

STATE OF WISCONSIN

BEFORE THE PERSONNEL BOARD

Audrey K. Minton,)
Appellant,)
vs.)
Wilbur J. Schmidt, Secretary,)
Department of Health and Social Services,)
and)
C. K. Wettengel, Director)
State Bureau of Personnel,)
Respondent.)

MEMORANDUM DECISION
ON
JURISDICTION

Appellant is an Institution Aid 3 employed at Southern Wisconsin Colony.

On September 17, 1967, she was injured under circumstances which qualified her for benefits under s. 16.31, Wis. Stats. (Hazardous employment, injuries, salary continued)

Appellant claims physical disability related to the injury of September 7, 1967, which kept her away from work from December 29, 1969, to February 4, 1970.

On March 18, 1971, Appellant filed a claim for s. 16.31 Stats. benefits for that period of disability.

In May, 1971, the Department of Health and Social Services denied the request and this conclusion was concurred in by Respondent Director Wettengel.

Appellant's appeal to this Board was dated June 23, 1971 and received in the Board's office on June 24, 1971. The appeal states that the denial of benefits was received by the Appellant on June 10, 1971.

S. 16.31(4) Wis. Stats., provides that an employe denied benefits has the right of appeal to this Board. The subsection also provides that the Board shall adopt formal rules for the administration of the section.

Accordingly, pursuant to s. 16.05, Wis. Stats., this Board promulgated by proper procedures Pers 505, Wisconsin Administrative Code which reads:

"Pers 5.05 Injury while on hazardous duty. Certain employes injured while performing hazardous duties as defined in section 16.31, Wis. Stats., and who are unable to work may continue to receive their full monthly salary while unable to work as the result of the injury or until the termination of their employment. Claim shall be made by the employe or his representative to his appointing officer on forms provided by the bureau. Within 30 calendar days after receipt of the claim, the appointing officer shall notify the director in writing of his decision to recommend authorization or denial of the claim. Within 10 calendar days after receipt of the recommendation of the appointing officer the director shall notify the employe and the appointing officer of his decision to authorize or deny the claim. The employe or the appointing officer may appeal the decision of the director to the board within 10 calendar days after receipt of the director's decision.

It is patent on the face of the appeal that Appellant did not appeal to this Board within ten calendar days after receipt of the Director's decision.

This Board promulgated the rule limiting the time to appeal to within ten days to have conformity with the statutory time within which s. 16.24 and s. 16.05(1) Wis. Stats. appeals may be taken.

This Board intended when it promulgated the rule that any appeal not taken within the ten days would be untimely and would preclude either the appointing officer or the employe from prosecuting the appeal.

Under its own rules, this Board has no jurisdiction to consider the instant appeal and for that reason it should be dismissed.

Dated at Madison, Wisconsin,

August 9th, 1971.

STATE PERSONNEL BOARD

BY 
CHAIRMAN