

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KARL W. MARQUARDT,
 Appellant,
 v.
 Superintendent, DEPARTMENT OF
 PUBLIC INSTRUCTION,
 Respondent.
 Case No. 90-0349-PC

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RULING ON
MOTION
TO DISMISS

This matter is before the Commission following a prehearing conference, November 5, 1990, in which respondent raised the issue of the Commission's authority to hear the captioned appeal. Subsequently, on November 19, 1990, respondent filed a motion to dismiss the captioned appeal because it was untimely.

For purposes of this motion the following facts are taken as uncontested.

On March 15, 1990, respondent announced a servicewide promotional opportunity for its chief legal counsel position in the Department of Employment Relation's Job Opportunities Bulletin.

Appellant applied for the position, went through the examination process and was among those certified as eligible for appointment. Five candidates were interviewed during the final screening which was completed on or about May 30, 1990.

On July 3, 1990, appellant received notice that he was not selected for the position. Subsequently, about July 8, appellant learned the position may have been filled by a transfer candidate not on the certification list.

Appellant requested respondent to provide a copy of the certification list and identification of the appointee. He received it on July 18, 1990. Respondent's cover letter indicated July 15, 1990, was the effective dates of the appointee's appointment.

On August 14, 1990, appellant filed an appeal with the Commission, alleging respondent violated §230.44(1)(d), Stats.

Respondent contends the Commission lacks jurisdiction over this matter because appellant failed to file his appeal within thirty days after he was notified of his nonselection. Respondent cites Cozzens-Ellis v. Personnel Comm., 155 Wis 2d 271, 455 N.W. 2d 246 (Ct. App. 1990), which held the effective date of promotion and not the date the person who was promoted began the new job was the decision date, was on point.

In response, appellant argues that Cozzens-Ellis is distinguishable from this matter on the basis of facts and on the basis of the subject of the appeal. Appellant alleges he is appealing the hiring process and not his non-selection.

The facts in Cozzens-Ellis and this matter are virtually identical. They differ only in the breadth of the job promotional opportunity where in this matter the promotional opportunity was servicewide, while in Cozzens-Ellis it was intra-departmental. This distinction has little bearing on the matter.

Concerning appellant's second argument, he alleges he seeks a review of: "the hiring process, i.e., changing methods for obtaining a pool of applicants without adequate notice to afford an equal opportunity for all interested candidates to be considered under the transfer opportunity, . . ."

In Cozzens-Ellis the court said:

Under Sec. 230.44(1)(d), an employe appeals from a 'personnel action' alleged to be illegal or an abuse of discretion. If a person is denied a promotion, the action appealed from is the denial, not a later event stemming from it.

In the instant case before the Commission, appellant, as in Cozzens-Ellis, appealed under §230.44(1)(d). Consequently, the action he appealed was his denial or nonselection. However, if, as appellant alleges, §230.44(1)(d) includes a general appeal of the hiring process, then the focus of appellant's appeal is respondent's "action" allowing the inclusion of transfer employes in the pool of eligible candidates and not a later event stemming from it. In either instance, undisputed facts show that appellant filed his appeal more than thirty days after the effective date of respondent's personnel action allowing the inclusion of transferees or his notice of nonselection.

For the above stated reasons, respondent's motion for dismissal prevails.


ORDER

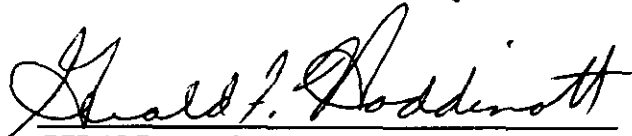
This appeal is dismissed as untimely filed.

Dated: January 11, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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