

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**GERALD F. SCHNEIDER**, Appellant,  
v.  
**Director, OFFICE OF STATE EMPLOYMENT RELATIONS**, Respondent.

Case 766  
No. 66268  
PA(der)-197

**Decision No. 31903**

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**Appearances:**

**Gerald F. Schneider**, appearing on his own behalf.

**David Vergeront**, Legal Counsel, P. O. Box 7855, Madison, WI 53707-7855, appearing on behalf of the Office of State Employment Relations.

**ORDER GRANTING MOTION TO DISMISS**

This matter, which arises from the decision to reallocate the Appellant's position to Facilities Repair Worker – Advanced, rather than Facilities Maintenance Specialist - Advanced, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The final written argument was filed on October 26, 2006.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**FINDINGS OF FACT**

1. Effective June 25, 2006, Respondent reallocated Mr. Schneider's position to Facilities Repair Worker – Advanced.
2. Appellant was notified of the reallocation decision by written notice that was supplied to him along with his paycheck for July 20, 2006. Mr. Schneider received the notice no later than July 21, 2006.
3. Appellant submitted appeal materials to the Commission where they were received on August 29, 2006.

Dec. No. 31903

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

**CONCLUSIONS OF LAW**

1. The Appellant has the burden of establishing that his appeal was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.
2. The Appellant has failed to sustain that burden.
3. The appeal is untimely.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**<sup>1</sup>

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

Given under our hands and seal at the City of Madison, Wisconsin, this 8<sup>th</sup> day of November, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/  
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Judith Neumann, Chair

Paul Gordon /s/  
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Paul Gordon, Commissioner

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

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<sup>1</sup> Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

OSER (Schneider)

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

The issue in this matter is whether Mr. Schneider complied with the time limit for filing a State classified service personnel appeal. That time limit is found in Sec. 230.44(3), Stats., which reads, in 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 term “filed” in this subsection requires physical receipt by the Commission rather than merely placing the appeal in the mail.

Mr. Schneider does not dispute that the classification action that is the subject of this appeal was effective on June 25, 2006 and that by July 21, 2006, he had received written notification of the transaction. The 30<sup>th</sup> day after July 21 was Sunday, August 20, 2006. Pursuant to Sec. 990.001(4)(b), Stats., Mr. Schneider had until Monday, August 21 to file his appeal with the Commission. The Commission did not receive his appeal until August 29, 2006, so it must be considered untimely.

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of November, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner