

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ROCKY PIERZINA, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0048

Case Type: PA

DECISION NO. 35725

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**Appearances:**

Rocky J. Pierzina, 4305 Whitetail Lane, Madison, Wisconsin, appearing on his own behalf.

Lynne K. Van Hollen, Assistant Legal Counsel, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

On November 6, 2014, Appellant Rocky Pierzina was advised that his application for a position as a Probation and Parole Agent was rejected based upon a conclusion that he was not qualified. Pierzina filed an “appeal” from that decision.<sup>1</sup> At some point in time after his appeal, Respondent Department of Corrections advised Pierzina that if he dropped his appeal he would be permitted to continue in the process. On February 13, 2015, Pierzina participated in the exam and was advised by email on February 27, 2015 that he did not pass the examination and, further, that under § 230.13, Stats., he would not be told why he failed the exam. Pierzina then emailed the person responsible seeking further information as to why he was rejected. On March 13, 2015, Pierzina was informed that he did not receive a passing grade on the essay portion. On March 19, 2015, Pierzina received further clarification as to why he failed the exam in the form of a communication from Assistant Legal Counsel Lynn Van Hollen. Van Hollen’s email closes with the statement: “I understand you are not satisfied with the process however the decision stands and this matter is concluded.” Pierzina filed his appeal with the Wisconsin Employment Relations Commission on April 6, 2015.

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<sup>1</sup> The record does not reveal whether there was a formal internal appeal process or simply an informal review.

### DECISION

The issue is whether Pierzina complied with the time limit for filing a State classified service personnel appeal as set forth in § 230.44(3), Stats. DOC contends that the failure to do so is jurisdictional. To the contrary, in *Stern v. WERC*, 2006 WI App 193 ¶ 23, 296 Wis.2d 306, 324, 722 N.W.2d 594, 603, the court of appeals concluded, “Wis. Stat. § 230.44(3) affects WERC’s competency to proceed, not its subject matter jurisdiction,” and, accordingly, “the time limit in Wis. Stat. § 230.44(3) may be waived.” *Id.*, 2006 WI App 193, ¶ 33, 296 Wis.2d at 331, 722 N.W.2d at 606. The statute of limitations contained in § 230.44(3), Stats., provides that:

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.

DOC takes the position that the initial email advising Pierzina of the fact that he did not pass the assessment, which was sent on February 27, 2015, was the date upon which the thirty days began to run. If the thirty days began to run when Pierzina received either the human resource specialist email providing the specifics on March 13, 2015, or the Van Hollen email advising that “the decision stands and this matter is concluded,” his April 6, 2015 appeal would be timely. We conclude that the informal review by a representative of the DOC extended the date upon which the action became “effective” to March 19, 2015, and Pierzina’s appeal is therefore timely.

The DOC in effect created a *de facto* appeal process for Pierzina. When he was initially rejected back in November, Pierzina pursued an internal “appeal” rather than taking a formal appeal to the Commission. Pierzina was successful in his efforts and as a practical matter there was no reason for him to accept the February 27, 2015 notice as final. Pierzina again pursued his “appeal” and received at least an explanation as to why he failed. Pierzina’s failure to obtain relief became final (in our view “effective”) when Van Hollen rejected his appeal and opined that the matter was concluded.

We recognize that this decision may discourage internal review of otherwise “final” decisions for fear that time limits may be tolled as a result. In our view that fear is unfounded. Most State employing units recognize the importance of making sure that the selection process is done correctly and fairly. Providing a thorough internal review is a worthwhile function under any circumstance.

### ORDER

The motion to dismiss is denied.

Dated at Madison, Wisconsin, this 14th day of May 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner