

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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 *
 WILLIAM C. GOEHRING, *
 *
 Appellant, *
 *
 v. *
 *
 DEPUTY DIRECTOR, Bureau of Personnel *
 and SECRETARY, Department of Health *
 and Social Services, *
 *
 Respondents. *
 *
 Case No. 74-128 & 75-227 *
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 * * * * *

OFFICIAL

OPINION
AND
ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

ORDER

This matter is before the Board on a motion to dismiss for failure of prosecution. The following Findings of Fact are based on material on file with the Board. The Board has reviewed the entire file.

FINDINGS OF FACT

1. On February 23, 1977, the Board entered an order that these cases be consolidated for hearing following appellant's request for separate hearings.
2. This order was mailed on February 23, 1977, to the appellant at Route #1, Random Lake, Wisconsin, 53705, the address used by appellant throughout these appeals.
3. A notice scheduling both these appeals for hearing on October 28, 1977, was mailed to the appellant on July 18, 1977.
4. On August 11, 1977, the respondent sent the appellant a list of witnesses for the October 28, 1977, hearing.

5. On October 20, 1977, appellant sent a letter to Attorney Anderson of the Board staff, received October 24, 1977, stating that he did not plan to attend the hearing scheduled for October 28, 1977, for the following reasons:

1. When the appeal date was scheduled, I questioned you regarding the consolidation of the two cases. I told you that I was unsure as to whether I had received a final notice regarding a decision on it. You told me that if a decision was rendered you would see that a copy of the decision was sent to me. You also stated that if a decision had been rendered and it appeared a notice had been mailed you would see that an additional notice was sent. I have as yet to receive a copy of this decision. As you know I do not agree with the consolidation of the cases.
2. Because reorganization has not fully come to pass the hearing of the issue at this time may be pointless. As originally mentioned when I talked with you about setting up a date, I expressed the opinion that depending upon certain results of reorganization I might drop the appeal.

Therefore please be informed that I do not plan to attend the appeal 10/28/77. I ask that I be provided with the information requested. I also ask that it be rescheduled for some time in early 1978."

6. By a letter to the appellant dated October 24, 1977, Attorney Anderson denied the request for a postponement and enclosed another copy of the February 23, 1977, Personnel Board decision and a copy of the affidavit of mailing of that opinion.

7. The appellant failed to appear at the hearing on October 28, 1977, and the respondent moved to dismiss for lack of prosecution.

CONCLUSION OF LAW

1. The appellant has failed to prosecute these appeals and is in default. See § 227.07(5), Wis. stats.

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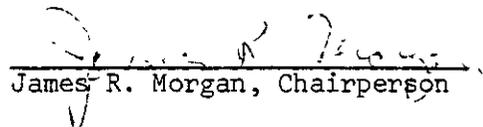
OPINION

The Board's affidavit of mailing reflects that the February 23, 1977, decision regarding the consolidation of these cases was mailed to the appellant at his correct address. The appellant indicates that he never received a copy of this decision until Ms. Anderson sent him one on October 24, 1977. Nevertheless, he knew these appeals were scheduled for a consolidated hearing because of the notice of hearing provided by the Board and the notice of witnesses provided by the respondent. The order consolidating the appeals for hearing was not appealable in any event. The appellant did not submit a request for postponement of the hearing until 8 days before the scheduled date. For all these reasons the Board is of the opinion that the appellant is in default and the appeal should be dismissed accordingly.

ORDER

The motion to dismiss for lack of prosecution is granted and this appeal is dismissed.

Dated: April 11, 1978 STATE PERSONNEL BOARD


James R. Morgan, Chairperson