

DOUGLAS C. STOCKLI,

Appellant,

v.

Administrator, DIVISION OF
MERIT RECRUITMENT AND SELECTION,¹

Respondent.

Case No. 91-0189-PC

DECISION
AND
ORDER

This matter is before the Commission on a timeliness objection raised by respondent Division of Merit Recruitment and Selection (DMRS). A briefing schedule was established and the following facts do not appear to be in dispute.

1. Some time prior to May 11, 1991, the appellant completed an application for a Food Service Supervisor 3 position at the University of Wisconsin-Madison.

2. An examination was held on May 11th and the appellant was subsequently informed that his overall ranking was number one.

3. On June 20, 1991, after not having received any notification of an interview, the appellant contacted DMRS to determine whether a certification list had been requested by the UW-Madison. During a telephone conversation with Debra Bower of DMRS, the appellant was informed that UW-Madison had requested a certification list for a full-time evening hours position and that because the appellant had indicated an interest in full-time employment but not evening hours on his initial application, his name was not included in the certification.

4. By letter to Ms. Bower dated June 21, 1991, the appellant was "compelled to appeal your decision to exclude me from the eligibility list" and requested that his name be included for any full-time certification request, irrespective of the shift involved.

¹In previous correspondence in this matter, the respondent has been incorrectly identified as the Department of Employment Relations rather than the Division of Merit Recruitment and Selection.

5. On June 26th, the appellant was informed that the UW-Madison was satisfied with the certification list they had received but that if there were cancellations, they would interview the appellant.

6. By letter to the respondent dated June 28, 1991, the appellant raised a series of questions regarding the respondent's application form and job announcements. The appellant concluded his letter by stating: "I would appreciate a written, logical explanation, to these quirks in the certification process." The appellant sent copies of his letter to: Governor Thompson, Representative Radtke, All Department Heads, Affirmative Action Committee, Personnel Commission, AFSCME Council 24 and WSEU, Local 18.

7. Respondent administrator of DMRS responded by letter dated August 9, 1991.

8. On August 21, 1991, the appellant learned that the Food Service Supervisor 3 position at the UW-Madison, had been filled.

9. On September 12, 1991, the Commission received the appellant's letter of appeal, which stated:

After recent communications with the Department of Employment Relations, I feel it necessary to appeal to the Personnel Commission, for judgement [sic]. Here is a basic account, of what has transpired.

May 11, 1991 I tested for a Food Service Supervisor 3 position, at the University of Wisconsin-Madison, and ranked number one. Although I requested full time employment, I was not considered for the eligibility list. June 21, 1991 I appealed, to the DER, their decision, to exclude me from the list. June 28, 1991 I wrote a letter expressing confusion to their policies, and cc'd a copy to the Personnel Commission. After numerous inquiries, I was informed August 21, 1991 the position I had tested for, and was attempting to be interviewed for, had been filled without considerations [sic] to me.

I'm looking for satisfaction, in the following areas. Proper interpretation, by DER, on information given and provided; present and future consideration for level 11 food service positions; and/or back pay lost for not being afforded the opportunity to be considered for the position.

CONCLUSION OF LAW

This appeal was not timely filed.

OPINION

This matter, which arises from a certification action, is before the Commission on the respondent's motion to dismiss for untimely filing.

The time limit for filing appeals is established in §230.44(3), Stats., which states that an appeal "may not be heard" unless it "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 this time limit is jurisdictional in nature. Richter v. DP, 78-261-PC, 1/30/79.

The decision being appealed is the decision not to include the appellant's name on the original certification list for the Food Service Supervisor 3 vacancy at the UW-Madison. The Commission has previously ruled that in an appeal of the administrator's refusal to certify or removal from a register, the "cause of action" accrues at the time the appellant receives notice of the decision, and the appeal must be filed within 30 days to be timely. Desrosiers v. DMRS, 87-0078-PC 8/5/87; motion for reconsideration denied, 9/10/87; O'Connor v. DMA & DP, 82-70-PC, 10/14/82. Here, it is clear that the appellant first learned on June 20th that his name was not on the certification list.

The additional factor present in this case, as set forth in finding of fact 5, is that the appellant was told by the respondent that if there were cancellations by candidates on the original certification list, UW-Madison would interview the appellant. Clearly, this could not occur unless DMRS prepared a new or supplemental certification which contained the appellant's name. And, as indicated by the finding, this would not occur unless and until the appointing authority, UW-Madison, requested a supplemental certification because other candidates had cancelled their interviews. There is no indication there were any cancellations or that UW-Madison requested a supplemental certification. Therefore, the only personnel action placed in issue by the letter of appeal was the original certification, of which the appellant was notified on June 20th. On that date, the appellant was informed that the respondent had taken an adverse personnel action which had the effect of excluding the appellant from consideration for the vacancy. The appellant clearly could have appealed the decision to the Commission on June 20th and the 30 day filing period commenced then rather than on the date the appellant finally learned that the position had been filled using the original certification.

A second question raised by this appeal is whether, by sending the Personnel Commission a copy of his June 28th letter to DMRS, the appellant could be considered to have filed an appeal with the Commission. There is nothing on the record indicating that the Commission actually received a copy of the June 28th letter prior to September 12, 1991. Even if the Commission assumes that it did receive a copy within 30 days of June 20th, there is nothing in the letter which could be read as constituting an appeal of the certification action to the Commission. In that letter, addressed to DMRS, the appellant stated:

On more than one occasion, I feel I have been misled about what the Application For State Employment Form DER-MRS 38 is meant to be, or used for, and how it is interpreted by the State of Wisconsin - Department of Employment Relations.

The appellant then described two instances, one being the Food Service Supervisor 3 application and certification, and wrote: "I would appreciate a written, logical explanation, to these quirks in the certification process." The only reference to the Personnel Commission in the letter was as one entry among seven recipients of copies of the letter. The letter makes no mention of filing an appeal with the Commission or even of instituting some review procedure external to DMRS. The letter gives no suggestion that at the time it was written, the appellant sought to commence a formal appeal with the Personnel Commission. Therefore, there was no reason for the Commission to process the letter as an appeal. To read such a requirement into the letter would mean that nearly every time the Commission receives a copy of correspondence directed to another agency, it would have to be considered an appeal.


ORDER

This matter is dismissed as untimely filed.

Dated: November 14, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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