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HELEN GOERS (GRIMMENGA),  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 REVENUE,  
 Respondent.

Case No. 82-101-PC

\* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to s.230.44(1)(c), stats., of a termination of employment. The respondent has moved to dismiss on the ground that the appeal was untimely filed pursuant to s.230.44(3), stats. The parties have filed written arguments. The following findings are based on material in the file which appears to be undisputed.

FINDINGS OF FACT

1. By letter dated March 17, 1982, the Department of Revenue terminated appellant's employment effective February 9, 1982.
2. The letter of termination was sent to appellant's last known address in Watertown by certified mail.
3. The receipt for delivery of said letter was signed by Bonnie Goers, appellant's daughter, on March 23, 1982.
4. The appellant submitted a letter of appeal addressed to "Personnel Office, Department of Revenue, State of Wisconsin, 131 W. Wilson St., Madison, WI 53703."
5. The aforesaid letter was received by the Wisconsin Tax Appeals Commission on April 23, 1982, sent from there to the Department of Revenue's Personnel office where it was received on April 26, 1982, and from there to this Commission, where it was received on April 27, 1982.

CONCLUSIONS OF LAW

1. Pursuant to s.230.44(3), stats., this Commission lacks the authority to hear an appeal unless it is received within 30 days after the effective date of the action, or within 30 days after notification of the action, whichever is later.

2. The appellant received effective notice of the action in question on March 25, 1982.

3. This appeal was received by the Commission more than 30 days after the effective date of the action appealed and more than 30 days after notification of the action, and therefore the Commission lacks authority to hear the appeal.

OPINION

In her argument on jurisdiction filed with the Commission, the appellant states that she did not actually receive the letter providing notice of termination until March 25, 1982, since she had been staying in Madison due to health problems, and it was not until then that the letter was delivered to her by her daughter.

In the absence of a statute or rule permitting service of such a notice by certified mail, notice requires actual notice to the person involved. See 66 CJS Notice, ss 3, 18C. (1):

"Generally a notice is regarded in law as actual when the person sought to be affected by it knows of the existence of the particular fact in question, or is conscious of having the means of knowing it. Notice is actual when it is directly and personally given to the person to be notified.

\* \* \*

"In the absence of custom, statute, estoppel, or express contract stipulation, when a notice, affecting a right, is sought to be served by mail, the service is not effected until the notice comes into the hands of the one to be served, and he acquires knowledge of its contents, except perhaps in those cases where the party to be notified resorts to some trick or artifice to avoid personal communication with him."

See also Wing v. Bureau of Personnel, No. 77-63 (5/26/78).

Therefore, from a legal standpoint, notice was not effective until appellant actually received it on March 25, 1982.

However, this appeal was not received by the Commission until April 27, 1982. In order to have been timely, it would have had to have been received not later than April 26, 1982. (Since the 30th day after March 25th falls on a Saturday, April 24th, the appeal would have been timely if filed the next working day, or April 26th, see s.990.001(4)(c), stats.

The 30 day time limit set forth in s.230.44(3), stats., has consistently been held to be jurisdictional in nature, see, e.g., State ex rel DOA v. Personnel Board, No. 149-295 (Dane Co. Circuit Court 1976), and the Commission loses authority over the appeal after 30 days.

In this case, it is apparent that the late receipt of the appeal by the Commission was caused by the appellant's failure to use the Commission's correct address on the envelope. While it may seem harsh to dismiss an appeal on this basis, the Commission has no choice in the matter due to the jurisdictional nature of the 30 day time limit as set forth above. Furthermore, state employes are required, as a matter of law, to know their own rights under the civil service law. See Jabs v. State Board of Personnel, 34 Wis. 2d 245 (1967).

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ORDER


This appeal is dismissed for lack of subject matter jurisdiction as untimely filed.

Dated: July 8, 1982

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

AJT:ers

Parties

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