

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**TERRY KLINE**, Appellant,

vs.

**President, UNIVERSITY OF WISCONSIN SYSTEM** and  
**Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondents.

Case 6  
No. 63202  
PA(der) - 84

**Decision No. 30818**

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**Appearances:**

**Terry Kline**, P.O. Box 260373, Madison, Wisconsin 53726-0373, appearing on his own behalf.

**John C. Dowling**, Senior University Legal Counsel, University of Wisconsin-Madison, 361 Bascom Hall, 500 Lincoln Drive, Madison, Wisconsin 53706-1380, appearing for the University of Wisconsin and the Office of State Employment Relations.

**ORDER GRANTING MOTION TO DISMISS**

Respondent filed a motion to dismiss this matter as untimely filed. The parties have had an opportunity to file written arguments and the following findings are undisputed.

**FINDINGS OF FACT**

1. Respondent University of Wisconsin System (UW) employs the Appellant at the University of Wisconsin-Madison Memorial Union.
2. By letter dated July 2, 2002, UW hired Aduino Araujo to the position of Audiovisual Services Assistant (50%) with the UW-Madison Wisconsin Union Facility Support, effective July 8, 2002.

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3. By letter to the Commission received on October 6, 2003, Appellant wrote, in part:

This is an official complaint to the Personnel Commission in regards to the work title and misrepresentation of the position held by Terry Kline as a “limited term employee” of the Wisconsin Union. . . . The [Memorial] Union’s recent decision to call Mr. Kline an Audio-visual services assistant does not reflect his years of service as a sound engineer. . . . [A] recent legislative classification of limited term employees in the building placed a custodian in the newly created audio-visual services assistant position. . . . Mr. Kline’s work has included all facets of a/v set up and at least half-time state classification is requested as resol[ution].

4. By letter dated October 15, 2003, the Commission informed Appellant:

The Wisconsin Employment Relations Commission has recently received correspondence signed by you and by two union stewards relating to the classification of your position at the Wisconsin Union. The circumstances underlying the letter are not entirely clear.

Certain decisions made by or delegated by the Director of the Office of State Employment Relations can be appealed to the Commission pursuant to §230.44(1)(b), Stats. This includes reallocation decisions and final decisions denying reclassification requests. However an agency’s decision to assign work is, under nearly all circumstances, not reviewable under §230.44.

If you are seeking to file an appeal under §230.44(1)(b), there is a \$50 filing fee that must be paid [or a hardship affidavit filed] before any other action may be taken by the Commission.

5. Appellant subsequently submitted a signed hardship affidavit.

**CONCLUSION OF LAW**

1. The Appellant has the burden of establishing that his appeal was timely filed. LAWRENCE & WERMUTH V. DER, 94-0443-PC, 1/20/95
2. The Appellant has failed to sustain that burden.
3. The appeal is untimely.

**OPINION**

The time limit for filing an appeal under §230.44(1), Stats., is established in §230.44(3):

An 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 Appellant has not clearly articulated the personnel action he seeks to appeal. Respondent has construed the appeal as follows:

This is apparently an attempt to appeal a personnel action pursuant to s. 230.44(1)(d), Wis. Stats. The Appellant, an LTE in the Wisconsin Union, complains that he was not chosen for a conversion to an FTE position as an Audiovisual Services Assistant. Mr. Adatao Arajo, also an LTE employee in the Wisconsin Union, was hired into the FTE position effective July 8, 2002. . . . The Appellant was orally notified that he was not selected for the FTE position at about this same time.

To the extent the Appellant is seeking review of the decision not to hire him into the FTE position, his appeal was filed nearly 15 months after Mr. Arajo began working in that position. Appellant does not dispute that he was notified of the non-selection decision about the same time Mr. Arajo was hired. Any appeal under §230.44(1)(d), Stats., of the non-selection decision is clearly beyond the 30 day time limit.

The fact that the Appellant filed a hardship affidavit in response to the Commission's October 15<sup>th</sup> letter and to satisfy the filing fee requirement found in §230.45(3), Stats., 1/ suggests he was seeking to appeal a decision attributable to the Director of the Office of State Employment Relations (OSER) under §230.44(1)(b), Stats. To the extent the Appellant is seeking to review a decision by OSER establishing a classification for a particular position, his appeal would still be subject to the 30 day filing requirement. There is nothing in the materials in the case file suggesting a civil service classification decision was made within 30 days of the October 6, 2003, filing date.

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*1/ The filing fee also applies to appeals filed under §§230.44(1)(a) and 230.45(1)(c) and (e). None of these provisions apply to the subject of this appeal.*

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Because the Appellant has failed to sustain his burden of establishing the timeliness of his appeal, it must be dismissed.

**ORDER**

This matter is dismissed as untimely filed.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of March, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/  
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Judith Neumann, Chair

Paul Gordon /s/  
\_\_\_\_\_  
Paul Gordon, Commissioner

Susan J. M. Bauman /s/  
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Susan J. M. Bauman, Commissioner

Parties:

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