

JOSEPH E. ANCEL,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 91-0117-PC

FINAL
DECISION
AND
ORDER

This matter is before the commission on respondent's motion to dismiss for untimely filing. Both parties have filed briefs. For purposes of deciding this motion, the commission will assume as correct all factual allegations made by appellant.

On April 30, 1991, appellant received a notice of reallocation of his position from Air Management Engineer--Senior (PR 14-07) to Air Management Engineer--Advanced 1 (PR 14-08), with an effective date of June 17, 1990. This notice was forwarded by a memorandum dated April 23, 1991, from Sue Steinmetz, Classification Specialist, Bureau of Personnel and Employment Relations, Department of Natural Resources. This memorandum included the following:

As you are aware, we have been working with the Department of Employment Relations to resolve your informal appeal on the Engineering Survey results. Based on the information you provided as well as these discussion, we have been successful in receiving approval to reallocate your position to Air Management Engineer - Advanced 1. Your copy of the approved reallocation notice is attached.

* * *

This action resolves the informal appeal you previously filed regarding your classification. If you have any questions regarding this decision,, please contact me at 608 - 266-6999.

The reallocation notice which accompanied this memo included the following:

If you wish to appeal this reallocation you must submit a written request to the State Personnel Commission. The appeal should state the facts which form the basis of the appeal, the reason or reasons you feel the reallocation is improper, and the relief sought. This appeal must be received by the State Personnel Commission within 30 days after the effective date of the reallocation or within 30 days after you are notified of the reallocation, whichever is later. If you have any questions on the procedural aspects of filing an appeal, please contact your Agency Personnel Officer.

On May 21, 1991, appellant sent an appeal of the reallocation to Judith Ann Burke of DER, "not realizing that the State Personnel Commission was a separate entity from the DER." (appellant's letter of September 12, 1991). On May 30, 1991, appellant received a letter dated May 28, 1991, from Ms. Burke. This letter stated: "[a]s indicated on your reallocation form, you have 30 days from your receipt of the reallocation form to file an appeal to the Personnel Commission." On or about May 30, 1991, and June 3, 1991, appellant attempted unsuccessfully to call Ms. Burke "to find out if she would forward my appeal to the Personnel Commission or if I would need to send a separate appeal letter. Ms. Burke was not in so I left a message . . . She never returned my calls." (Appellant's letter of September 12, 1991). From June 11 to June 17, 1991, appellant was on sick leave due to the death of a relative in Illinois. On June 28, 1991, appellant sent an appeal of his reallocation to the commission "after learning the proper procedure from my supervisor on June 27, 1991." *id.* This appeal was received by the commission on July 2, 1991.

Section 230.44(3), stats., provides, as applicable:

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 effective date of the action, whichever is later. (emphasis added)

Because of the underscored language, the commission and the courts have held that the time limit set forth in this subsection is mandatory and jurisdictional in nature, and the commission lacks any authority to hear a case that has not been filed within the allotted time. See Richter v. DP, 78-261-PC (1/30/79); State ex rel DOA v. Personnel Board, 149-295 (Dane Co. Cir. Ct. 1976). Appellant argues that he:

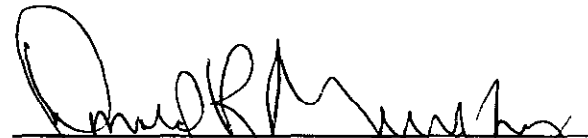
[a]ttempted to comply with the intent of the appeal process. However, due to my unfamiliarity with the process, my appeal was not sent to your office within the prescribed 30 days. I feel that this technicality should not prevent me from presenting my appeal to the Personnel Commission.

While it is unfortunate that appellant did not submit his appeal within the statutorily prescribed time, there is nothing the commission can do under these circumstances except to dismiss the appeal. Because sec. 230.44(3) is mandatory and jurisdictional in nature, the commission lacks the authority to excuse a late filing on a theory that the appellant acted in good faith, the untimely filing was inadvertent, etc. Furthermore, there is nothing in the facts alleged by appellant to suggest that any employe or agent of respondent misled appellant so as to cause him to miss the filing deadline. Respondent provided correct information about appealing the reallocation on the notice of reallocation. When he mistakenly filed his appeal with Ms. Burke, due to his confusion as to agency organization, her letter referred him back to the information on the notice of reallocation. In light of all the facts, the commission must dismiss this appeal.

Dated: October 17, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

AJT:ajt


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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