

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 *
 KAREN P. ZAHN, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 and Secretary, DEPARTMENT OF *
 EMPLOYMENT RELATIONS, *
 *
 Respondents. *
 *
 Case No. 85-0040-PC *
 *
 * * * * *

INTERIM
 DECISION
 AND
 ORDER

Respondent Department of Health and Social Services has moved to dismiss this matter due to untimely filing. Both parties have been provided an opportunity to file briefs. In her brief, respondent contends:

In this case Ms. Zahn was notified of the effective date of her reclassification on or about July 22, 1984. On March 12, 1985 she appealed the established effective date. This was over seven months after the effective date was set and the appellant became aware of it.

The time limit for filing appeals with the Commission is determined by §230.44(3), Stats., which provides in part:

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, whichever is later .
 . .

This time limit is mandatory rather than directory and is jurisdictional in nature. Richter v. DP, 78-261-PC, 1/30/79.

This case arises from an apparent delay in deciding the appellant's request to reclassify her position. It appears to be uncontroverted that the appellant requested to be reclassified in early 1983, but, for various reasons, did not receive a final decision granting her request until July of 1984. On August 23, 1984, the appellant asked personnel within DHSS to make her reclassification retroactive to June 16, 1983. This request reached the Bureau of Personnel Employment Relations (BPER) within DHSS. Utlimately, on February 21, 1985, William Kuntz, Team Leader at BPER denied the appellant's request, noting that the decision could be appealed to the Personnel Commission. A copy of the denial is attached hereto and incorporated by reference.

The letter from Mr. Kuntz constitutes a decision establishing the effective date of a reclassification. It may be that respondent DHSS was not required to reconsider their July, 1984 decision. Nevertheless, that decision was reconsidered (and upheld) as reflected in Mr. Kuntz's letter. Therefore, the appellant had 30 days from receipt of the February 21st letter in which to file an appeal with the Commission. Her appeal was filed well within the 30 day limit.

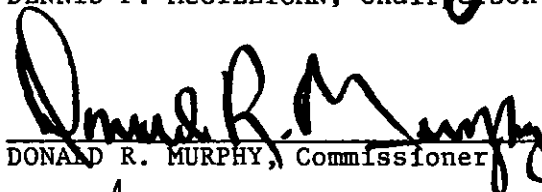
ORDER

Respondent's motion to dismiss is denied.

Dated: July 17, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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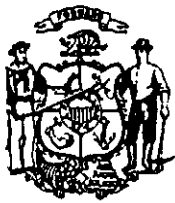
Attachment

Parties

Karen P. Zahn
3943 N. Downer Avenue
Shorewood, WI 53211

Linda Reivitz, Secretary
DHSS
P.O. Box 7850
Madison, WI 53707

Howard Fuller, Secretary
DER
P.O. Box 7855
Madison, WI 53707



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MANAGEMENT SERVICES
Bureau of Personnel & Employment Relations
Room 687, 1 West Wilson Street
P O Box 7850
Madison, WI 53707

February 21, 1985

RECEIVED

MAR 12 1985

FEB 22 1985

Personnel
Commission

Karen Zahn
Quality Control Reviewer
Bureau of Economic Assistance
State Office Building, Rm. 725
819 North 6th Street
Milwaukee, WI 53203

RE: Request for Retroactive Reclassification

Dear Ms. Zahn:

I have had Michael Soehner of my staff review your request for a retroactive reclassification. Based on his review and analysis, it appears that the effective date of your reclassification from Area Services Specialist 2 to 3 was established according to current departmental policy (see Attachment 1). Although you initiated your request as early as February 10, 1983, it was not received by the Bureau of Personnel and Employment Relations (BPER) until July 20, 1984. This set the effective date of July 22, 1984 which is the beginning of the pay period following effective receipt in BPER. As the effective date was determined according to DHSS policy, we must deny your request for retroactivity of the effective date of your reclassification request.

Because your reclassification request took so long to get "through the system", I have also had Mike review the current reclassification process within DHSS to determine if this process is both clear and appropriate. A partial summary of that process is contained in Attachment 2.

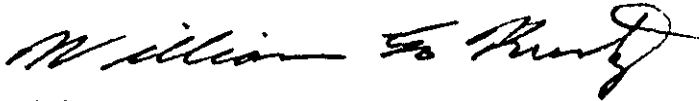
In reviewing the process as it relates to your request, it appears that a number of factors contributed to the delay. To begin with, the Division of Community Services (DCS) did not formally act upon your reclassification request until July 20, 1984. At this point in time, it was forwarded to BPER (along with 29 similar requests) with a recommendation for approval. This request coincided with the Department of Employment Relations (DER) approval of the Area Services Specialist 3 level as the objective level for Quality Control Reviewers. Previously, to the DER action, the objective level for your position was at the 2 level. The BEA and DCS had, for some time, tried to get the level upgraded. Since reclassification seemed inappropriate, they had hoped to do this through a Personnel Management Survey. Although, it can not be said for certain, it appears that both DCS and BPER would have recommended denial of your reclassification request prior to DER's July 20, 1984 decision to approve the 3 as the objective level. Hoping to find a way to approve your request (and upgrade all QC Reviewers), a denial letter was not written by DCS. Since there was no denial, there was no appeal. Without the appeal, there was no re-review by BPER and DER. Because it is not possible to know what would have happened had DCS "processed" your request, and since there is a real probability that your request may have been denied by BPER and DER (prior to the change in the objective level), it is not appropriate for me to recommend that the effective date of your reclassification be retroactive.

FEB 22 1985

In retrospect, it is also unfortunate that the current policies and procedures do not address this kind of problem i.e., failure to recommend approval or denial of a reclassification request. Clearly, the process needs to be reviewed. Therefore I have directed that Mike continue his study of the reclassification process within DHSS with the objective of proposing whatever changes are necessary to both the Supervisor's Manual (Chapter 236) and the Employee's Handbook, in order to make the process clear and fair.

In summary, your request for a retroactive reclassification to June 16, 1983 must be denied. If you disagree with this determination, you may appeal to the Personnel Commission (608/266-1995), 131 W. Wilson Street, Madison, WI 53702. Your appeal must be received by the Commission within 30 calendar days after receipt of this notification.

Sincerely,



William Kuntz, Team Leader
Bureau of Personnel and Employment Relations

WK:MS:bb

Attachments