

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 SARA SHULTIS, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES \*  
 and Administrator, DIVISION \*  
 OF PERSONNEL, \*  
 \*  
                   Respondents. \*  
 \*  
 Case No. 81-79-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(b), Wis. Stats., of a reclassification decision. On August 31, 1982, respondent filed a motion to dismiss this appeal on the basis of appellant's failure to appear on the date scheduled for hearing the appeal. Appellant has requested a continuance of that hearing date. Pursuant to an October 15, 1982, order of the Personnel Commission, an evidentiary hearing was conducted on February 1, 1983.

FINDINGS OF FACT

1. This appeal of a reclassification decision was filed with the Personnel Commission on March 16, 1981.

2. A prehearing conference was originally scheduled for April 29, 1981, but was postponed at the request of the appellant and eventually held on May 13, 1981. Appellant was represented at the prehearing conference and thereafter until January 3, 1983, by Martin Beil, president of AFSCME Council 24, WSEU.

3. At the prehearing conference, the parties agreed to scheduling a hearing on the merits for July 21, 1981. This hearing was postponed and rescheduled for October 2, 1981. By mutual agreement of the parties and due to the possibility of settlement, the October 2, 1981, hearing was indefinitely postponed but the Personnel Commission required that appellant's representative contact the Personnel Commission on or before November 29, 1981, regarding appellant's intentions to proceed. On December 4, 1981, the Personnel Commission had not yet been contacted by appellant's representative and on that date provided appellant's representative with an additional 20 days to advise the Commission of the current status of the appeal. Appellant's representative did not contact the Commission within this 20-day period and on February 12, 1982, the Commission received a request from respondent to schedule a hearing at the earliest convenient date. On April 6, 1982, the Commission scheduled a hearing for July 1, 1982. On June 28, 1982, this hearing was postponed at the request of appellant's representative and rescheduled for August 30, 1982.

4. Appellant's representative did not submit copies of exhibits or names of witnesses (other than those listed in the prehearing conference report) or a request for letters of attendance prior to August 30, 1982.

5. On August 30, 1982, the Commission was advised by telephone by Tom King, executive director of AFSCME Council 24, WSEU, that Mr. Beil had the flu and could not appear for the hearing. Mr. King requested that the Commission grant a continuance and reschedule the hearing for a future date. Respondent's counsel did appear for the hearing and indicated that respondent was ready to proceed at that time. A decision was made by the

Commission's hearing examiner not to have the respondent present its case at that time. Ms. Shultis was in Madison on August 30, 1982, and was herself ready to proceed with the hearing at that time but did not contact the Commission on that date.

6. Mr. Beil reported to his place of employment on August 30, 1982, at 7:30 a.m. and worked continuously until 4:30 p.m. with only a 45 minute break for lunch. (See Resp. Exhibit 1A). He did not advise his supervisors that he was ill and was not on sick leave status on that date. He logged 23 business miles on that date.

7. There was no showing in the record of the hearing on the subject motion that Mr. Beil was, in fact, ill on August 30, 1982.

#### CONCLUSIONS OF LAW

1. This appeal is appropriately before the Commission pursuant to §230.44(1)(b), Wis. Stats.

2. Pursuant to §PC 3.02, Wis. Adm. Code, requests for continuances of hearing dates will be granted only if there is sufficient cause and substantial reason to do so.

4. Pursuant to §PC 3.04, Wis. Adm. Code, the Commission may consider a motion to dismiss by respondent as a result of appellant's failure to appear on the scheduled hearing date and without the necessity of respondent presenting its case on the merits.

5. The Commission concludes that the record of the hearing on the motion to dismiss does not support the granting of a continuance of the hearing date and does support the granting of the motion to dismiss the appeal.

OPINION

This case involves an appeal of a reclassification decision and was filed with the Personnel Commission on March 16, 1981. After numerous delays, a hearing on the merits was scheduled for August 30, 1982.

Appellant did not appear for the hearing and the reason offered was that appellant's representative, Martin Beil, was ill that day. However, the work log prepared by Mr. Beil and kept by his supervisor, (see Resp. Exhibit 1A) indicates that Mr. Beil worked a full day on August 30, 1982. In addition, Mr. Beil's supervisor's testimony at the hearing on the motion indicated that Mr. Beil did not advise his supervisor that he was ill that day and Mr. Beil was not on sick leave status that day.

Mr. Beil did not appear at the hearing on the motion to dismiss to offer testimony on the date of his health on August 30, 1982. Although he indicated that he would be out of the state on the day of the hearing on the motion, neither Mr. Beil nor appellant nor appellant's new representative requested a postponement of such hearing due to Mr. Beil's unavailability. Consequently, the record of the hearing on the motion does not include a showing that Mr. Beil was, in fact, ill on August 30, 1982. Such a showing would have been necessary to successfully rebut the presumptions created by the evidence of Mr. Beil's activities on August 30, 1982. The Commission has no choice but to conclude that appellant has not shown sufficient cause or substantial reason to justify granting the request for a continuance and that good cause did not exist for appellant's failure to appear on the August 30, 1982, hearing date.

The record of the hearing on the motion indicates that Ms. Shultis herself was in Madison and ready to proceed with the hearing on August 30, 1982. However, she never communicated this to the Commission. Mr. Beil

had been her representative since at least the date of the prehearing conference and the Commission had received no indication that Ms. Shultis wanted to proceed on her own on August 30, 1982.

Respondent also implied in the record of the hearing on the motion that the fact that appellant's representative had not submitted copies of documents or a list of additional witnesses in anticipation of the hearing on August 30, 1982, indicated that appellant had not had any intention to proceed on that date. Such a conclusion is not the only one that can be drawn from this fact, however, since the appellant's representative may have made a decision to present at the August 30, 1982, hearing only the testimony of those witnesses listed on the prehearing conference report.

ORDER

The motion to dismiss is granted, the request for a continuance of the hearing date is denied, and the appeal is dismissed.

Dated: March 17, 1983 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

LRM:jmf

James W. Phillips did not participate in the decision of this matter

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Parties:

Sara Shultis  
9354 W. Green View Ct.  
Milwaukee, WI 53224

Linda Reivitz, Secretary  
DHSS  
1 W. Wilson Street  
Madison, WI 53702

Charles Grapentine, Administrator  
DP, 149 E. Wilson Street  
Madison, WI 53702