

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANYEL MCNEIL, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0005

Case Type: PA

DECISION NO. 36102

Appearances:

Danyel McNeil, 1925 North 22nd 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 State of Wisconsin Department of Health Services.

On October 7, 2014, Appellant Danyel McNeil was orally informed that she was not selected for a position as a Health Care Manager / Director with the State of Wisconsin Department of Health Services. On November 6, 2014, McNeil mailed an appeal of that decision to the Wisconsin Employment Relations Commission. The appeal was mailed to the Commission's defunct post office box but eventually arrived on December 11, 2014. DHS, on September 9, 2015, moved to dismiss the appeal based upon the assertion that the appeal was untimely. Written argument was submitted by both sides and the matter is ripe for decision.

DECISION AND ORDER GRANTING MOTION TO DISMISS

Pursuant to § 230.44(1)(d), Stats., an individual who alleges that a hiring process in the classified service is illegal or an abuse of discretion is entitled to appeal that matter to the Commission. Here McNeil raises a host of alleged improprieties arising out of the decision to hire someone other than herself into the position in question.

The appeal however must be filed with the Commission “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.” § 230.44(3), Stats. There is no dispute that the supervisor, Marlea Mattke, informed McNeil on October 7, 2014, of the fact that she was not selected. DHS argues correctly that 30 days after October 7, 2014 is November 6, 2014; and, regardless of the mislabeling, McNeil’s appeal, mailed on November 6, 2014, would not have been timely even if she had the correct address.

The statute however references two potential starting points for beginning the calculation and directs that we use whichever is later. DHS uses only the oral notification not the “effective date of the action” assuming apparently that that is the later date. Under normal circumstances we would have denied the motion to dismiss based upon the incomplete argument. These circumstances however are not normal as this matter is already almost a year old, although much of the delay is attributable to McNeil’s request to hold the matter in abeyance.

We will exercise our discretion and examine the question of what is the “effective date” upon which to begin the running of the 30-day period. In *Cozzens-Ellis v. Personnel Commission*, 155 Wis.2d 271, 455 N.W.2d 246 (Ct. App. 1990), the court concluded that when an individual is denied a promotion the “action” appealed from is the denial itself “not the later event stemming from it.” The employee in that matter had argued that the effective date was the date upon which the successful candidate started work in the new job. The court concluded that the effective date was the date the successful candidate was chosen which was the day before the appealing party was notified of her non-selection. Applying that rationale in denial of promotion cases, the “later” date will always be the date upon which the unsuccessful candidate was notified of their non-selection. Given that guidance, we can safely conclude that the running of the 30-day time period began on October 7, 2014, and that placing the appeal in the mail on November 6, 2014 rendered the filing untimely.

McNeil argues that in *Robertson v. DHS*, Dec. No. 35500 (WERC, 3/2014), we excused her coworker’s later filing which involved an appeal from the same promotional opportunity. The difference there was that Robertson mailed her appeal 20 days after she was informed of her non-selection. While her appeal ultimately was not filed until mid-December (because she mailed it to the defunct post office box), we excused that later filing because it was DHS that provided her with the erroneous address.

The situation here is different. McNeil missed the deadline as a result of her own mistake and, accordingly, we enter the following:

ORDER

The appeal of Danyel McNeil is dismissed.

Signed at the City of Madison, Wisconsin, this 2nd day of November 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner