

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LUIS SALAZAR,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH & SOCIAL SERVICES

Respondent.

Case No. 84-0038-PC

* * * * *

DECISION
AND
ORDER

This matter is before the Commission on a motion by respondent to dismiss the appeal. The following facts appear to be undisputed. Neither party requested a hearing on the motion.

On February 23, 1984, appellant filed an appeal of a hiring decision made by respondent. On April 18, 1984, a prehearing conference was conducted by telephone conference call to which appellant was a party. The report of such conference prepared by the Commission's General Counsel indicates that the parties agreed to a hearing on June 7, 1984, at 9:00 a.m. and that appellant's witnesses at such hearing would be himself, the examiners and others to be named. In correspondence to the Commission dated April 27, 1984, appellant added 2 names to his witness list: Lupe Martinez, Executive Director, UMOS, Inc.; and Joseph Schlangen, Director of Monitoring and Evaluation, United Way of Greater Milwaukee. In a letter to appellant dated May 23, 1984, the hearing examiner appointed to hear this appeal indicated that evidence related to the written examination administered by the Department of Employment Relations to generate the list of certified applicants for the position which is the subject of the hiring

decision by respondent which forms the basis of this appeal was not deemed relevant to the issue under consideration.

As of June 6, 1984, the Commission had not received copies of exhibits the appellant intended to introduce at the hearing or the names of any additional witnesses he intended to call. The Commission's hearing examiner attempted to reach appellant twice by phone on June 6, 1984, to determine if he intended to appear at the scheduled hearing but, although she let the phone ring many times, there was no answer.

On the date and at the time scheduled for the hearing, respondent's representative was present. At 9:15 a.m., 15 minutes after the hearing was scheduled to commence, appellant had not yet appeared and the hearing examiner attempted to reach him by phone at his Milwaukee office telephone number. Appellant answered the phone and advised the hearing examiner that he was just looking up her telephone number and that he had not appeared at the hearing because he had a "crisis in the office" that morning. The hearing examiner advised appellant to file with the Commission a written explanation of his failure to appear at the scheduled hearing.

In a letter dated June 11, 1984, appellant wrote as follows:

The Honorable Laurie McCallum, I am writing to submit my apology for being unable to attend the hearing on June 7, 1984. I had to attend to emergencies at work and could not get away from my office.

Item: One of the students, male from Chrystal City had been having chest pains. I had to work with the University Health Center and with the Inner-City Development Project's Health Center to have special services provided him. (As a child, the student was shot with a gun. He carries pellets in his chest yet, as I understand the case). HEP students do not qualify for Title XIX services and HEP attempts to orchestrate health services from the various providers. I was needed at the office because I had acted as legal guardian in referring him to the health centers.

Item: Another student, female, cut her foot and needed immediate attention. Again, I had to act as legal guardian to authorize medical services for a student. Unfortunately, the press of business at HEP is such that I must be available to attend to such matters. I hope that my apology and the circumstances cited

above meet such requirements as may the Commission demand for rescheduling the hearing. Thank you for your kind attention.

Section PC 3.04, Wis. Adm. Code, provides as follows:

By failing to appear and participate after due notice, a party shall waive the rights set forth in sec. PC 3.02 and admit the accuracy of the uncontradicted evidence produced by the parties present, and, unless good cause can be shown, is precluded thereafter for introducing any evidence controverting any contentions or allegations. The commission or individual determining the matter may rely on the record as made. If the absent party has the burden of proof, the Commission will consider a motion to dismiss by the party (ies) present without requiring presentation of the case.

In its appearance at the scheduled hearing, respondent filed a motion to dismiss the instant appeal due to appellant's failure to appear.

In the instant case, not only did the appellant not files copies of exhibits prior to the scheduled hearing, but he also failed to contact the Commission to advise that he would not be appearing at the hearing. Even if appellant could not leave his work site because of office emergencies that only he could handle, he obviously had access to a phone since the hearing examiner was able to reach him by phone 15 minutes after he was scheduled to appear at the hearing.

The Commission concludes that appellant has not shown good cause for his failure to appear at the scheduled hearing and that his apparent lack of preparation for the hearing and his failure to advise the Commission that he was not going to appear at the scheduled hearing justify the Commission's dismissal of this appeal for lack of prosecution.

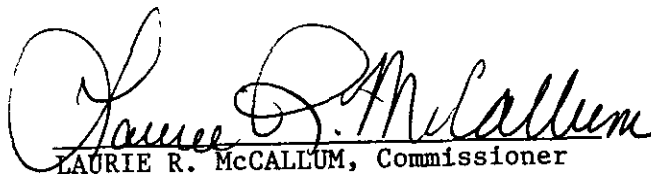
ORDER

The motion to dismiss is granted and the appeal is dismissed.

Dated: June 27, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

LRM:jab


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

Parties:

Mr. Luis Salazar
1134 N. 35th St.
Milwaukee, WI 53208

Linda Reivitz, Secretary
DHSS
P.O. Box 7850
Madison, WI 53707