

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIEL R. HAYES, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0037

Case Type: PA

DECISION NO. 35738

Appearances:

Daniel R. Hayes, W1098 Spring Grove Road, Ripon, Wisconsin, appearing on behalf of himself.

Katharine Ariss, Wisconsin Department of Corrections, 3099 East Washington Avenue, Post Office Box 7925, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

Appellate Daniel R. Hayes sought a new position at the Kettle Moraine Correctional Institution. He was interviewed on September 9, 2014, for a job entitled “HVAC/Advanced” position. Hayes was advised on December 4, 2014 that he was not selected. Hayes sent an email to the KMCI Human Resource Department seeking information as to why he was not selected for the position on December 17, 2014. On January 20, 2015, Hayes filed an appeal with the Wisconsin Employment Relations Commission over his non-selection. The Department of Corrections has filed a motion dismiss the appeal as untimely.

DECISION

We have no alternative but to grant the motion to dismiss based upon a failure to meet the thirty day appeal filing limitation set forth in § 230.44(3), Stats. Contrary to the DOC’s argument, the thirty day filing requirement is not jurisdictional but rather is in the nature of a statute of limitations. *Stern v. WERC*, 2006 WI App 193 ¶26, 296 Wis.2d 306, 326, 722 N.W.2d 594. As a statute of limitation, the thirty day appeal period is subject to waiver, estoppel, and other equitable relief. *Robertson v. DHS*, Dec. No. 35500, (WERC, 2014).

Relief from the requirement is available when the employer misleads the employee as to the deadline.

Here, we have no argument or claim that DOC misled Hayes. He has confused the 300 day limitation period on filing employment discrimination claims with the 30 day limit on civil service appeals. An understandable mistake but not one that DOC contributed to. Accordingly, we grant the motion and issued the following:

ORDER

The appeal of Daniel R. Hayes is rejected and dismissed as untimely filed.

Signed at the City of Madison, Wisconsin, this 17th day of June 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner