

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILLIAM J. THOME, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0180

Case Type: PA

DECISION NO. 36780

WILLIAM J. THOME, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0184

Case Type: PA

DECISION NO. 36781

Appearances:

William J. Thome, 619 S. Watertown Street, Waupun, Wisconsin, appearing on his own behalf.

Andrea L. Olmanson, Department of Corrections, 3099 E. Washington Avenue, Post Office Box 7925, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On November 18, 2016, Appellant William J. Thome filed an appeal challenging the decision of the State of Wisconsin Department of Corrections to reject him for hire for a position of Buildings and Grounds Superintendent at the Columbia County Correctional

Institution. On November 22, 2016, Thome filed a second appeal challenging his non-selection for another building and grounds position based upon his failure to pass the qualifying exam.

The State of Wisconsin Department of Corrections has moved to dismiss both appeals as untimely. Both sides have submitted written argument in support of their positions.

DECISION

Jurisdiction over these two appeals is governed by § 230.44(1)(a), Stats., exam failure, and § 230.44(1)(d), Stats., non-selection after certification. Appeals to the Wisconsin Employment Relations Commission must be received within thirty days of the date the appellant was notified of the action. The time limits are in the nature of a statute of limitation and subject to equitable modification.

Thome applied for the superintendent position in July of 2016. He participated in the exam and interview steps in August and, on September 20, 2016, he received a communication from Warden Michael Dittman advising that the “Buildings and Grounds Supervisor” position at the Columbia County Correctional Institution had been filled by another candidate and thanking him for his interest. Thome’s appeal was received by the Commission on November 22, 2016, well beyond the prescribed thirty-day limit. Thome argues that the deadline does not apply because the position he applied for was the Buildings and Grounds Superintendent not supervisor. DOC counters that it was merely a typographical error and that the time limitation should begin running at that point.

If there was some confusion on Thome’s part, we may well have considered the error as a basis for equitable tolling. Clearly, however, Thome’s actions following receipt of the Dittman letter suggest he knew that this was the denial letter for the position he applied for. According to Thome’s timetable, the very next day he began checking with his references to determine whether they had been contacted. Thome also discussed the issue with Warden Dittman on October 6, 2016. There is no doubt that Thome was aware, on September 20, 2016, that he had not been selected for the position he had applied for.¹

Thome also took an examination for a Buildings and Grounds Superintendent classification on September 22, 2016. He had previously taken the exam on February 1, 2016. Following the taking of the exam on September 22, 2016, Thome was notified on October 1, 2016, that he failed the test. He then filed an internal “appeal” with DOC questioning how he could pass a test on one occasion and then fail it eight months later. Thome acknowledges that

¹ Thome also argues that DOC’s Executive Directive 5, which references the 300-day limitation for filing discrimination complaints is applicable here. It is not and references filing under the Wisconsin Fair Employment Act, § 111.31, et seq., which does contain a 300-day limitation period on filing employment discrimination complaints.

he received notice on October 4, 2016 from DOC on that date. He filed an appeal from that action with the Commission on November 22, 2016. Thome argues that his internal request for a review of the scoring process, which was filed within the 30-day limit, satisfies the 30-day appeal limit.

The issue is not whether DOC was aware of his dissatisfaction with the scoring process. The statute requires appeal to the Commission within 30 days. Thome does not argue that he was misled by DOC. The law is relatively straight forward and, absent some other basis for equitable modification, we have no alternative but to dismiss both appeals for failure to meet the statutory timely filing requirement.

ORDER

That the appeals of William J. Thome are dismissed.

Signed at the City of Madison, Wisconsin, this 21st day of February 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner