

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES E. PARKER, JR., Appellant,

v.

Secretary, WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent

Case 70
No. 67263
PA(sel)-45

Decision No. 32298

Appearances:

James E. Parker, Jr., appearing on his own behalf.

Liz Kennebeck, Assistant Legal Counsel, P. O. Box 7925, Madison, WI 53707-7925, appearing on behalf of the Department of Corrections.

ORDER GRANTING MOTION TO DISMISS

This matter, which arises from a hiring decision, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The final date for submitting written arguments was November 13, 2007.

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

FINDINGS OF FACT

1. In September 2006, Parker resigned from his employment as a Correctional Sergeant with Respondent Department of Corrections (DOC). As a consequence, he had reinstatement eligibility.
2. Subsequently, Parker sought to be reinstated to a position within DOC.
3. In 2007, Parker applied via the open recruitment process for a position with DOC as a Correctional Officer. The Correctional Officer classification is assigned to a lower pay range than the Correctional Sergeant class.
4. By letter dated July 11, 2007 and received the same day, Parker was informed that he had not been selected for a Correctional Officer position.

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5. Parker sought to appeal the selection decision by sending an e-mail to a member of the Commission's staff. The information on the face of the e-mail indicates it was sent at 10:49 p.m. on August 28, 2007 and was printed on August 29, 2007. Parker also sent the same information to the Commission via regular mail where it was received on September 5, 2007.

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

ORDER¹

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 19th day of December, 2007.

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

¹ Upon 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 Corrections (Parker)

MEMORANDUM ACCOMPANYING ORDER
GRANTING MOTION TO DISMISS

The issue in this matter is whether Parker complied with the time limit for filing a State classified service personnel appeal. 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.

Irrespective of whether the calculation of the 30 days is based Parker's e-mailed appeal, received on August 29, 2007, or on his letter, received on September 5, he has failed to establish that his appeal was received by the Commission within 30 days of when the selection decision was made or when he first learned of the decision, whichever occurred last.

DOC notified Parker that he not been selected by sending him a letter that was dated July 11, 2007. The effective date of the selection decision was no later than July 11, the date of the letter. COZZENS-ELLIS V. WIS. PERS. COMM., 155 WIS. 2D 271, 455 N.W.2D 246 (CT. APP. 1990) (If a person is denied a promotion, the "action" appealed from is the denial and not the simultaneous or subsequent decision to promote someone else.) Parker acknowledged receiving the letter on July 11. Neither the August 29 e-mail nor the September 5 letter reached the Commission within 30 days of July 11. Given that it was Parker's burden to establish that his appeal was received within the 30 day time limit, the Commission must dismiss the appeal as untimely filed.

Dismissal of this appeal will have no effect on Parker's other pending appeals, DOC (Parker), Case 71, No. 67264, PA(sel)-46; and DOC (Parker), Case 72, No. 67265, PA(sel)-47.

Dated at Madison, Wisconsin, this 19th day of December, 2007.

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