

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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VANESSA ROBERTSON, Appellant,

vs.

DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0006

Case Type: PA

DECISION NO. 35500

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**Appearances:**

Vanessa Robertson, 3419 North 57th Street, Milwaukee, Wisconsin, appearing on behalf of herself.

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

**DECISION AND ORDER DENYING MOTION TO DISMISS**

Appellant Vanessa Robertson seeks review by the Commission of her non-selection for a vacancy as a Health Care Manager with the Department of Health Services. Robertson was orally advised of her non-selection on October 3, 2014. She appealed that decision on October 23, 2014, by letter to the Commission addressed to P.O. Box 7870, Madison, Wisconsin. The Commission discontinued use of that address in September of 2013. Robertson asserts that she relied on the DHS Human Resources Policy and Procedure Manual which describes the appeal procedure and identifies the post office box address as the place to submit the appeal. Robertson received a text message from the United States Post Office on October 25, 2014, advising her that the letter had been delivered to the post office box. On December 19, 2014, Robertson checked with the Commission about the status of her appeal and learned that the post office box was no longer used and her appeal was not received. In addition to filing her appeal on December 19, 2014, she also advised DHS Human Resources that the policy manual included the incorrect address. Robertson alleges that the policy was subsequently changed to reflect the correct address. DHS has moved to dismiss the appeal as untimely pursuant to § 230.44(3), Stats., which requires that the appeal be filed within 30 days of the effective date of the action.

DHS relies on our decision in *Kasper v. DHS*, No. 72764 (WERC 2014) in support of its position. Clearly Robertson's appeal which was received by us on December 19, 2014, arrived after the 30 days had run. The timely filing requirement is in the nature of a statute of limitations and is subject to waiver. *Stern v. WERC*, 2006 WI App. 193, ¶ 26, 296 Wis.2d 306, 326, 722 N.W.2d 594. In *Kasper supra*, we granted a motion to dismiss based upon an untimely filing in the fall of 2013. In that case, the employee relying on the DHS materials filed her appeal using the post office box. As a result of an error by the United States Post Office, the appeal document was not forwarded to the Commission until after the deadline. That occurred approximately six weeks after the Commission had relocated and discontinued the use of the post office box. We had arranged for the forwarding of mail submitted to the old address. We concluded that the untimely filing was a result of the post office's error not DHS. It would have been unreasonable to expect agency manuals to have been corrected within less than two months after we changed our address.

The difference in this case however is that Robertson relied on a DHS document which still maintained an incorrect address thirteen months after our change in address. By now the post office forwarding service has expired. Particularly given the fact that DHS was involved in a previous claim involving this issue, we believe they should have revised the appeal information.

While it is true that DHS has no duty to advise employees of their appeal rights and how to perfect them, once DHS undertook that responsibility they have a duty to provide the correct information. Robertson was diligent in her efforts to pursue the appeal and undoubtedly would have found out where to file if the information had not been provided by DHS. DHS cannot profit from its own error and, accordingly, is equitably estopped from relying on misleading information it provided.

**ORDERED**

Respondent Department of Health Services motion to dismiss is denied.

Dated at Madison, Wisconsin, this 2nd day of March 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner