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**DISTRICT I**

October 8, 2024

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2023AP373

Cheryle Carlson v. Labor and Industry Review Commission  
(L.C. # 2022CV7273)

Before White, C.J., Geenen and Colón, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Cheryle Carlson, *pro se*, appeals an order dismissing her action for judicial review of an unemployment insurance decision of the Labor and Industry Review Commission (“the commission”). The circuit court found that Carlson failed to serve an authenticated summons and complaint on the commission within the statutory deadline. Based upon a review of the

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> We summarily affirm.

The commission denied Carlson unemployment insurance in a decision dated October 13, 2022, and mailed a copy of its decision to her that same day. An enclosure included with the decision provided an explanation of Carlson’s appeal rights and instructions for pursuing an appeal of the commission’s decision. Specifically, the enclosure stated that an appellant must file a summons and complaint in circuit court within thirty days from the date of the commission’s decision and that the appellant must serve authenticated copies of the summons and complaint upon the commission within that same thirty-day period. The enclosure further stated, in bolded text: “If the authenticated pleadings are mailed to the commission, service will only be effective if they are actually received by the commission within the appeal period (30 days). It is not sufficient for the appeal to be postmarked by the due date.”

Carlson filed the summons and complaint in the circuit court on November 14, 2022, the last day of the thirty-day deadline.<sup>2</sup> However, Carlson did not serve copies of the authenticated summons and complaint upon the commission until two weeks later, when the commission received them via certified mail on November 28, 2022, forty-six days after the decision. The envelope in which the commission received the authenticated summons and complaint was postmarked November 23, 2022, nine days after the thirty-day deadline. The commission moved to dismiss the circuit court action on the ground that Carlson served the commission after the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

<sup>2</sup> The thirtieth day after the commission’s decision fell on Saturday, November 12, 2022. In accordance with WIS. STAT. § 990.001(4)(c), that meant that Carlson had until Monday, November 14, 2022, to file and serve her summons and complaint.

thirty-day service deadline had passed. Following a hearing, the circuit court granted the commission's motion. Carlson then submitted a letter to the court "objecting to this decision." The circuit court held another hearing to clarify the nature of Carlson's objection, but ultimately maintained its decision to dismiss on the ground that Carlson failed to timely serve the commission as required by statute. This appeal follows.

Judicial review of the commission's unemployment insurance decision is governed by WIS. STAT. § 108.09(7). The statute required Carlson both to file a summons and complaint in circuit court and to serve those pleadings on the commission within thirty days of the October 13, 2022 decision. *See* § 108.09(7)(c). A party seeking judicial review must comply with § 108.09(7), because that statute is the "exclusive statutory scheme" for commencing the action. *DWD v. LIRC*, 2016 WI App 21, ¶4, 367 Wis. 2d 609, 877 N.W.2d 620 (citation omitted).

The Wisconsin Administrative Code makes clear that service on the commission by mail "is effective only if the pleadings are actually received by the commission within the appeal period." WIS. ADMIN. CODE § LIRC 1.14. Carlson served the commission by mail with her summons and complaint. That is a permissible form of service, but it is effective only if the commission receives the pleadings within the thirty-day period allowed by WIS. STAT. § 108.09(7). *Schiller v. DILHR*, 103 Wis. 2d 353, 355-56, 309 N.W.2d 5 (Ct. App. 1981). Here, the commission did not receive the pleadings within the statutory deadline.

The circuit court lacks competency to proceed when the party seeking judicial review of the commission's decision fails to comply with a statutory requirement. *Brandt v. LIRC*, 166 Wis. 2d 623, 627, 634-35, 480 N.W.2d 494 (1992). Thus, WIS. STAT. § 108.09(7)(a) provides that "[i]f a plaintiff fails to ... serve the commission as required by this subsection, the court shall

dismiss the action.” We acknowledge that dismissal denies Carlson the opportunity for judicial review and therefore leads to a harsh result. “The cases are clear, however, that the statutory procedures must be strictly followed.... ‘Uniformity, consistency, and compliance with procedural rules are important aspects of the administration of justice.’” *Gomez v. LIRC*, 153 Wis. 2d 686, 693, 451 N.W.2d 475 (Ct. App. 1989) (citations omitted).

The bulk of Carlson’s arguments to this court challenge the factual basis for the commission’s decision. Carlson faults what she contends is “ambiguity” in the decision as the reason for her delay in filing the authenticated summons and complaint, stating that certain parts of the decision were confusing and took time for her to understand. While parts of the commission’s decision may have been confusing, the confusion did not prevent Carlson from filing a summons and complaint in the circuit court within the statutorily-prescribed deadline. Her argument does not explain why an authenticated summons and complaint was served on the commission two weeks later.

Carlson also claims that she mailed an authenticated summons and complaint to the commission on November 14, 2022; however, the record belies Carlson’s claim. The commission received the authenticated summons and complaint in an envelope postmarked November 23, 2024, which was well after the statutory deadline. Moreover, even if Carlson’s claim was true, both the Wisconsin Administrative Code and the appeal instructions provided to Carlson clearly state that service upon the commission is only effectuated upon *receipt* of the authenticated summons and complaint within the relevant thirty-day period. Postmark dates are insufficient to effectuate service.

To the extent that Carlson contends that various other factors, including problems with the postal system and the COVID-19 pandemic, affected her ability to timely effectuate service on the commission, we conclude that those arguments are without merit and are not supported by the record.

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*