

RICHARD COCKER,

appeal from Gocker v. DMRS & DHSS, 87-0174-PC,  
2/1/88

Plaintiff,

**RECEIVED**

vs.

STIPULATION AND ORDER  
FOR DISMISSAL

APR 14 1988

ADMINISTRATOR, DIVISION OF MERIT  
RECRUITMENT AND SELECTION AND  
SECRETARY, DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES,

**Personnel  
Commission**

Case No. 88 CV 300

Defendant.

The parties and their counsels as attested hereto, hereby stipulate and agree for dismissal of the above matter without cost or attorney's fees.

WHEREAS, the parties hereby request the court to grant the order attached below forthwith.

Dated this 6th day of April, 1988.

Richard Gocker  
Richard Cocker, Plaintiff

Daniel Wallock  
Daniel Wallock, Defendant

Brian Lee Mares  
Brian Lee Mares,  
Attorney for Plaintiff

Timothy J. Cullen  
Timothy Cullen, Defendant

Stephen M. Sobota  
Stephen Sobota,  
Attorney General's Office

O R D E R

It is hereby ordered that the above matter be dismissed without cost or attorney's fees.

Dated this 8 day of April, 1988.

BY THE COURT:

William E. Crane

Honorable William E. Crane  
Circuit Judge, Branch I

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 RICHARD GOCKER,  
                     Appellant,  
 v.  
 Administrator, DIVISION OF  
 MERIT RECRUITMENT & SELECTION,  
 and Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES,  
                     Respondents.  
 Case No. 87-0174-PC  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

On September 10, 1987, appellant filed a letter of appeal with the Personnel Commission which stated:

I submitted a questionnaire stating my interest and qualifications for the position of Superintendent of Buildings and Grounds 5 at the Winnebago Mental Health Institute, Winnebago, Wisconsin. I received a letter from the Bureau of Personnel and Employment Relations stating that I did not have the qualifications for the position and would not be considered for the position.

I have learned recently that a Mr. Ronald Wruck was chosen for the position of Superintendent of Buildings and Grounds 5 at Winnebago and who the candidates were that were interviewed for the position, also.

After comparing my experience and qualifications against some of the candidates which were interviewed for the position of Superintendent of Buildings and Grounds 5 at Winnebago Mental Health Institute, I feel that I have been discriminated against and wish an investigation, reclassification of vacancy candidates and re-interviewing of the Superintendent of Buildings and Grounds 5 position at Winnebago Mental Health Institute. I will wait to hear from you before taking any further action.

On November 18, 1987, respondent Division of Merit Recruitment and Selection (DMRS) and respondent Department of Health and Social Services (DHSS) each filed a motion to dismiss this appeal for lack of subject matter jurisdiction on the basis that it was not filed in a timely fashion.

1. In his brief, appellant states:

"No mention was given in letter (from respondent DHSS) that an appeal was required to be filed within 30 days. I had no way to know that candidate selection procedure was fair and correct until the vacancy was filled and I could obtain a list of eligible candidates who were interviewed for the position. Appeal was filed correctly after obtaining said information."

Because of the manner in which the position of Superintendent of Building and Grounds 5 was filled at Winnebago Mental Health Institute (WMHI), I feel that I was not given a fair and equal chance to be considered for the position at WMHI and wish an investigation, reclassification of vacancy candidates, re-interviewing of the Superintendent of Buildings and Grounds 5 position at WMHI, and/or remuneration of all monies and benefits I would have received if I had been interviewed for and offered and accepted the position of Superintendent of Buildings and Grounds at WMHI."

2. The September 7, 1986, Current Opportunities Bulletin announced a Superintendent of Buildings and Grounds 5 vacancy for the Oshkosh/Waupun area. The appellant took and passed the examination with a score and rank of 78.4 and 19 respectively. On or about December 29, 1986 the appellant was sent a notice of examination results.

3. On or about March 18, 1987, the DHSS's Bureau of Personnel and Employment Relations sent all the persons on the register a letter asking them, basically, (1) if they were interested in the Superintendent of Buildings and Grounds 5 vacancy at the WMHI and (2), if so, to submit additional information relating to their qualifications. The reason for the letter was that a new register (in effect, a subset of the existing register) of candidates with special qualifications was to be established for the WMHI vacancy.

4. The appellant was interested and submitted the additional information as requested. The DHSS, through its Personnel Office and the Chief Engineer for all DHSS institutions, evaluated the submissions of all of the candidates that responded to the March 18, 1987, letter. The candidates

were evaluated as qualified or not qualified for the WMHI vacancy. The candidates that were evaluated "qualified" were then ranked according to their rank on the register.

The appellant was evaluated as not qualified. By letter dated April 2, 1987, and received by appellant on April 4, 1987, appellant was notified that he would not be given further consideration for the subject position.

Section 230.44(3), Stats., provides:

"(3) Time Limits. 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 Personnel Commission has consistently held that this 30-day filing requirement is jurisdictional in nature, i.e., that the Personnel Commission does not have the authority to hear an appeal unless it is filed within this 30-day limit. Richter v. DP, Case No. 78-261-PC (1/30/79); Newberry v. DER, Case No. 87-0066-PC (1987).

In this case, it is clear that the actions of respondents which appellant is appealing are the decisions regarding the relative qualifications of the candidates who expressed an interest in the subject position and the resulting decision not to certify appellant for the position. Appellant acknowledges that he was notified that he was not certified on April 4, 1987. Appellant clearly did not file his appeal within 30 days of such notification and his appeal is, therefore, untimely.

Appellant argues that he filed his appeal within 30 days of his discovery of which candidates were certified for the position. However, the operative date for purposes of s. 230.44(3), Stats., is the date of respondent's actions or the date appellant received notice of such actions, not the date that appellant learned of a fact that led him to believe that such actions were flawed. In addition, since respondents have no

obligation to inform appellant of the time limit for filing appeals, the failure to do so does not constitute a legal or equitable ground for the Personnel Commission taking jurisdiction of this appeal. (See Seemann and Bong v. DILHR, Case No. 79-167-PC (11/8/79)).

ORDER

This appeal is dismissed.

Dated: February 1, 1988 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

LRM:rcr  
RCR03/01

  
LAURIE R. MCCALLUM, Commissioner

Parties:

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