

PATRICK BRADY,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0085-PC

DECISION
AND
ORDER

This matter is before the Commission on the respondent's motion to dismiss the appeal as untimely filed. The parties have been provided an opportunity to file briefs. The following facts appear to be undisputed.

FINDINGS OF FACT

1. At all relevant times, the appellant has been employed by the Department of Natural Resources.
2. On April 5, 1991, the appellant received verbal notification that his position was being reallocated to the classification of Waste Management Engineer - Senior. The appellant received written notification of this action on April 30, 1991. The notice stated that all appeals must be filed with the Personnel Commission but it did not provide an address for the Commission.
3. The appellant prepared a letter of appeal and mailed it to the Personnel Commission in an envelope which bears a Milwaukee postmark dated May 29, 1991 (p.m.), and is addressed to the Commission at 131 W. Wilson, Madison, WI 53707.
4. The Commission's correct address is 121 East Wilson Street, Madison, WI 53702.
5. The appellant obtained the incorrect address for the Commission by consulting the Madison State Offices Directory, which had been supplied to him by DNR and which he had used previously during the course of employment.
6. The appellant's letter of appeal reached the Commission on June 4, 1991.

OPINION

The time limit for filing an appeal of a reallocation decision under §230.44(1)(b), Stats., is established in §230.44(3), 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, whichever is later. . . .

This 30 day time limit is mandatory rather than discretionary and is jurisdictional in nature. The term "filed" requires physical receipt by the Commission. Richter v. DP, 78-261-PC, 1/30/79.

Here, the appellant received notice of the reallocation decision on April 30th. Therefore, according to the language of the statute, he had to file his appeal with the Commission no later than May 30, 1991, in order for it to be considered timely. The Commission does, however, recognize that it has implicit authority to apply the principle of equitable estoppel in deciding timeliness issues. Desrosiers v. DMRS, 87-0078-PC, 8/5/87; motion for reconsideration denied, 9/10/87. Equitable estoppel against a state agency requires inequitable conduct by the agency which amounts to fraud or a manifest abuse of discretion, and irreparable injury to the other party acting honestly and in good faith reliance on the agency conduct Schleicher v. DILHR & DP, 79-287-PC, 8/29/80. However, the Commission has also held that the doctrine of equitable estoppel cannot be applied where the conduct on which the appellant relied was the conduct of another state agency and not the respondent agency. Goeltzer v. DVA, 82-11-PC, 5/12/82.

In the present case, the appellant contends that the failure of DER to provide the Commission's correct address on the reallocation notice and DNR's provision of the incorrect address supply a basis for finding his appeal to be timely filed:

I believe that because the address used was obtained from the most recent version of a manual supplied to me by the DNR, and no other address was provided in the Reallocation Notice, that Respondent should be estopped from arguing that the appeal was filed late. The DNR and DER actions and inactions in providing me with the correct address for the Personnel Commission have

resulted in a denial of my statutory appeal right. If I had been supplied with the correct address by either the DER or the DNR my appeal would have been received in a timely manner.

The appellant has failed to provide any evidence that DER has a duty to provide the Commission's address to employees who receive a reallocation notice. Written notification of the decision to reallocate is required by §ER 3.04, Wis. Adm. Code, but there is no mention of providing the incumbent with the Commission's address in order to file an appeal. This result is consistent with the decision in Bong and Seeman v. DILHR & DP, 79-167-PC, 11/8/79, where the Commission concluded that no estoppel could be derived from the failure of the agency to advise the appellants of their appeal rights under §230.44(1)(d), Stats., because the respondent had no obligation to inform the appellants of the appeal procedures.

Likewise, the conduct or misconduct of DNR cannot serve as the basis for an equitable estoppel theory when it is undisputed that the underlying action of reallocating the appellant's position was taken by DER rather than DNR. Goeltzer, supra. Even if the Commission could somehow overcome the fact that the appellant was provided the address by DNR rather than by DER, the mere provision of a directory which included an incorrect address cannot be said to amount to "fraud or a manifest abuse of discretion" as is required for estoppel to lie against a state agency.

While the Commission believes it is unfortunate that this appeal cannot be heard under these circumstances, the law in question (§230.44(3), Stats.) is strict and compels this result. A contrary conclusion would be subject to reversal by a reviewing court.


ORDER

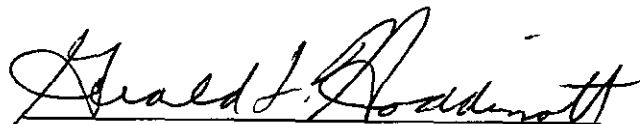
This matter is dismissed as untimely filed.

Dated: September 19, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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