

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JOHN C. BACHMAN,
 Appellant,

v.

President, UNIVERSITY OF
WISCONSIN - MADISON,
 Respondent.

Case No. 85-0111-PC

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DECISION
AND
ORDER

Respondent moved to dismiss this matter based on a timeliness objection. The following facts appear to be undisputed and are based on documents in the case file.

FINDINGS OF FACT

1. The appellant took an examination for a position at the University of Wisconsin Memorial Library on February 2, 1985.
2. The appellant was interviewed for the position on April 1, 1985 and was notified one week later that he was not selected for the position.
3. Within 30 days of the notification, the appellant wrote at least two letters to Mr. Thomas Li, the person who made the selection decision. The letters asked for a detailed explanation of the selection decision.
4. The appellant was dissatisfied with any replies he may have received.
5. On June 5, 1985, the appellant spoke with Sandra Pfahler, Assistant Director for Budget and Personnel, Memorial Library.

6. Based at least in part on the information derived from the June 5th telephone conversation with Ms. Pfahler, the appellant wrote another letter (dated June 8, 1985) to Mr. Li, stating in part:

My June 5 conversation with Ms. Sandra Pfahler of the Memorial Library Personnel and Budget Department was quite enlightening. It not only explained why I was not hired for the recently advertised Library Assistant 4 Chinese position it also explained your failure to reply promptly and clearly to my letters inquiring as to the rationale for your decision.

I must conclude from Ms. Pfahler's scant remarks that although the letter of the law was followed in the hiring process for this position for the intent was certainly grossly circumvented.

It is now clear that you had no intention of hiring anyone other than your former assistant. The entire process was designed to secure a sinecure for this particular individual.

7. Also on June 8th, appellant sent to the Wisconsin Employment Relations Commission a copy of the letter to Mr. Li, stating in part:

Not only do I feel the hiring process for this position was only superficially fair but I have been unable to receive a report on the rationale for this decision. For these reasons I feel compelled to write to you seeking assistance.

Thank you for your time and any efforts you may be able to exert on my behalf.

That letter was forwarded to the Personnel Commission where it was received on June 18, 1985 and treated as a new appeal.

CONCLUSION OF LAW

This appeal was not timely filed with the Commission.

OPINION

The respondent's motion to dismiss is founded upon the time limit established in §230.44(3), Stats., which provides:

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 ...

The Commission has previously ruled that the statutory time limit is mandatory rather directory and is jurisdictional in nature. Richter v. DP, 78-261-PC (1/30/79).

In the present case, the appellant was notified of the decision on April 8, 1985 and filed an appeal on June 18, 1985. Nothing in the record suggests that the effective date of the selection decision was on or after May 19th.

The appellant did make several efforts to obtain an explanation of the selection decision from Mr. Li. However, the appellant's explanation request is readily distinguishable from the facts in Adams v. DHSS, 83-0050-PC (8/17/83) in which the appellant had written a letter directly to the Secretary of the department, asking her to reexamine a decision by a subordinate employe not to consider the appellant for a particular vacant position. In his letter, Mr. Adams had stated:

No formal charges or appeals to the Personnel Commission [have] been initiated. I think DHSS deserves the right and chance to resolve this matter as expeditiously as possible.

The Secretary of DHSS responded by stating:

My review of this matter indicated that the Mendota Mental Health Institute did not act improperly or discriminated against you.

Appellant Adams then filed an appeal of the Secretary's decision. The Commission held that the appeal was timely because it was filed within 30 days of the Secretary's letter.

In contrast, the appellant in the present case sought an explanation by Mr. Li of his own actions. Nothing indicates that the appellant sought reconsideration of Mr. Li's decision by someone with the authority to overturn the selection decision. Therefore, the June 18th appeal is untimely and must be dismissed.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: November 7, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner *vic*


LAURIE R. McCALLUM, Commissioner

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