

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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MARGARET WETHERWAX,
Appellant,

v.

PRESIDENT, University of Wisconsin
and DEPUTY DIRECTOR, Bureau of
Personnel,
Respondent.

Case No. 77-127

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OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an appeal pursuant to s. 16.05(1)(f), Stats., of a decision of the Director extending the appellant's probation. The respondent raised a question of the timeliness of the appeal and the parties filed briefs. The parties agreed to reserve the question of whether respondent is estopped from raising the timeliness objection pending a decision on whether the 15 day limitation contained in s. 16.05(2), Stats., applies. The following findings are based on matter in the file which appears to be uncontested.

FINDINGS OF FACT

1. The appellant was hired as a Curator 1 on May 22, 1976.
2. Her normal 6 months probationary period would have expired November 22, 1976.
3. On November 4, 1976, the Director took action which became effective November 22, 1976, extending her probationary period to February 27, 1977.

4. The appellant filed a grievance concerning the extension of her probationary period.

CONCLUSIONS OF LAW

1. The 15 day period of limitations set forth in s. 16.05(2), Stats., applies to this appeal.

OPINION

Section 16.05(2), Stats., provides in part:

"The Board shall not grant an appeal under sub. (1), (e) or (f) unless a written request 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 No action of the Director relating to appointments or examinations shall be upset unless the action is appealed or a request for an investigation is received, within 6 months, after the effective date of the action. This limitation shall not apply when there is fraud or gross irregularity on the part of the Director."

The appellant argues that the action of the Director extending the probationary period was an action "relating to appointments or examinations" and that therefore there was a 6 month, not 15 day, period in which to file an appeal. The respondent argues that the 6 month limitation applies only to the relief available and not to the jurisdiction of the Board to grant an appeal.

In the Board's opinion the respondent's interpretation is mandated by the plain language of the statute and should be followed. The first sentence of s. 16.05(2) provides a limitation on the Board's jurisdiction over appeals. The sentence containing the 6 month provision is a restriction on the remedy that can be provided. The two provisions are not incompatible. The 15 day limit runs from the effective date or the date of notice to appellant, whichever is later.

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The 6 month provision runs from the effective date of the action. In the event that an appellant received an extensively delayed notice of an action, he or she might still have the right to an appeal by filing within 15 days after the date of notice, but could not "upset" an action relating to an appointment or exam if the appeal were filed more than 6 months after the effective date of the action. Similarly, there is no time limitation on requests for investigation under s. 16.05(4), Stats., yet the 6 month limitation contained in s. 16.05(2) would foreclose the relief of "upsetting" an action relating to an appointment or examination if the investigation were not requested within 6 months.

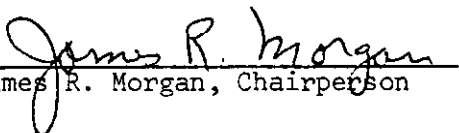
The two provisions are not both statutes of limitations with respect to the Board's jurisdiction over appeals. The 15 day limitation provides the limit on the Board's jurisdiction with respect to the instant appeal.

ORDER

The appellant will be allowed 15 days from the date of service of this decision to serve and file a statement of facts in support of any argument she wishes to make that the respondent should be estopped from asserting that this appeal is untimely. If no such document is filed this appeal will be dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson