

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

DANIEL O'CONNOR,

Appellant,

v.

Adjutant General, DEPARTMENT
OF MILITARY AFFAIRS, and
Administrator, DIVISION OF
PERSONNEL,

Respondent.

Case No. 82-70-PC

* * * * *

INTERIM
DECISION
AND
ORDER

The letter of appeal in this matter, filed with the Commission on April 1, 1982, states in part:

I wish to appeal a recent selection for Facilities Repair Worker 2 position at Volk Field, Camp Douglas, WI (Dept. of Military Affairs). I received notification that I was not selected March 26, 1982 for the Facilities Repair Worker 2 position.

I also had requested a lateral transfer to one of the 3 vacant Motor Vehicle Operator 2 positions at Volk Field ... I understand these positions have been filled, but I was never contacted for an interview.

At a prehearing conference held on April 29, 1982, the sole named respondent at the time, the Department of Military Affairs (DMA) objected to the authority of the Commission to hear the appeal as it related to the Motor Vehicle Operator 2 (MVO2) position. After receiving briefs from both parties, the Commission issued an Interim Decision and Order on August 5, 1982. In its Interim Decision, the Commission found that it lacked jurisdiction over the MVO2 issue under §230.44(1)(d), Wis. Stats. However, the Commission withheld ruling on whether it had jurisdiction under §230.44(1)(a), Wis. Stats., in order to allow the Administrator, Division of Personnel (DP) to submit on

brief. The Administrator was temporarily added as a party respondent at least until the remaining jurisdictional issue could be resolved.

The findings that follow are based on documents in the case file. Because none of the parties have requested a jurisdictional hearing, they have waived any right they may have had to a hearing on jurisdictional facts.

FINDINGS OF FACT

1. Appellant is currently employed by the Department of Transportation as a Facilities Repair Worker 1 (FRW1) and had previously been employed by respondent DMA in the same classification.

2. In a State Service Current Employment Opportunities Bulletin for November, 1981, the respondent announced a job vacancy for a Motor Vehicle Operator 2 (MVO2) position at Volk Field. Interested persons were directed to submit a state application to Virginia Currie of the Division of Personnel by December 14, 1981.

3. The appellant contacted Ms. Currie regarding the possibility of transfer to the MVO2 position and was advised to send his request to DMA. This contact between the appellant and Ms. Currie occurred sometime prior to March 1, 1982.

4. Appellant made a written request to DMA for a lateral transfer to the MVO2 position. The request was submitted to DMA's personnel manager, as well as to the superintendent of buildings and grounds at Volk Field.

5. The MVO2 position was filled by someone other than the appellant. The appellant was never interviewed for the position.

6. The appellant's letter of appeal was not filed within 30 days of the date in which he was advised by Ms. Currie to send any request for transfer to DMA.

CONCLUSION OF LAW

With respect to any decision by DP not to submit the appellant's name for transfer to the MVO2 positions, this appeal was not timely filed and cannot be heard by the Commission.

OPINION

As a consequence of the Commission's Interim Decision dated August 5, 1982, the only question extant is whether this matter may be heard under §230.44(1)(a), Wis. Stats., which provides:

(a) Decision of Administrator. Appeal of a personnel decision of the administrator, including but not limited to a refusal to examine an applicant or certify an eligible under §230.17, orders by the administrator under §230.05(4), actions and decisions of the administrator and decisions of the administrator concerning employing units under §230.30 shall be to the commission.

More particularly, the question is whether the administrator, or a designee, made a decision not to submit the appellant's name along with the MVO2 certification list. Pursuant to §Pers 12.12(3), Wis. Adm. Code:

(3) The administrator may submit the names of persons interested in transfer, reinstatement or voluntary demotion along with a certification or, at the request of the appointing authority, in lieu of a certification.

In order for any such decision to be reviewable by the Commission, it must have been appealed within the 30 day time limitation imposed by §230.44(3), Wis. Stats:

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action ...

In this case the appellant was effectively notified by Ms. Currie that DP was not going to unilaterally submit his name as a transfer applicant along with the certification. Ms. Currie apparently advised the appellant to send any transfer requests to DMA. Once the transfer request went to DMA it was up to

them to request the administrator to submit the names of transfer applicants. Nothing in the file indicates that such a request was ever made of the administrator. In the absence of any evidence to the contrary, the Commission must assume that the appellant's contact with Ms. Currie occurred before the end of the application period, i.e. before December 14, 1981. Even if the contact was later than December 14th, it would have to have been on or after March 1, 1982 in order for the appellant's letter of appeal to be considered timely. The appellant failed to offer an affidavit or any other specific evidence indicating that he spoke with Ms. Currie in March.

Therefore, in light of the lack of timeliness, the Commission need not reach the second jurisdictional argument raised by respondent DP, i.e. that the decision not to submit a name of someone interested in transfer is a discretionary action outside the scope of §230.44(1)(a), Wis. Stats.

ORDER

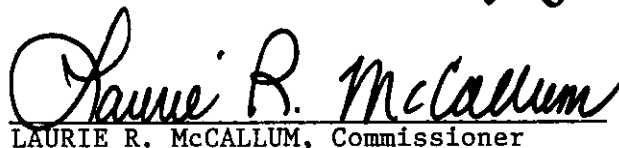
As it relates to the Motor Vehicle Operator 2 positions, this appeal is dismissed due to lack of jurisdiction and the Administrator, Division of Personnel is dropped as a party. This matter may proceed to hearing as scheduled on the following issue:

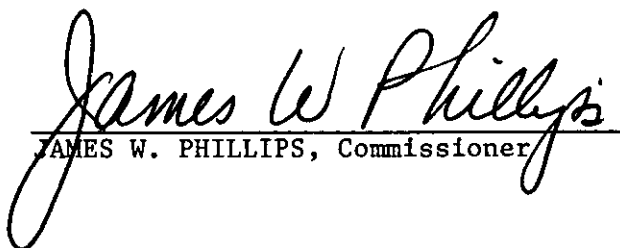
Whether respondent committed an illegal act or an abuse of discretion in not appointing the appellant to the position of Facilities Repair Worker 2.

Dated: October 14, 1982

PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

KMS:ers

Parties

Daniel O'Connor
507 McLean Ave.
Tomah, WI 54660

Raymond Matera
Adjutant General, DMA
P.O. Box 8111
Madison, WI 53708

Charles Grapentine
Administrator, DP
P.O. Box 7855
Madison, WI 53707