

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIELLE WINCENTSEN, Appellant,

v.

Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 763
No. 66262
PA(der)-194

Decision No. 31866

Appearances:

Danielle Wincentsen, appearing on her own behalf.

David Vergeront, Legal Counsel, P. O. Box 7855, Madison, WI 53707-7855, appearing on behalf of the Office of State Employment Relations.

ORDER GRANTING MOTION TO DISMISS

This matter, which arises from a decision to reallocate the Appellant's position to Office Operations Associate rather than some other classification, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The final written argument was submitted on September 18, 2006.

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

FINDINGS OF FACT¹

1. On August 18, 2005, Danielle Wincentsen learned that her position as a Program Assistant 2 in the Department of Natural Resources had been reallocated to the classification of Office Operations Associate, effective July 24, 2005.

2. Ms. Wincentsen sought and obtained review of the decision with the Office of State Employment Relations (OSER). By letter dated June 1, 2006, a representative of OSER

¹ These findings reflect allegations of fact set forth in the Appellant's submissions and are adopted solely for the purpose of ruling on the present motion.

notified Ms. Wincentzen that the agency had declined to revise the previous decision. The letter included the following information:

If you disagree with this decision, you may appeal this action to the Wisconsin Employment Relations Commission, 18 S. Thornton Avenue, Madison, WI 53703. Appeals must be made in writing and be received by the WERC within 30 calendar days from the effective date of the decision or your notification of the decision, whichever is later. You should contact the WERC directly for information on the procedures for information about the appeal process, including applicable filing requirements: http://werc.wi.gov/classification_survey_appeals.htm.

Appellant did not actually receive the denial letter until July 24, 2006.

3. The web page referenced in OSER's letter includes the following information:

The Commission's mailing address is PO Box 7870, Madison, WI 53707-7870. The offices of the Commission are located at the corner of East Washington Avenue and South Thornton Avenue, on the southeast (or Lake Monona) quadrant of the intersection. We are directly across the Yahara River from Marling Lumber Co.

4. Sometime after receiving the denial letter but no later than August 23, Appellant both accessed the Commission's web page and later telephoned the Commission. The Commission employee who spoke with Appellant indicated that Appellant had to use zip code 53703-7870 for the Commission's mailing address.

5. Ms. Wincentzen prepared a letter of appeal that listed the Commission's address as "PO Box 7870, Madison, WI 53703-7870" and she mailed the letter to the Commission by Express Mail on August 23, 2006. She enclosed a money order for \$50 in order to comply with the filing fee requirement for classification appeals. The money order was dated August 23, 2006. While the letter reflected a 53703 zip code, the envelope bore the following address: WERC, PO Box 7870, Madison, WI 53707-7870. The appeal reached the Commission on August 24, 2006.

6. Mail reaches the Commission whether it is sent to the Commission's street address at 18 South Thornton Avenue (zip code 53703), or to the Commission's mailing address of P.O. Box 7870 (zip code 53707-7870).

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 her 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

ORDER²

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

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of October, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

² 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.

Office of State Employment Relations (Wincentzen)

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

The issue in this matter is whether Ms. Wincentzen complied with the time limit for filing a State classified service personnel appeal. That time limit is established 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 rather than merely placing the appeal in the mail. There is no dispute that Ms. Wincentzen received notice of OSER’s final classification decision on July 24, 2006 and that the decision was effective in 2005. Pursuant to the requirements of Sec. 230.44(3), Stats., Ms. Wincentzen had 30 days after July 24, i.e. until August 23, to file her appeal. However, her appeal did not reach the Commission until the following day, August 24.

Appellant has the burden of establishing that her appeal was timely filed. UW & OSER (KLINE), DEC. NO. 30818 (WERC, 3/04); DOC (RASMUSSEN), DEC. NO. 63702 (WERC, 10/04).

Appellant argues initially that “any reasonable person would consider 30 calendar days to be the same day, the following month (i.e.: July 24th to August 24th).” The Commission understands Appellant to be raising an equitable estoppel claim, i.e. she contends that she reasonably relied on information found in OSER’s June 1, 2006 denial letter when she filed her appeal and, as a consequence, her appeal was a day late. The denial letter included the following sentence:

Appeals must be made in writing and be received by the WERC within 30 calendar days from the effective date of the decision or your notification of the decision, whichever is later.

While Sec. 230.44(3), Stats., refers only to “30 days” rather than “30 calendar days,” the information in the denial letter accurately reflected the meaning of the statutory language.³

³ Statutory time periods are to be construed according to the provisions of Sec. 990.001(4), Stats. As was explained in MORGAN V. KNOLL, CASE NO. 75-204 (PERS. BD., 5/25/76):

Although no statutory section specifically states that the word [“days”] means calendar days, Section 990.001(4) which outlines the rules for construction of the computation of time would make little sense if days meant anything but calendar days. For example, the section details how time is computed when the last day falls on a Sunday or legal holiday. Obviously, if only work days were being referred to, the last day could not fall on a Sunday or legal holiday.

In any event, there is no support for Appellant's suggestion that a reference to "30 calendar days" could reasonably be interpreted to mean "a month" or, more specifically, "the same day the following month." Equitable estoppel does not apply unless the reliance is reasonable and justifiable. DOT (SOMERVILLE), DEC. NO. 31685 (WERC, 6/2006), citing DOR V. FAMILY HOSPITAL, 105 WIS.2D 250, 313 N.W.2D 828 (1982). It is not reasonable to interpret "30 calendar days" to mean something that is completely different, i.e. as code for "the same numbered day during the subsequent month."

Appellant also contends that she was given inaccurate information about the process for filing an appeal and that the inaccuracies affected her submission to the Commission:

The [18 S. Thornton Avenue, Madison, WI 53703] address that was provided in that [OSER denial] letter was incorrect. I did follow procedure by going to the WERC website. There, I noted that a different address was provided. The WERC website says to mail it to "PO Box 7870, Madison, WI 53707-7870." I felt insecure about the 2 very different addresses. I had to take extra time to search the WERC website to find a phone number. It was not readily available on the page I was given. I had to get back to the WERC Home Page and search there to find it. Then I had to call several times to actually speak to someone. When I finally did speak directly to someone to confirm the proper address, I was told that the zip code on the web page was also incorrect. The woman I spoke with told me that "I must use 53703-7870", (not 53707-7870 as their web page says).

Though I did not actually mail my appeal and have it returned to me, I felt that had I not taken extra time to confirm the address that my appeal would have been returned to me and consequently would have been even later.

The Commission accepts the Appellant's statement as true for the purpose of ruling on the present motion. Even so, the Appellant has failed to allege that inaccurate statements caused her to file her appeal on the 31st day rather than on the 30th day after she received notice of OSER's decision. She does not contend that she relied on the information in the denial letter (or the information she received by telephone) to mail her appeal to the Commission at 18 South Thornton Avenue with a 53703 zip code and that because of using this address, her appeal was not received until an extra day had passed.⁴ She does not even contend that

⁴ The distinction between the Commission's post office box address and its Thornton Avenue address is both noted and explained on the web-page referenced in the denial letter. The web-page, found on the WERC website, included the following paragraph:

What is the WERC address?

The Commission's mailing address is PO Box 7870, Madison, WI 53707-7870. The offices of the Commission are located at the corner of East Washington Avenue and South Thornton Avenue, on the southeast (or Lake Monona) quadrant of the intersection. We are directly across the Yahara River from Marling Lumber Co. For directions to the WERC Madison office [click here].

differences in how the Commission's address was listed in the denial letter and on the Commission's website caused her to mail her appeal a day later than if she had received identical information in the letter, on the Commission's website and over the telephone. Appellant's only contentions are that she was confused by inconsistent information and that had she mailed the appeal without conducting her investigation, the letter would have reached the Commission on an even later date because it would have initially been returned to her before she could send it to the "correct" address. The equitable estoppel doctrine does not apply unless there has been some reliance by the party asserting estoppel to that party's detriment. DOT (SOMERVILLE), DEC. NO. 31685 (WERC, 6/2006). Absent any allegation that the time she spent checking on the Commission's mailing address caused her to delay mailing the appeal so that it arrived on a later day, the Appellant has failed to articulate a causal connection between the inaccurate information and the untimeliness of her appeal.

The appeal must be dismissed as untimely filed.

Dated at Madison, Wisconsin, this 13th day of October, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner