

STATE OF WISCONSIN

PERSONNEL COMMISSION

MICHAEL W. COENEN,
Appellant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN-MADISON,**
Respondent.

**RULING ON MOTION
TO DISMISS**

Case No. 99-0039-PC

This is an appeal of a non-selection decision. On June 4, 1999, respondent filed a motion to dismiss for untimely filing. The parties were permitted to brief the motion, and the schedule for doing so was completed on June 23, 1999. The following findings are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

1. In January of 1999, appellant applied for and was interviewed for the position of Steamfitter-Journey at respondent's Charter Street Heating and Chilling Plant. In a letter dated March 4, 1999, appellant was informed that he had not been selected for this position.

2. In his letter of appeal, appellant characterized what occurred next as follows:

When I found out who was hired, I called the Facilities Planning and Management Personnel Department and asked under the open records law for all pertinent information to justify this hire, resumes, interview notes, etc. I was told to make my request in writing, which I did. It took several weeks for a response. The information confirmed my belief that the person hired was not qualified. The slow response is the reason for tardiness of this appeal.

3. Respondent did not advise appellant of his appeal rights in either the non-selection letter or in his first phone contact with respondent after learning the identity of the successful candidate. After appellant received the response to his open records request in a letter dated April 13, 1999, he again telephoned respondent to challenge the selection, and was advised by respondent at that time of his right to appeal the non-selection decision to the Commission.

4. Appellant filed this appeal on April 23, 1999.

Section 230.44(3), Stats., provides that an appeal such as this one 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.” Here, the operative date is March 4, 1999, the date that appellant was notified that he was not the successful candidate for the subject position, and the date on or before which this non-selection was effective. See, *Cozzens-Ellis v. UW*, 87-0085-PC, 9/26/88, aff’d *Cozzens-Ellis v. Wis. Pers. Comm.*, 88CV5743 (Dane Co. Circ. Ct., 4/17/89), aff’d *Cozzens-Ellis v. Wis. Pers. Comm.*, 155 Wis. 2d 271, 455 N.W.2d 246 (Ct. App. 1990); *Marquardt v. DPI*, 90-0349-PC, 1/11/91. Since appellant did not file his appeal until April 23, 1999, more than 30 days after March 4, 1999, it must be concluded that appellant failed to satisfy the 30-day filing requirement.

Appellant contends that the filing period should be tolled here. First, appellant argues that he was not aware of his appeal rights to the Commission or the 30-day filing period. However, the Commission has consistently held that lack of knowledge of the law does not toll a filing period. *Hallman v. WCC & DOA*, 96-0146-PC, 2/12/97. Next, appellant argues that respondent had an affirmative duty to notify him of his appeal rights upon notifying him of his non-selection and respondent’s failure to do so should toll the filing period. However, the Commission has held that an appointing authority has no obligation to inform an unsuccessful candidate of his or her right to appeal to the Commission. *Bong & Seeman v. DILHR & DP*, 79-167-PC, 11/8/79. Finally, appellant appears to be arguing that respondent’s delay in replying to his open

records request prevented him from filing a timely appeal, and respondent should, as a result, be estopped from asserting that the 30-day filing period is a bar to this appeal. There is, however, no authority for the proposition that a filing period is tolled pending a response to a related open records request. In order to demonstrate that equitable estoppel should be applied against respondent here, appellant would have to set forth some basis for concluding that respondent engaged in fraud or a manifest abuse of discretion. *See, Ferguson v. DOJ & DP*, 80-245-PC, 7/22/81. Since, as concluded above, respondent was under no obligation to provide information to appellant about his appeal rights, respondent's failure to do so does not meet this standard. Appellant does not allege that respondent provided false information about his appeal rights or otherwise misled him. It is concluded that the filing period should not be tolled, nor equitable estoppel applied against respondent, under the circumstances present here.

CONCLUSIONS OF LAW

1. Appellant has the burden to show that his appeal was timely filed.
2. Appellant has failed to sustain this burden.


ORDER

This appeal is dismissed for untimely filing.

Dated: July 14, 1999

LRM: 990039Adec1

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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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