

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MIRTA KASPER, Appellant,

vs.

DEPARTMENT OF HEALTH SERVICES, Respondent.

Case 85
No. 72764
PA(sel)-103

DECISION NO. 34949

Appearances:

Mirta Kasper, 3717 S. 18th Street, Milwaukee, Wisconsin 53221, appearing on behalf of herself.

Lara M. Herman, Office of Legal Counsel, Wisconsin Department of Health Services, 1 West Wilson Street, Room 651, P.O. Box 7850, Madison, Wisconsin 53707-7857, appearing on behalf of Respondent.

ORDER GRANTING MOTION TO DISMISS

On October 17, 2013, Mirta Kasper received a notice from the Respondent Department of Health Services that she had not been hired for a position with Department. On November 17, 2013, Kasper placed an appeal in the mail in Milwaukee, Wisconsin, addressed to the Wisconsin Employment Relations Commission, at Post Office Box 7870, Madison, Wisconsin, alleging illegal conduct and / or abuse of discretion as to the hiring decision. The post office box address was contained within standardized materials provided by the Department to Kasper.

Kasper's appeal arrived at the Madison post office on November 13, 2013, but was not delivered until November 21, 2013. The last date that would have resulted in a timely filing was November 18, 2013.

On September 25, 2013, the Commission relocated its offices to 4868 High Crossing Boulevard, Madison, Wisconsin, and discontinued using the post office address. Arrangements were made to forward mail addressed to the post office box to the Commission's new address.

The Department has filed a motion to dismiss the appeal as untimely because it was not received on or before the November 18, 2013 deadline applicable under § 230.44(3), Stats.

Having considered the matter fully, we make and issue the following:

ORDER

That the motion to dismiss is granted and the appeal is dismissed in its entirety.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORADUM DECISION

The 30-day filing appeal deadline contained in § 230.44(3), Stats., is in the nature of a statute of limitations which affects our competency to proceed, not our subject matter jurisdiction. *Stern v. Wisconsin Employment Relations Commission*, 2006 WI App. 193 ¶ 26, 296 Wis.2d 306, 326, 722 N.W.2d 594. While that limitation is subject to waiver, in this matter, the Department has not waived its defense.

The Department did to some extent mislead Kasper by providing incorrect information as to the correct address of the Commission. The submissions provided by Kasper demonstrate, however, that the fault lies with the United States Post Office not the Department. In fact, Kasper submitted a letter from the United States Postal Service acknowledging that “[t]he delay in forwarding was clearly the fault of the Postal Service.” The Postal Service also acknowledged that even with the additional forwarding time, Kasper’s appeal should have arrived prior to the statutory deadline.

The doctrine of equitable estoppel is not applicable here. The Department would have had to have engaged in fraud or inequitable conduct, and the conduct would have had to have caused the failure. *Wieting Funeral Home of Chilton, Inc. v. Meridian Mutual Insurance Company*, 2004 WI App. 218 ¶ 23, 277 Wis.2d 274, 288, 690 N.W.2d 442. Given that the Department had no clear duty to provide specifics as to the appeal process, its provision of an incorrect address does not rise to the level necessary to constitute inequitable conduct.

While the result here may seem harsh, limitations periods do provide important finality. As the court described in *Wieting*, “litigants must inform themselves of applicable legal requirements and procedures... .” *Id.* at ¶ 25.

There is simply no basis for not applying the limitations period on these facts.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner