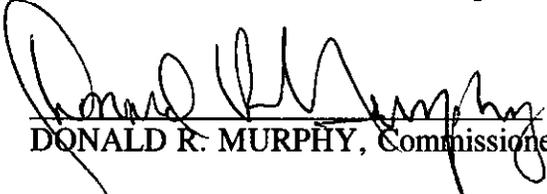
Respondent's motion is granted and this appeal is dismissed.

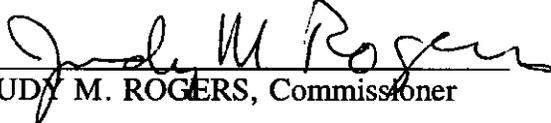
Dated: February 12, 1997

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM
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DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Tony Hallman
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Eagle River, WI 54521

Brian Schimming
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30 West Mifflin St.
Madison WI 53702

Mark Bugher,
Secretary, DOA
101 East Wilson Street
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Madison WI 53707-7864

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