

\*\*\*\*\*  
 EMMA J. MILLER, \*  
 Appellant, \*  
 v. \*  
 BRONSON LAFOLLETTE, Attorney General, \*  
 Department of Justice, \*  
 Respondent. \*  
 Case No. 76-121 \*  
 \*\*\*\*\*

**OFFICIAL**

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of a discharge pursuant to Section 16.05(1)(e), Stats. The Respondent has moved to dismiss on the ground that the Board lacks subject matter jurisdiction because the appeal was untimely.

FINDINGS OF FACT

These findings are based on undisputed matter contained in the file. Appellant was an employe with permanent status in class. On June 2, 1976, she received notice of the decision to discharge her effective June 4, 1976. Her appeal was received by this board on June 22, 1976. It originally had been directed to the Bureau of Personnel where it was received on June 18, 1976, and forwarded to the Board on June 21, 1976.

The notice of discharge sent to Appellant by Respondent contained the following paragraph concerning Appellant's appeal rights:

"Wisconsin Administrative Code Pers. 26 sets forth an employe's right to appeal (copy attached). Pursuant to this section and Section 16.05, Stats., if you feel the action is not based on just cause, you may appeal to the Personnel Board within 15 calendar days. Should you allege the action taken to be illegal and an abuse of discretion, or that provisions of the law have not been complied with, and that such decisions are not subject for consideration under the state-wide grievance procedure or hearing by the State Personnel Board, you may

file an appeal with the Director of the State Bureau of Personnel as authorized by Section 16.03(4), Stats."

CONCLUSIONS OF LAW

Section 16.05(2), Stats., requires that:

"The board shall not grant an appeal under subsection (1)(e) or (f) unless a written request therefor is received by the board within 15 days after the effective date of the decision, or within 15 days after the appellant is notified of such decision, whichever is later."

Compliance with this provision is mandatory and jurisdictional. Oda v. Personnel Board, 250 Wis. 600 (1947); Mid-Plains Telephone Co. v. Public Service Commission, 56 Wis. 2d 780 (1973); Van Laanen v. Wettengel, Wisconsin Personnel Board Case No. 74-17, (1/2/75). Fifteen days from the latest operative date in this case would be June 19, 1976. Since this was a Saturday when state offices are not open the deadline would be extended to June 21, 1976, pursuant to Section 990.001(4)(c), Stats. Since the appeal was not received by this board until June 22, 1976, it was not timely.

The fact that the appeal was received by the Director on June 18, 1976, does not require a different conclusion. The Respondent explicitly advised Appellant of her appeal rights. Faced with the statutory requirement of Section 16.05(2), Stats., we cannot on this record find any basis for a conclusion that the filing with the Director should be construed as a constructive filing with the Board, or that for some other reason the failure to file in a timely manner should be excused. C. f. Pulliam and Rose v. Knoll, Wisconsin Personnel Board Case No. 75-51, (11/25/75).

We do observe that in many cases an employe wishing to appeal a personnel transaction faces a rather perplexing array of choices. It may be difficult to discern whether an appeal properly goes to this board pursuant to Section 16.05(1), Stats., to the Director via Section 16.03(4), or whether it should be pursued through the unilateral grievance procedure. An employe should

not be required to have to analyze the various statutory, administrative code, and other provisions to determine how to appeal action taken by an appointing authority pursuant to Section 16.28(1), Stats. For the guidance of those concerned, we note that in such cases, which would normally be covered by Section 16.05(1)(e), Stats., we would be inclined to hold that appointing authorities would not be permitted to rely on an argument that an appeal is untimely when the employe misdirects it to the Director of the Bureau of Personnel, unless, as in this case, the appointing authority has given the employe explicit notice of the correct appeal route.

ORDER

IT IS ORDERED that the Respondent's motion to dismiss is granted and this appeal is dismissed.

Dated December 21, 1976.

STATE PERSONNEL BOARD

  
\_\_\_\_\_  
Percy L. Julian, Jr., Chairperson