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 *
 RON PAUL,
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 Appellant,
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 v.
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 Secretary, DEPARTMENT OF
 HEALTH & SOCIAL SERVICES,
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 Respondent.
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 Case No. 81-323-PC
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INTERIM
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to s.230.45(1)(d), stats., of the denial of certain hazardous employment injury benefits. The respondent has objected to subject matter jurisdiction on the ground that the appeal was not timely filed. The parties have filed written arguments on this question. While the parties are not in agreement on all of the facts, it appears to the Commission that the essential material facts are not in dispute, and they will be set forth hereafter. These findings are limited to the purpose of deciding at this time the respondent's motion to dismiss.

FINDINGS OF FACT

1. The appellant, an Officer 5 at Kettle Moraine Correctional Institution, (KMCI) was on hazardous employment injury leave from October 1980 to April 1981.
2. The appellant became aware not later than June 11, 1981, that certain sick leave and vacation time had been deducted from his leave accounting records. On that date a memo was sent from the KMCI personnel manager, Mr. Regan, to the Chief of Payroll and Benefits, Bureau of Personnel and Employment, DHSS, Mr. Hasenberg. This memo stated as follows:

"Mr. Paul was absent beginning in October, 1980 to April, 1981 due to an injury under Wis. Statute 230.36.

During this period of absence he lost 20 hours of sick leave and 29.25 hours of vacation earnings. This time was deducted from his leave accounting records.

I understand the new Pers 28.04(5) now permits non-represented employees to earn these benefits. I have heard that other persons in similar situations as Mr. Paul have had their benefits restored.

What do we need to do to restore Mr. Paul's benefits? Please let me know as soon as possible."

3. Mr. Paul filed an appeal of this "lost" sick leave and vacation with this Commission on July 23, 1981. At that point in time there had been no reply from Mr. Hasenberg.

4. Mr. Regan eventually responded to the appellant by memo dated August 6, 1981, as follows:

"During your s.230.36 Stats. absence with pay, you were not given any credit for earning sick leave and vacation.

The new Administrative Rules Pers 28.04(5) now provides for continued sick leave and vacation earnings during such absence effective March 1, 1981. When this new rule went into effect, the leave accounting computer program did not generate any credit after that date. We have been advised to make a manual adjustment to the leave accounting record to correct this. We are therefore restoring 1.4 hours of sick leave and 1.82 hours of vacation which covers the earnings for your paid 230.36 absence for March 2-4 of 12 hours; and April 16, 8 hours."

CONCLUSIONS OF LAW

This appeal was not untimely filed and is properly before the Commission pursuant to s.230.45(1)(d), stats.

OPINION

The respondent has objected that this appeal was not timely filed pursuant to s.230.44(3), stats., which provided that appeals must be filed "... within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later." Laying to one side the point that this subsection by its terms does not appear to apply to appeals

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under s.230.45(1)(d), since s.230.44(3) states that "any appeal filed under this section may not be heard...", (emphasis added), in the opinion of the Commission this appeal should be considered as timely filed.

The appellant apparently discussed the matter of his leave account with the institutional personnel manager, an agent of the respondent. The personnel manager forwarded this request to DHSS personnel in Madison. There was no final decision conveyed to the appellant regarding the status of his leave account until the August 6, 1981, memorandum from Mr. Regan. Compare, Van Laanen v. State Personnel Board, Dane County Circuit Court No. 145-395 (8/26/75).

ORDER

The respondent's motion to dismiss this appeal as untimely filed is denied.

Dated: Dec-16, 1981 STATE PERSONNEL COMMISSION


DONALD R. MURPHY
Chairperson

AJT:ers

Parties

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