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SANDY CASPER,

Appellant,

v.

Secretary, DEPARTMENT OF HEALTH
& SOCIAL SERVICES,

Respondent.

Case No. 80-320-PC

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DECISION
AND
ORDER

NATURE OF THE CASE

This matter is before the Commission on respondent's motion to dismiss. The following are findings of fact and conclusions of law based upon an evidentiary hearing.

FINDINGS OF FACT

1. Appellant, Sandy Casper, R.N., was hired by the respondent, Department of Health and Social Services (DHSS) as a Nurse Consultant 1 on March 13, 1978. For a year she worked in the Long-Term Care Facilities Section, Bureau of Quality Compliance.
2. On March 13, 1979, appellant submitted a written reclassification request to her supervisor. Shortly thereafter on April 12, 1979, she received a written response denying her request. She was told there would be no program changes for the next few months, until the bureau's budget was approved.
3. On August 2, 1979, appellant again filed a written request for reclassification. This time it was filed jointly with another employe in the bureau director's office.
4. Subsequently, the appellant engaged in a variety of discussions and meetings with her immediate supervisor and other bureau staff members. From these conferences appellant learned that her position would not be reclassified

except through a new grouping of position responsibilities at the Nurse Consultant II level. Appellant was also told she would have to compete for any Nurse Consultant II positions created through this process. Appellant was asked by her supervisor to recommend in writing, descriptions qualifications and duties for the new position. She assumed she'd obtain the position despite posting and competition requirements.

5. On November 28, 1979, appellant was advised in writing that she and several other employes were being transferred to the newly established Special Resources Section; that her duties would remain unchanged until a section head was named. Following the transfer, appellant continued to maintain periodic discussions with her supervisors about her status and the proposed Nurse Consultant II positions.

6. On June 27, 1980, appellant sent a memo to her supervisors which outlined her employment concerns and requested medical leave. It was granted. Appellant remained on medical leave from July 6, 1980, to August 21, 1980, when she wrote her letter of resignation. Appellant never returned to work. On October 1, 1980, she appealed to the Commission, alleging respondent failed to reclassify her to Nurse Consultant II.

CONCLUSIONS OF LAW

1. The Commission has authority to hear matters as provided in s.230.45, Wis. Stats.

2. Appellant has the burden of proving by the greater weight of credible evidence her appeal was filed with the Commission within time limits specified in s.230.44(4), Wis. Stats.

3. Discussions between respondent and appellant prior to December, 1979,

constituted notification to appellant that reclassification of her position would require competitive examination and open recruitment.

4. Appellant has failed to establish that her appeal of October 1, 1980, to the Commission was within time limits provided in s.230.44(3), Wis. Stats.

5. The Commission has no authority to hear appellant's appeal because it was not filed within the time limits provided in s.230.44(3), Wis. Stats.

OPINION

The pertinent facts in this case are not in dispute. Appellant, with the encouragement and support of her supervisors made at least two attempts in 1979 to have her position reclassified from Nurse Consultant I to Nurse Consultant II, but on each occasion was rejected. Between August and December, 1979, she engaged in several discussions with her supervisors. During the course of these discussions appellant was told that attempts would continue to be made to reclassify her position, but she could not be regraded with the position and would have to seek the position through competitive examination.

It is the examiner's belief that time for appeal to the Commission commenced the moment appellant was advised she could only gain reclassification through competitive examination. Consequently, appellant's appeal filed with the Commission on October 1, 1980, exceeded the 30-day limit expressed in s.230.44(3), Wis. Stats.

Although not a part of this appeal, some comment seems appropriate regarding the circumstances in this case. However well intended, staff members inappropriately told appellant that she would be, in effect, the only bonafide candidate for the position. Any effort to cause such an outcome could have resulted in a violation of state civil service laws. It is believed that a clear statement of circumstances at the onset may have saved an employe from resigning and avoided

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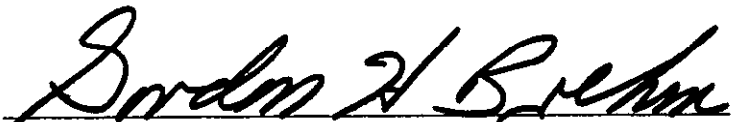
this appeal.

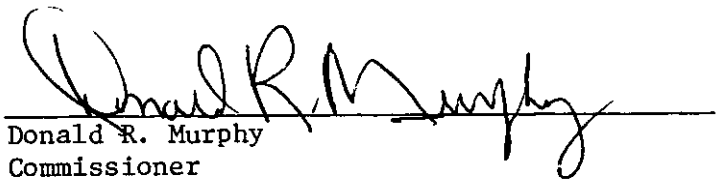
ORDER

Respondent's objection to the Commission's jurisdiction on grounds that appellant exceeded the time limit for appeal is sustained and this appeal is dismissed.

Dated June 3, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Chairperson


Donald R. Murphy
Commissioner

DRM:mgd

Parties

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