

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**LAURA KWART MOORE**, Appellant,

v.

**Attorney General, WISCONSIN DEPARTMENT OF JUSTICE**, Respondent

Case 1  
No. 67507  
PA(sel)-49

**Decision No. 32351**

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**Appearances:**

**Laura Kwart Moore**, appearing on her own behalf.

**Jennifer Sloan Lattis**, Assistant Attorney General, P. O. Box 7857, Madison, Wisconsin, 53707-7857, appearing on behalf of the Department of Justice.

**ORDER GRANTING MOTION TO DISMISS**

This matter, which arises from the withdrawal of an offer of employment, is before the Wisconsin Employment Relations Commission (the Commission) on Respondent's motion to dismiss the appeal as untimely filed. The final date for submitting written arguments was January 28, 2008.

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

**FINDINGS OF FACT**

1. In approximately 2003, Laura Kwart Moore (Appellant) left her employment as a forensic scientist with Respondent's Wisconsin State Crime Laboratory in Milwaukee. She spent the next three years with her family. She returned to employment at the crime lab in 2006 as a limited term employee (LTE) but continued to seek permanent part-time employment with the lab.

2. On April 2, 2007, Respondent offered Appellant employment in a permanent part-time position.

3. As a consequence of a difference of opinion relating to the rate of pay, Respondent withdrew the employment offer on April 16 and notified Appellant of the decision. Respondent also notified her that her LTE employment was being terminated.

4. Appellant subsequently contacted DOJ administrators, a legislator, and the Office of State Employment Relations about what had occurred.

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5. On November 27, 2007, Appellant first emailed the Commission to appeal Respondent's April decision to withdraw the employment offer. Appellant also sent appeal documents to the Commission via regular mail that reached the Commission on November 29, 2007.

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 her 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 11<sup>th</sup> day of February, 2008.

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

<sup>1</sup> 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.

**DOJ (Kwart Moore)**

**MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS**

The issue in this matter is whether Ms. Kwart Moore 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. For example, if an appellant uses an incorrect address on the letter of appeal, the timeliness determination is still based on when it reaches the Commission. The fact that an appellant may have acted reasonably in terms of when or how s/he submitted an appeal does not satisfy the statutory filing period. UNIVERSITY OF WISCONSIN (ELMER), DEC. NO. 30910 (WERC, 5/04).

The action that is the subject of this appeal, i.e. the decision to withdraw a previous offer to employ Appellant in a permanent part-time position, was effective April 16, 2007, and there is no dispute that the Appellant received notice of the decision on the same date. Ms. Kwart Moore emailed the Commission on November 27 and we received a hard copy via regular mail on November 29. Both dates are well outside the 30-day period.

Ms. Kwart Moore has the burden of establishing that her appeal was timely filed. UW & OSER (KLINE), DEC. NO. 30818 (WERC, 3/04). She contends that she “made every effort to have this issue resolved in a timely [manner],” first by contacting administrators with the Department of Justice: “Gary Hamblin, Administrator of the Division of Law Enforcement, . . . and Gary Martinelli, Director of Human Resources met with me a week later at which time I formally appealed [the] decision to withdraw my offer of employment.” She later contacted a legislator’s office which, in turn, contacted the Office of State Employment Relations. As already noted, merely making an effort does not satisfy the statutory time limit.

Even if Ms. Kwart Moore gave some sort of letter of appeal to Hamblin and Martinelli during their meeting in April, those documents never reached the Commission and the agency’s response was still more than 30 days before Appellant contacted the Commission.<sup>2</sup>

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<sup>2</sup> According to one of the attachments to the Appellant’s submission to the Commission:, she met with Mr. Hamblin and Mr. Martinelli the week after the lab director, Jana Champion, withdrew the employment offer:

[Hamblin and Martinelli] told me that they didn’t have any knowledge of what had happened and would need to speak to Jana Champion. . . . I waited another week before contacting Gary Martinelli again. He told me that they still had not talked to Jana Champion. Then the next day, Gary Martinelli called to inform me that they had finally spoken to Jana Champion and if she thought that I had a bad attitude, then she had every right to deny me the permanent position.

If Ms. Champion first advised Appellant on April 16 of the decision to withdraw the employment offer, Martinelli told Appellant by early May that Champion had “every right” to deny her the permanent position. Appellant did not file her appeal with the Commission within 30 days of the conversation in early May.



Under certain circumstances, conduct by the employing agency that causes reasonable reliance by an appellant to her detriment may serve as the basis for estopping a respondent from claiming an appeal was untimely filed. DOC (BIGGAR), DEC. NO. 31388 (WERC, 7/05), citing AUSTIN-ERICKSON V. DHFS & DER, CASE NO. 97-0113-PC (PERS. COMM. 2/25/98). Here, the Appellant has not invoked the estoppel theory to justify her filing delay: Kwart Moore has not argued that someone at DOJ told her to hold off filing with the Commission until she received a written report from the agency or until some other action had occurred.

Because the appeal was filed outside of the 30-day statutory period, Respondent's motion must be granted and the appeal must be dismissed as untimely filed.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of February, 2008.

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