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 ROBERT C. FOX,
 Appellant,
 v.
 MANUEL CARBALLO, Secretary,
 Dept. of Health & Social Services, and
 VERNE KNOLL, Deputy Director,
 Department of Administration,
 Respondents.
 Case No. 77-3
 * * * * *

OFFICIAL

OPINION AND ORDER

Before: DEWITT, Chairperson, HESSERT, MORGAN, and WARREN, Board Members.

NATURE OF THE CASE

This is an appeal of the manner in which a non-contractual grievance was processed by DHSS. The director has moved to dismiss the appeal on the grounds that it was not timely filed.

FINDINGS OF FACT

These findings are based on uncontradicted material found in the file. This matter began as a departmental non-contractual grievance filed July 23, 1976, by the appellant, a DHSS employe in the classified service. The grievance concerned a reclassification denial. The disposition at the third step on October 12, 1976, was to submit the matter to audit by the Bureau of Personnel. The bureau determined to reallocate the position with an effective date of November 7, 1976, and the appellant received notice of this determination on December 6, 1976. The reallocation notice form contained the following:

"If you believe the new classification does not adequately reflect the duties and responsibilities of your position, you may file a written notice of appeal within 15 calendar days after the effective date of this action or receipt of this notice, whichever

is later. If you have any questions on the procedural aspects of filing an appeal, please contact your Agency Personnel Office,"

In a memo dated December 16, 1976, to Bernie Nugent, Employee Relations Specialist, DHSS, the hearing agent assigned to the grievance, the appellant stated, in part, as follows:

". . . I do not consider my grievance resolved as a result of the reallocation of my former position . . . the relief sought included . . . appropriate retroactivity.

* * *

Therefore, as a direct result of the untimely processing of my grievance, the effective date of the reallocation was significantly delayed. Technically, it appears the grievance should have been processed by August 2, 1976. Allowing 5 working days for transmittal of the grievance response to DOA, the Bureau of Personnel should have reasonably received the audit request by August 9, 1976. This submittal date would have resulted in a reallocation effective date of no later than September 12. As a result, four (4) pay periods at the new base pay rate were missed.

Consequently, to bring final resolution to this matter, I am seeking financial relief in the amount of the new base pay rate less the old base pay rate for the four (4) pay periods missed due to the Department of Health and Social Services' untimely processing of this grievance"

The appellant also requested information about alternative appeal rights.

Mr. Nugent responded by a memo dated January 7, 1977, which included the following statement:

"The third step answer on your grievance indicated that your position would be audited by the Bureau of Personnel . . . Consequently, the grievance response merely requested a higher level review of the classification. Thus, the effective date of the Bureau of Personnel's decision on their audit is their decision and not the decision of the department."

"Your memorandum also inquires about an appeal procedure. As was discussed in the grievance hearing, an appeal may be made to the Personnel Board if an individual is dissatisfied with the third step response provided the criteria is met as described in the Departmental Grievance Procedure."

The appellant subsequently filed an appeal with this board on January 14, 1977.

CONCLUSIONS OF LAW

Appellant's complaint on this appeal runs to the failure of the DHSS to process his grievance in a timely manner. Both the uniform non-contractual grievance procedure, Administrative Practices Manual, DOA, Personnel, Administration, effective 8/24/66, revised 10/1/74, and the DHSS non-contractual grievance procedure, provide for appeals to the next step by the grievant in the event of failure by the employer to respond in a timely fashion. This the appellant did not do. Once the agency made the third step decision to refer the matter to the bureau for audit, the appellant was faced with a final disposition of the grievance by the department. At that time (October 12, 1976) the appellant had 15 days in which to attempt to appeal the agency decision to the Personnel Board, but did not.

Even if this appeal were construed as from the director's reallocation decision, it still would be untimely. The appellant received notice of the reallocation on December 6, 1976, and did not file an appeal with the Personnel Board within 15 days in accordance with Section 16.05(2), stats.

Appellant suggests that the agency should have given him prompt notice of a possible appeal route to the board in response to the request in his December 16th memo for information concerning alternative and further appeal rights, intimating that he could then have filed an appeal with the board that would have been timely vis-a-vis the December 6th date. However, we conclude that there is no basis for the imposition of this requirement on the agency. The record does not reflect why the agency did not respond to the December 16th memo until January 7th. However, the agency would not have perceived any basis for urgency in responding because, based on their analysis set forth in the January 7th memo, which

is essentially correct, the final decision by the agency was rendered in October and the time for further appeal from that decision had long since run. From that perspective the information on further appeal contained in the last paragraph of the January 7th memo was essentially moot. This is not a situation where the agency misled the appellant as to his appeal rights and is thus estopped from advancing the claim of untimeliness.

C.f. Pulliam & Rose v. Wettengel, Wis. Pers. Bd. 75-51 (11/25/75).

ORDER

The motion to dismiss is granted and this appeal is dismissed.

Dated April 25, 1977. STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson