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JILL CASPER,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM (Madison),  
and Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondents.

Case No. 96-0013-PC

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DECISION  
AND ORDER  
ON MOTION  
TO DISMISS

This matter involves an appeal of a reclassification request denial. Subsequent to a prehearing conference held April 1, 1996, respondent filed a motion to dismiss appellant's appeal on the basis of timeliness.

The following findings are based on documents and pleadings filed by the parties:

1. About March 29, 1995, Cheryl A. Mekschun, Personnel Manager, University of Wisconsin-Madison ("UW-Madison") received a request from Annette Condron to reclass the Housing Cook 2 staff, including appellant, to the Food Production Assistant 3 classification.

2. By memorandum dated December 5, 1995, addressed to each Housing Cook 2 staff member, including appellant, Tamara Bailey, Personnel Specialist, Classified Personnel Office, UW-Madison, wrote that their positions were reviewed and determined to be appropriately classified at their current level and included the following statement: "If you wish to appeal this decision to the Personnel Board, you must do so in writing, within 30 days of your receipt of this memo."

3. By memorandum dated January 2, 1996, Cheryl Mekschun, Housing Personnel Office, UW-Madison, sent a copy of the reclassification denial to appellant and advised her as follows:

Please note the appeal process in Tamara Bailey's memo. Should you have any questions, please call me or Tamara Bailey at 2-3259.

4. Appellant never contacted Mekschun or Bailey, but subsequently, at the "suggestion" of some unidentified person at work or at the Department of Employment Relations (DER), she sent a letter to Cornell Johnson, a Classification Analyst at DER, seeking to appeal the reclass denial. The letter bears a date stamp indicating it was received by DER on February 5, 1996. In written response, Johnson advised appellant, "If it is your desire to have the decision reviewed, you must file an appeal with the Personnel Commission at 131 West Wilson Street, Madison, WI 53702." Ms. Johnson's letter was not dated.

5. On February 13, 1996, appellant hand-delivered her appeal to the Commission, which included a packet of documents. The cover note provided: "Despite that Ms. Mekshun's memo is dated 1/2, our building did not open till 1/6--I received this on 1/10 so we should still be within our time limits. Please call me with any questions."

Respondent argues that appellant failed to file her appeal in a timely manner as required by §230.44(3), Wis. Stats., which provides for filing such appeals "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..." In support, respondent accepts appellant's statement that she received the notice of reclassification denial on January 10, 1996; claims that appellant was informed in her notice of denial of her appeal rights and 30 day time requirement, although it misidentified the agency to receive the appeal as the State Personnel Board; and contends that appellant filed her appeal with the Commission 4 days late, on February 13, 1996.

In reply appellant writes:

I again state that my appeal was filed in a timely manner, although to the wrong agency. The DER does do reveiws [sic] of classifacations [sic], and this is where my misunderstanding with the person I spoke to came in. I though [sic] a reveiw [sic] and an appeal were the same thing. As for why I did not contact Cheryl Mekshun [Personnel Manager, Division of Housing, UW-Madison] or Tamara Baily [Personnel Specialist, UW-Madison], neither person is easy to get a hold of. My position does not give me time to make many phone calls. As I knew I was nearing my deadline I took the suggestion to call D.E.R. At this time I do not recall who I spoke to either at work, or, at the D.E.R. however, I would like to point out that Ms. Snowden, who is trained in la,w [sic] felt no need to file an objection to my appeal within her time limits of 15 days after notification. I would also like to state that I am filing this appeal on behalf of all cook 2s in housing, and that these people should not lose their right to appeal because of my mistake. Therefore I request that you allow the appeal to stand.

The Commission has the authority to hear appeals of reclassification decisions under §230.44(1)(b), Wis. Stats. The time limit for filing such appeals is set out in §230.44(3), Stats., which provides in pertinent part:

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 . . . .

The Commission has consistently held the language "may not be heard" in this provision to be mandatory. Richter v. DP, 78-261-PC, 1/30/79. Therefore, in this instance, appellant was required to file her appeal with the Commission by February 9, 1996. It is undisputed that she filed her appeal four days later.<sup>1</sup> Appellant's only rejoinder is that she "took the suggestion to call D.E.R. [Department of Employment Relations]" from someone she spoke to "either at work or at the D.E.R."

This assertion is too adumbrative to establish a claim of equitable estoppel. See Mergon v. UW & DER, Case No. 91-0247-PC (11/13/92) where it cites Porter v. DOT, 78-0154-PC (5/14/79); affirmed, DOT v. Pers. Commn., Dane Co. Cir. Ct., 79CV3420 (3/24/80). Appellant acknowledges that she was advised to contact Personnel Manager Mekschun or Personnel Specialist Bailey of respondent's staff if she had questions about the reclassification denial. Instead, appellant followed the "suggestion" of some unidentified person at work or at DER, causing her to file her appeal with DER. Also, appellant never claims she was misdirected by Ms. Bailey's incorrect reference to the "Personnel Board" or that she had insufficient time to submit a timely appeal after receiving Johnson's letter with the correct name and address of the Commission. Instead, her only rejoinder is that she "file[d] this appeal on behalf of all Cook 2's in housing, and that these people should not lose their right to appeal because of my mistake."

Clearly, appellant has not met her burden of proving she filed a timely appeal with the Commission or that she justifiably relied on the conduct of respondents, causing her to fail to timely appeal this matter with the Commission.

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<sup>1</sup> February 9, 1996 was a Friday. The next office day at the Commission was Monday, February 12, 1996.

In terms of appellant's statement that she filed her appeal on behalf of all Cook 2's, the Commission has denominated Ms. Casper as the sole appellant since the original filing. No one other than the appellant signed the appeal letter. Therefore, the Commission will continue to identify Ms. Casper as the sole appellant.

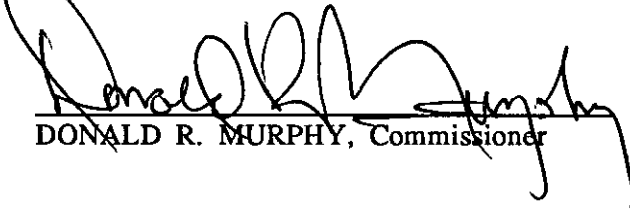
ORDER

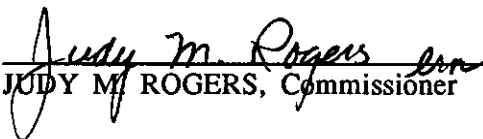
Respondent's motion is granted and this matter is dismissed as untimely filed.

Dated: June 28, 1996 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

DRM:rcr

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Jill Casper  
2210 Winnebago Street  
Madison, WI 53704

Katharine Lyall  
President, UW  
1720 Van Hise Hall  
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Jon Litscher  
Secretary, DER  
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P.O. Box 7855  
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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95