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ERMINE CLIFFORD,

Appellant,

v.

VERNE KNOLL, Deputy Director,
State Bureau of Personnel,

Respondent.

Case No. 75-242

* * * * *

OFFICIAL

INTERIM
OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER, and DEWITT, Board Members.

OPINION

NATURE OF THE CASE

This is an appeal pursuant to Section 16.05(1)(f), Stats., of a reallocation. At the prehearing conference, one of the issues to which the parties stipulated was as follows:

"Whether the Appellant is entitled to retroactive back pay and benefits to sometime in 1973 if she was performing the duties and responsibilities of a higher classified position beginning sometime in 1973 but did not file an appeal until December 1975."

The parties have filed letter-briefs on this question.

FINDINGS OF FACT

These findings are based on undisputed facts appearing in the file. The Appellant was reallocated from Clerk 3 to Job Service Assistant 2 effective October 26, 1975. She subsequently received notice of this action and filed an appeal on December 24, 1975.

CONCLUSIONS OF LAW

Appellant contends that she has been performing duties associated with a higher classification since March 1972, and is entitled to retroactive pay and benefits to that date should she be successful on the merits. Res-

pondent argues that such a recovery would be improper because Section 16.05(2), Stats., requires that Personnel Board appeals be filed no later than 15 days "after the effective date of the decision, or within 15 days after the Appellant is notified of such decision, whichever is later." Appellant states that her supervisor told her in March, 1972, that she had requested the reclassification of Appellant's position, that Appellant received no notice that this request had been denied, that her supervisor advised her from time to time that she was still hoping that Appellant's position would be upgraded, and that at no time was she informed she could file a grievance regarding the action or lack of action.

Normally the recovery of back pay by an employe who is wrongfully denied reclassification is limited to the date the appeal is filed, or some time thereafter. See Van Laanen v. Knoll, Wisconsin Personnel Board No. 74-17, 3/19/76, 3/23/76. In the case of a wrongful reclassification, retroactive salary may in some cases run to the date of the reclassification. Section 16.38(4), Stats. In this case the employe alleges that she was not informed of her rights to appeal the Director's apparent inaction on her reclassification request, and, assuming that the request was still pending, she never filed an appeal until the end of 1975.

Under some circumstances when an employe is misled by the state as to their appeal rights, the state may be estopped or prevented from relying on the untimeliness of the appeal. See Pulliam and Rose v. Wettengel, Wisconsin Personnel Board No. 75-51, 11/25/75. Here, Appellant does not allege she was misinformed by the state; rather, she alleges the state failed to inform her of her rights. In Wisconsin the Supreme Court has held that a state employe is responsible for ascertaining his or her own rights under the civil service. While this holding was in a different context, the

principle applies here:

"A state employe cannot relieve himself of the responsibility of informing himself regarding the rules regarding sick leave merely by not making inquiry.

* * *

We do not believe that the appellant is entitled to rely on a doctrine of estoppel. Ms. Jabs had the same means of knowledge available to all state employes, but she did not use them." Jabs v. State Board of Personnel, 34 Wis. 2d 245, 251 (1967).

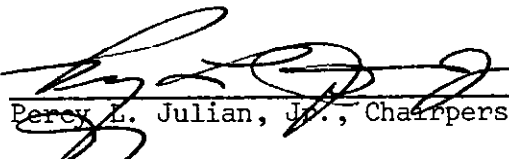
We conclude that the Appellant is not entitled to retroactive pay and benefits to March 1972, regardless of what her duties and responsibilities were.

ORDER

IT IS ORDERED that so much of this appeal that relates to a claim for retroactive pay and benefits prior to October 26, 1975, is dismissed.

Dated December 21, 1976.

STATE PERSONNEL BOARD



Percy L. Julian, Jr., Chairperson