

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MICHAEL F. CONLEY,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.
 Case No. 83-0075-PC

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INTERIM
ORDER

This matter is currently before the Commission on appellant's motion to reopen the hearing. Appellant's request was made after a proposed decision and order was issued and after oral arguments on the proposed decision had been scheduled.

In a letter to the Commission dated May 2, 1984, the appellant alleged that one of respondent's witnesses committed perjury during his testimony at the hearing:

Because of the act of Terry Regan, I wish to submit new evidence to the Commission that will show Mr. Regan's intent as to this Case # 83-0075-PC as to why my officer reclassification was not effective Jan. 8, 1981. I wish to present other evidence to the Commission that I was not granted this reclass until May 1983 because of harassment and retaliation because of a claim I made for Worker's Compensation Case # 83-CV-534 which is still pending.

Because of the above statements, I move for a reopening of Case No. 83-0075-PC so that the Commission can judge this case in a better respective.

The parties were provided until May 8, 1984, in which to submit any arguments regarding appellant's motion. On May 9, 1984, the Commission received a letter dated May 7th from counsel for the respondent, objecting to appellant's motion to reopen.

Appellant then asked the Commission to reject the respondent's objection because it was not received by May 8th. The appellant stated that had he known in time of respondent's objection, he "was prepared to drive to Madison to hand deliver [his] evidence to the Personnel Commission and to DHSS." In addition, the appellant cites § PC 2.01, Wis. Adm. Code, in support of his objection.

The appellant has failed to identify sufficient reasons for ignoring the respondent's objection. The cited provision of the administrative code (§PC 2.01) merely requires the parties to exchange witness lists and potential exhibits in advance of hearing and does not require the Commission to ignore untimely briefs or written arguments. The appellant's statement that he would have hand delivered his "evidence" to the Commission also fails to address the underlying question of whether the appellant has established a sufficient basis for reopening the hearing.

Regardless of whether or not the Commission considers respondent's written objection to the reopening of the appellant's hearing, the Commission should not reopen the present case. There are two references in Wisconsin's Administrative Procedure Act to reopening administrative hearings. The first, in §227.12, Stats., indicates that persons "aggrieved by a final order" may petition for a rehearing which will only be granted on the basis of a material error of law or fact or the discovery of new evidence "sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence." In addition after a final order has been appealed to circuit court, the court may order the hearing to be reopened where there has been a showing that "the additional evidence is material and there were good reasons for failure to present it in the proceedings before the agency." §227.19(1), Stats.

Although neither provision is specifically applicable to a motion to reopen made after a proposed decision and order has been issued, the Commission should apply a similar standard in considering appellant's request. In the present case, there has been no showing that new evidence had been discovered by the appellant which was not available or not reasonably discoverable at the time of the hearing. The appellant's request to reopen is based on a desire to present additional evidence as to why his reclassification was denied. The new evidence was apparently available at the time of the hearing but simply was not offered. Appellant was represented by competent counsel at the hearing. If the Commission would grant the appellant's request, hearings would be subjected to reopening at any time and for any reason. A tremendous additional expenditure of time and effort would result and the benefits of having an order for the presentation of evidence would be lost. Therefore, given the timing of the appellant's request, the nature of the proposed additional evidence and the lack of justification for reopening, appellant's motion must be denied.

ORDER

Appellant's motion to reopen is denied.

Dated: May 18, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

KMS:jmf


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILIGAN, Commissioner

Parties:

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