



STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

L. JOYCE SCHUSTER,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0479-PC

* * * * *

RULING ON
RESPONDENT'S
MOTION TO
DISMISS

A prehearing conference was held in the above-noted case on 11/25/94. A conference report of the prehearing was mailed to the parties on 11/25/94, which contained the following pertinent information:

JURISDICTION: DER raised a potential timeliness issue regarding the filing of this appeal. Appellant indicated she does not recall when she received notice of the reallocation. She does recall that someone from her personnel office put the notice on her desk. She indicated the notice has the two following dates: July 18, 1994 and July 19, 1994.

The undersigned [Commission staff person conducting the prehearing] explained that Ms. Schuster's inability to recall when she received notice could be fatal to going forward with her case. It was suggested that Ms. Schuster check with her personnel office to see if anyone there remembers when the notice was placed on her desk.

Ms. Schuster further indicated that her union filed an appeal on behalf of all purchasing agents on the grounds that the class specification criteria were different from the criteria agreed to by the union. The undersigned indicated that such an appeal may be pending in the form of a union grievance, which is not the same forum as the Commission. The undersigned suggested that Ms. Schuster check with the union to determine whether the union filed an appeal on her behalf with the Commission.

Ms. Schuster indicated frustration because DER did not provide information regarding any right to appeal to the Commission. The undersigned indicated that DER's notices usually include appeal information, but that DER is not required by law to provide such information.

The Conference Report established a briefing schedule whereby Ms. Schuster's written argument on the timeliness issue were due to be received by

the Commission on or before 12/29/94. Ms. Schuster did not file any written arguments.

DISCUSSION

Ms. Schuster's position was reallocated to Purchasing Agent effective 6/26/94. Someone from her personnel office placed written notice of the transaction on her desk at work and such notice was dated July 18 and 19, 1994. The Commission received Ms. Schuster's appeal on September 13, 1994.

It is Ms. Schuster's burden to establish that her appeal was timely filed. Lawry v. DP, 79-26-PC (7/31/79). She failed to provide any date of notice other than July 18 or 19, 1994.

Section 230.44(3), Stats., provided that appeals must be 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 later date here would be measured by the notice date, rather than by the effective date.



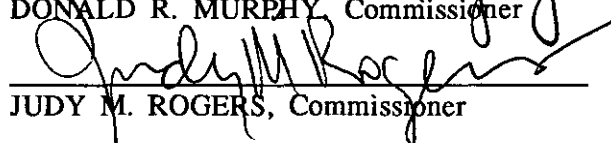
Accordingly, Ms. Schuster's appeal must have been filed within 30 days of July 19, 1994, to be considered timely filed. Her appeal was filed late, having been received by the Commission on September 13, 1994.

ORDER

That this case be dismissed as an untimely-filed appeal.

Dated January 20, 1995.

JMR


LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

Parties:

L. Joyce Schuster
1341 South Farwell St.
Eau Claire, WI 54701

Jon E. Litscher
Secretary, DER
137 E. Wilson St.
P.O. Box 7855
Madison, WI 53707-7855

NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW

OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)
2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)