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September 12, 2013

To:

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Circuit Court Judge
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David C. Turkiewicz
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You are hereby notified that the Court has entered the following opinion and order:

2012AP460

David C. Turkiewicz v. Labor and Industry Review Commission
(L.C. # 2011CV905)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

David Turkiewicz, pro se, appeals an order dismissing his complaint seeking judicial review of four Labor and Industry Review Commission decisions concerning Turkiewicz's unemployment insurance claim. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2011-12).¹

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Turkiewicz filed a claim for unemployment insurance benefits. The Department of Workforce Development (“DWD”) issued four separate initial determinations and mailed them to Turkiewicz’s last known address. Turkiewicz filed an untimely appeal of the initial determinations, indicating he had not received the determinations in the mail. After a hearing, an administrative law judge determined that the late filing of Turkiewicz’s appeal was not beyond his control but, rather, was the result of arrangements Turkiewicz made for his mail during a temporary relocation to Texas.

Turkiewicz appealed the ALJ’s determinations to the commission. In decisions dated and mailed on September 30, 2011, the commission adopted and affirmed the ALJ’s determinations. Turkiewicz filed a summons and complaint in the circuit court on November 30, 2011. Upon the commission’s motion, the circuit court dismissed the complaint as untimely and this appeal follows.

Where a statute provides a direct method for judicial review of agency action, the method is generally exclusive. *Kegonsa Joint Sanitary Dist. v. City of Stoughton*, 87 Wis. 2d 131, 274 N.W.2d 598 (1979). Unless the statutory requirements are strictly complied with, a party seeking review cannot invoke the subject matter jurisdiction of the circuit court. *Cudahy v. Department of Revenue*, 66 Wis. 2d 253, 259, 224 N.W.2d 570 (1974). WISCONSIN STAT. § 108.09(7) requires that an action for judicial review of a commission decision be commenced “in accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party’s last-known address.” In turn, WIS. STAT. § 102.23(1)(a) provides:

Within 30 days after the date of an order or award made by the commission ... any party aggrieved thereby may by serving a complaint ... and filing the summons and complaint with the clerk

of the circuit court commence, in circuit court, an action against the commission for the review of the order or award

Here, the deadline for commencing Turkiewicz's action was October 31, 2011.² On October 28, 2011, Turkiewicz sent three letters to DWD expressing his disagreement with its four initial determinations. The letters were forwarded to the commission. On November 7, 2011, the commission sent correspondence informing Turkiewicz that while it appeared he was attempting to appeal the commission's decisions, it did not appear that he had filed an action in the circuit court. The commission indicated it would take no further action on the matters and directed Turkiewicz's attention to the information about appeal rights that had originally been provided with the commission's decisions. Turkiewicz did not file his summons and complaint until sixty-one days after the commission's decisions.

WISCONSIN STAT. § 102.23(1)(a) give the circuit court discretion to grant an additional thirty days for filing a summons and complaint if it "is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order." The court determined there was no basis to grant an additional thirty days, noting there was no specific allegation of an exceptional delay in receipt of the commission's decisions. In fact, at the hearing on the commission's motion to dismiss, Turkiewicz indicated that he received the decisions "[p]robably three to five days after they were mailed." Moreover, the summons and complaint would have been untimely even if thirty days had been added to the deadline.

² The thirtieth day was Sunday, October 30, 2011, making the deadline Monday, October 31, 2011. *See* WIS. STAT. § 990.001(4)(b).

Because Turkiewicz failed to timely commence his action, the circuit court properly dismissed the complaint.³

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

³ We do not discuss the alternate arguments advanced by Turkiewicz. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (only dispositive issues need be addressed).