

STATE OF WISCONSIN

CIRCUIT COURT

SAM

DOUGLAS COUNTY

ROBERT E. BLOMQUIST,

Petitioner,

v.

Case No. 95-CV-230

WISCONSIN PERSONNEL COMMISSION,

Respondent.

RECEIVED

FILED

JAN 09 1998

ORDER

DEC 12 1997 PERSONNEL COMMISSION

JOHN J. JURY

Judge of Circuit Court

The above-referenced proceeding having been commenced on June 26, 1995, under ch. 227, Stats., for judicial review of an order of the Wisconsin Personnel Commission which dismissed petitioner Robert E. Blomquist's complaint against the Wisconsin Department of Agriculture, Trade and Consumer Protection on the ground that it was filed untimely; and

The petitioner, Robert E. Blomquist, having appeared Attorney Kyle Torvinen, the Commission having appeared by Jennifer Sloan Lattis and David C. Rice, Assistant Attorneys General; and

The court having reviewed the record and having considered the written and oral arguments of the parties; and

The court having issued a memorandum decision on December 2, 1997, in which the court granted respondent's motion to dismiss on the grounds that the court is without jurisdiction since this action was not filed on time,

Now Therefore, IT IS ORDERED that the order of the Commission
is affirmed.

BY THE COURT:



Michael T. Lucci
Circuit Court Judge 12-12-97

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ROBERT E. BLOMQUIST,

JAN 09 1998

Petitioner,

PERSONNEL COMMISSION

vs.

MEMORANDUM DECISION

Case No.: 95 CV 230

FILED

WISCONSIN PERSONNEL
COMMISSION,

DEC 02 1997

Respondent.

Clerk of Circuit Court

Respondent moves to dismiss the above judicial review action on the grounds that it was not filed within the 30 day period. The motion was argued on November 26, 1997 and both parties filed briefs.

The undisputed facts show that the Commission's decision was served upon the petitioner by mail on May 26, 1995 although the decision was not actually received until five days later. Petitioner subsequently filed his petition for review on June 26, 1995, which was 31 days later. Additionally, the petitioner attempted to serve the petition on June 26, 1995 when his counsel was advised by an attorney with the Commission that service could not be by fax. Personal service was attempted that same day but not until after the office was closed at 4:30 P.M.

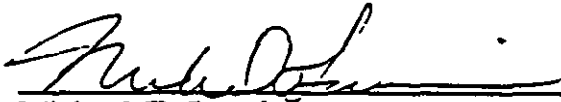
After reviewing the facts and arguments of counsel, the court must conclude that since this action was not filed in a timely manner, the court does not have jurisdiction and the motion to dismiss should be denied. Although to dismiss an action which is filed one day too late may seem to be a harsh or drastic result, sec. 227.53(1)(a) Wis. Stats.

requires strict compliance in order for the court to have subject matter jurisdiction. (See Kegonsa Jr. Sanit. Dist. v. City of Stoughton, 87 Wis.2d 131 (1979)). Although petitioner contends that the court should exercise its discretion to extend the time for filing and serving pursuant to sec. 801.15(5) Wis. Stats., application of this statute to appeals of administrative decisions has been rejected by the Supreme Court. (See Ryan v. Department of Revenue, 68 Wis.2d 467 (1975)). Additionally, the argument that the court should enlarge the time for filing and service based on excusable neglect was also rejected by the appellate court on the grounds that the court is without jurisdiction to extend the time since the action was not filed on time. (See Cudahy v. Department of Revenue, 66 Wis.2d 253 (1974)).

Based on the above findings, the court must grant the motion to dismiss.

Dated this 2d day of December, 1997.

BY THE COURT:


Michael T. Lucci
Circuit Court Judge