

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**WALT SAVELAND**, Appellant,

v.

**Secretary, WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES, and  
Administrator, DIVISION OF MERIT RECRUITMENT AND SELECTION**, Respondents.

Case 18  
No. 66069  
PA(dmrs)-9

**Decision No. 31815**

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**Appearances:**

**Walt Saveland** appearing on his own behalf.

**Paul Harris**, Attorney, DHFS, P.O. Box 7850, Madison, Wisconsin 53707-7850, appearing on behalf of the Respondents.

**ORDER GRANTING MOTION TO DISMISS**

This matter, which arises from a State civil service exam, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The matter became ready for decision on August 29, 2006, when counsel for Respondents indicated he would not be filing a reply to Mr. Saveland's written arguments.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**

1. Walt Saveland completed the civil service examination process for the position of Child Protective Services Manager – Program Evaluation Manager.

2. The Department of Health and Family Services mailed Mr. Saveland a "Notice of Examination Results" dated June 1, 2006. The notice directed the reader to contact Gregg Dalton, Human Resources Specialist at DHFS, if there were any questions. The envelope containing the notice was postmarked June 2, 2006.

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3. Mr. Saveland received the notice no later than Saturday, June 10.

4. Mr. Saveland sent an e-mail to Mr. Dalton at 4:30 on June 11, inquiring about his right to appeal the examination results. Mr. Dalton replied by e-mail at 7:30 a.m. the following day and provided Appellant with the Commission's mailing address.<sup>1</sup>

5. In an e-mail message reflecting that it was sent at 7:33 p.m. on July 10, 2006, WERC employee Marshall Gratz notified WERC's Madison office as follows:

Walt Saveland presented himself at the WERC Shorewood office (i.e., my residence) this evening about 7:15 PM and asked me to accept service of a personnel appeal and check.

I told him that I believed service would be completed only upon receipt of the original check and original appeal in the WERC's Madison office. He said he would take the originals to the downtown Milwaukee post office immediately tonight. . . .

6. On July 11, 2006, the Commission received Mr. Saveland's letter of appeal which was postmarked July 10. It read:

I am writing to appeal a finding of not eligible for a competition for a Program Evaluation Manager in the Bureau of Milwaukee Child Welfare. On two previous occasions during recent years, I have been found eligible for identically described jobs. In the first occasion, I was found eligible but not retained after an interview. In the second occasion, I was also found eligible but subsequently informed that the job had been filled internally.

I then informally protested by email that a position had been internally filled, after it had been advertised in newspapers. When I again applied a third time for an identically described position, I was deemed "Not Eligible." I herewith formally protest having been found "Not Eligible" for a job for which I had previously been found eligible. I am very well qualified for this job and would do it well, as well as respecting the Bureau's integrity.

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<sup>1</sup> Mr. Dalton listed the Commission's address as 18 South Thornton Avenue (PO Box 7870), Madison, WI "53707-8980." While the last four digits of the nine-digit zip code are incorrect, Appellant's subsequent letter of appeal was correctly directed to "53707-7870." As a consequence, Mr. Dalton's error had no effect on Mr. Saveland's conduct.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

**CONCLUSIONS OF LAW**

1. The Appellant has the burden of establishing that his appeal was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.
2. The Appellant has failed to sustain that burden.
3. The appeal is untimely.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**<sup>2</sup>

Respondents' motion is granted and this matter is dismissed as untimely filed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21<sup>st</sup> day of September, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>2</sup> Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

**Department of Health and Family Services and  
Division of Merit Recruitment and Selection (Saveland)**

**MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS**

The issue in this matter is whether Mr. Saveland complied with the time limit for filing a State classified service personnel appeal of examination results. That time limit is found in Sec. 230.44(3), Stats., which reads, in part:

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.

The term “filed” in this subsection requires physical receipt by the Commission, at the Commission’s office in Madison rather than at a remote location where the member of the Commission’s staff was conducting Commission business. DOC (FASSBENDER), DEC. NO. 31677 (WERC, 5/2006). Even if the delivery of the materials to WERC Attorney Gratz in Shorewood could be considered as physical receipt by the Commission, the delivery would be considered as having been completed on July 11, 2006, because it occurred at 7:15 p.m., which was after the 4:30 p.m. close of business on July 10, 2006. ID. Therefore, Appellant’s attempted delivery to Attorney Gratz’s residence has no effect on our conclusion in this matter because Mr. Saveland also mailed a copy of the appeal to the Commission in Madison where it arrived on July 11.

The timeliness issue turns on when Mr. Saveland received notice of the exam results. If he received the notice on June 11, the 30<sup>th</sup> day thereafter would be July 11 and his appeal would be timely. But if Mr. Saveland received the notification letter on June 10 or any previous day, the appeal delivered on July 11 is untimely.

Appellant has the burden of establishing that his appeal was timely filed. UW & OSER (KLINE), DEC. NO. 30818 (WERC, 3/04); DOC (RASMUSSEN), DEC. NO. 63702 (WERC, 10/04). Mr. Saveland has not contended, nor has he supplied any indication, that he received the notice on or after June 10. The only information of record indicates that the envelope bearing the notice was postmarked June 2. While he disagrees with Respondents’ contention that the notice “must have arrived at Mr. Saveland’s address on Friday or Saturday, June 2<sup>nd</sup> or 3<sup>rd</sup>,” there is no reason to believe that he did not receive it sometime in the 10 days after the letter was postmarked and before June 11. There is no apparent basis on which the Commission could conclude that Mr. Saveland received the notice as late as June 11, which was the first day that would fall within the 30-day statutory filing period. The Appellant has not satisfied his burden of establishing that his appeal was received in a timely manner.

The Appellant argues that DHFS should be required to provide notice to everyone receiving examination results of the right to file an appeal pursuant to Sec. 230.44(1)(a), Stats.<sup>3</sup> However, no provision in the State’s civil service code imposes such a requirement, just as

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<sup>3</sup> Implicit in this argument is the contention that the 30-day filing period should be tolled until the notice of the right to appeal has been provided.

there is no comparable notice requirement when an appointing authority informs an unsuccessful candidate of a non-selection decision, *COENEN v. UW-MADISON*, CASE NO. 99-0039-PC (PERS. COMM. 7/14/99) (the failure to provide notification of appeal rights to an unsuccessful civil service candidate does not toll the 30-day filing period), or when an incumbent employee is informed of a classification decision, *HEMSTEAD v. DER*, CASE NO. 00-0155-PC (PERS. COMM. 3/21/01 (employers have no legal obligation to advise an employee of the right to appeal a classification decision and, consequently, an employer's failure to do so does not toll the filing period). In contrast to the notice that is required for exam results, appeal rights must be included in any notice of a refusal to examine an applicant or to certify an otherwise eligible candidate.<sup>4</sup> Those personnel actions are subject to the express notice requirement found in Sec. 230.17(2), Stats., which requires the notice of rejection to inform the "applicant or eligible of his or her rights," including the right of appeal to the Commission. When Respondents notified Mr. Saveland of his civil service examination results, there was no corresponding requirement that they inform him of the statutory right of administrative review.

Given the absence of any information to the contrary, the Commission must conclude that Mr. Saveland received the notice no later than June 10, 2006, and that his letter of appeal that was received by the Commission on July 11, 2006, was not timely. The appeal must be dismissed as untimely filed.

Dated at Madison, Wisconsin, this 21<sup>st</sup> day of September, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>4</sup> The bases for disqualifying an applicant under this section are enumerated in Sec. ER-MRS 6.10, Wis. Adm. Code.