

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TERESA M. ZNIDARSICH, Appellant,

v.

Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 771
No. 66325
PA(der)-203

Decision No. 31951-A

Appearances:

Emily J. Johnson, Betsy L. Morgan, and Teresa M. Znidarsich, appearing on Appellant's behalf.¹

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

ORDER DENYING APPELLANT'S PETITION FOR REHEARING

The appeal underlying the petition for rehearing arose from Respondent's decision to reallocate Appellant's position to the classification of University Services Associate 2, rather than some other classification. The appeal was filed with the Wisconsin Employment Relations Commission on September 19, 2006. On October 12, 2006, Respondent filed a motion to dismiss, asserting that the appeal had not been filed within the 30-day period set forth in Sec. 230.44(3), Stats. By order dated December 12, 2006,² the Commission granted the Respondent's motion to dismiss. Appellant filed a petition for rehearing on December 22, 2006. The Respondent filed a response to the petition on December 29, 2006.

Pursuant to Sec. 227.49(3), Stats., petitions for rehearing in contested cases are to be granted only in cases where it is shown that the underlying order was premised on a material error of law or fact or that new evidence has been discovered that is sufficiently strong to reverse or modify the order, which evidence could not have been previously discovered by due diligence. The Commission has reviewed the petition and concludes that the criteria set forth in Sec. 227.49(3), Stats., have not been met. Thus, the petition for rehearing must be denied.

The petition outlines several ways in which the Appellant believes the 30-day time limit was waived in the present case. First, the Appellant relies on *STERN V. STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT*, 2006 WI APP 193 (2006). While it is true that Stern holds that an opposing party may waive the right to assert that an appeal was filed in an

¹ Ms. Johnson and Ms. Morgan filed this appeal on behalf of Ms. Znidarsich, who is the incumbent in the position at issue.

² Decision No. 31951.

untimely fashion, the Respondent in the present case clearly did not do so. On the contrary, the Respondent promptly objected to the appeal and did so specifically on the basis of timeliness.

The petition also asserts that the Commission could have waived the deadline for filing the appeal in the same manner that it waived deadlines for filing briefs in *ORIEDO v. DPI*, CASE NO. 98-0042-PC-ER (PERS. COMM. 6/2/99) and *MUELLER v. DOT & DER*, CASE NO. 93-0109-PC (PERS. COMM. 2/27/97). Although the Commission does have the authority to establish – and therefore alter – briefing schedules in personnel appeals, PC 1.09, Wis. Admin. Code, it does not have the same authority with respect to the 30-day, statutory time limit for filing an appeal. As we pointed out in our order granting the motion to dismiss in this matter, the time limit set forth in 230.44(3), Stats., is mandatory, not discretionary, *RUNDE v. DMRS*, CASE NO. 97-0088-PC (PERS. COMM. 12/17/97), and the Commission cannot set it aside.

For the same reason, the Commission could not have set aside the filing deadline, even if it were persuaded that, as the Appellant argues, no prejudice would result from having done so. Further, the Commission could not have found that a waiver of the deadline resulted from the Appellant's unsuccessful effort to locate instructions regarding how to extend said deadline. The Appellant's independently formulated, incorrect belief that such an option existed, did not have any impact on the statutory deadline.³

Based upon the above conclusion, the Commission makes and issues the following

ORDER⁴

Appellant's petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of January, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

³ Our holding here and in our December 12th Order rests, in part, on our understanding that the respondent-agency had no responsibility for any confusion or misunderstanding developed by the Appellant. While an agency may, under certain circumstances, be equitably estopped from raising a timeliness objection, there is no indication that Respondent misled the Appellant regarding her appeal rights so equitable estoppel does not lie. *DOT (SOMERVILLE)*, DEC. NO. 31685 (WERC, 6/2006).

⁴ Upon 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.

Susan J. M. Bauman, Commissioner