

ANNETTE ROGERS,

Complainant,

v.

Secretary, DEPARTMENT OF
ADMINISTRATION, and
Executive Director, STATE
ETHICS BOARD

Respondents.

Case No. 87-010-PC-ER

[87-0010-PC-ER]

INTERIM
DECISION
AND
ORDER

On October 24, 1989, an investigator for the Commission issued an initial determination in this matter which reflected determinations of both "probable cause" and "no probable cause" on different issues of the complaint. The investigator found probable cause as to claims of race, handicap and FEA retaliation with regard to references provided by respondent Department of Administration in 1986. The investigator found no probable cause as to claims of race, handicap and FEA retaliation with regard to references provided by respondent Ethics Board in 1986. The cover letter to the initial determination stated that an appeal of the no probable cause portions of the matter had to be "actually received by the Commission" within 30 days of the date of the letter in order to comply with the Commission's rules. Pursuant to §PC 2.07(3), Wis. Adm. Code:

Within 30 days after the service of an initial determination of no probable cause as to any claim raised in a complaint, a complainant may file, with the commission, a written request for hearing on the issue of probable cause as to that claim.

In Shelton v. DNR & WCC, 85-0123-PC-ER, 7/13/88, the Commission held that the 30 day period commences with the mailing (rather than receipt) of the initial determination and that the request for hearing is not perfected until it has been physically received by the Commission.

In the present case, the initial determination was mailed to both the complainant and to her attorney in Madison on October 24th. The Commission received complainant's letter of appeal from her attorney on November 27th

The letter was dated November 22nd and bears a postmark of the same date. The 30th day after the date of mailing was Thursday, November 23rd, a legal holiday. By operation of §PC 1.07, Wis. Adm. Code, complainant had until the next day, Friday the 24th, to file her appeal. Pursuant to §230.35(4)(a), Stats., the Commission's offices were open on November 24, 1989, as it was a normal day of business.

Complainant chose to wait until the 11th hour to file her appeal to the Commission. Her letter was postmarked in the p.m. of November 22nd, it had to be "filed" with the Commission by the 24th and the 23rd was Thanksgiving, a legal holiday. Instead of insuring timely receipt by hand-delivering the appeal to the Commission, the complainant opted to rely on regular postal delivery. Complainant argues:


I fully and reasonably expected that the notice of appeal would be delivered with the next mail delivery, which, apparently was on November 24, 1989, at [the Commission's] office Mail delivery everywhere in Madison invariably takes one day. It was reasonable for me to expect that the notice of appeal would be delivered on November 24, 1989.

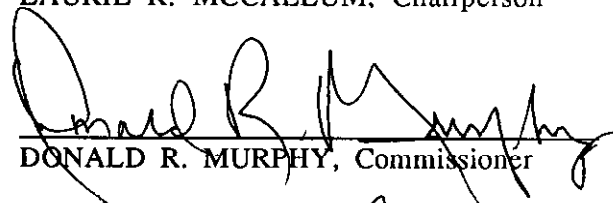
Given the lengthy opportunity the complainant had to file her appeal with the Commission, the 11th hour nature of the appeal that was finally mailed and the fact the complainant was represented by counsel, the Commission cannot conclude that the very limited delay in the postal delivery of the appeal provides good cause for the failure to comply with the 30 day period. Compare, Dugas v. DHSS, 86-0073-PC-ER, 87-0143-PC-ER, 7/14/88. In Dugas, the Commission held that the 30 day period is directory rather than mandatory and that good cause for failing to comply with the period existed where the complainant's mother died on the day before the 30 day period would have ended and the complainant's union representative was absent from the state. No comparable facts exist in the present case. In addition, the complainant has failed to establish that the expectation of next working day postal delivery was reasonable after taking into consideration both the intervening holiday and the procedure for delivery of mail to state offices.

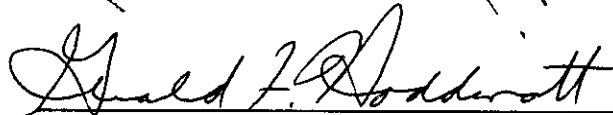
ORDER

The complainant's appeal from the findings of no probable cause is untimely and respondent Ethics Board is dismissed as a party. The remaining parties will be contacted for the purpose of scheduling a conciliation/prehearing.

Dated: December 22, 1989 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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