

STATE OF WISCONSIN

PERSONNEL COMMISSION

DAVID A. SCHNEIDER

Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**

Respondent.

**RULING
ON
MOTION TO
DISMISS**

Case No. 99-0062-PC

This matter was filed as an appeal from the denial of hazardous duty benefits under §230.36, Stats. Respondent moved to dismiss the appeal, contending that appellant failed to timely submit his request for benefits. The parties filed briefs and the following facts are made solely for resolving this motion and appear to be undisputed.

FINDINGS OF FACT

1. Appellant is a supervisor who has worked for respondent for approximately 30 years.
2. In November of 1992, while employed in the Bureau of Community Corrections, appellant sustained an injury to his left knee during a physical altercation with a probationer in appellant's office.
3. Before returning to work full time in February of 1993, appellant took approximately 70 hours of sick leave and 75 hours of workers compensation leave.
4. Appellant underwent surgery to his left knee in December of 1994. The surgery was related to the work injury that occurred in November of 1992.
5. While recuperating from the surgery, appellant took approximately 60 hours of sick leave.
6. At the time of the injury and of the surgery, appellant did not know he was eligible to file a claim under §230.36, Stats.

7. Appellant learned in 1998 that he could file a claim under §230.36, Stats. In a memo dated October 5, 1998, respondent's workers compensation coordinator provided appellant with specific information about the leave he had used from 1992 through 1995 relating to the injury and surgery. The memo stated, in part:

You indicated to me you wanted this information because you are checking into whether this claim might be covered by 230.36. I have enclosed a copy of the form to request 230.36 time. On the back of this form is a section of the state statutes that explains 230.36. Tom Garcia should be able to answer any further questions you have on 230.36.

8. Appellant did not file a claim under §230.36, Stats., relating to the leave arising from the 1992 injury and 1994 surgery until May 6, 1999.

9. Appellant's delay between when he learned he could file a claim under §230.36, Stats., and May 6, 1999, was due to his workload and because he needed to carry out additional research regarding the nature of the claim.

10. Respondent denied appellant's May 6, 1999, request for benefits under §230.36, with the following, written explanation:

Employee clearly did not file in a timely manner, within 14 days from the time he became aware he could file.

11. Appellant subsequently filed an appeal of the denial with the Personnel Commission.

CONCLUSIONS OF LAW

1. The time limit for filing an application for benefits under §230.36, Stats., is 14 calendar days from the day of injury.

2. Appellant failed to file his application within the time limit.

OPINION

Pursuant to §ER 28.04(1), Wis. Adm. Code:

Application for benefits under s. 230.36, Stats., shall be made by the employe or the employe's representative to the appointing authority within 14 calendar days from the day of injury, on forms prescribed by

the secretary. In extenuating circumstances, at the discretion of the secretary, the time limit for application for benefits may be waived.

The reference to "secretary" is to the secretary of the Department of Employment Relations. Section 1.02(43), Wis. Adm. Code.

In the present case, the injury occurred in 1992 and appellant underwent related surgery in 1994. Appellant acknowledges he learned of the opportunity to file for benefits in October of 1998. He failed to file a claim until May 6, 1999.

Appellant clearly failed to meet the 14-day filing requirement and there is no evidence that the secretary of the Department of Employment Relations waived the requirement due to "extenuating circumstances." Appellant argues that the benefit form fails to reference a 14 day filing requirement, dismissal would be "insensitive" in light of his "severe and significant injury on the job," and respondent did not inform appellant of the option of seeking §230.36 benefits at the time of the injury. However, appellant has not shown respondent had a responsibility to inform appellant of the filing period. Were appellant's arguments accepted by the Commission, there would effectively be no time limit at all for filing a claim for §230.36 benefits.

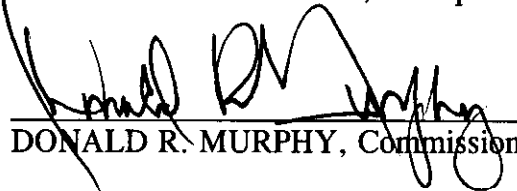
ORDER

Respondent's motion to dismiss is granted and this matter is dismissed as un-
timely.

Dated: September 8, 1999 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:990062Arul1


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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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.

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