

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 EARNESTINE MOSS, \*  
 \*  
                   Complainant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 NATURAL RESOURCES, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 87-0028-PC-ER \*  
 \*  
 \* \* \* \* \*

RULING ON  
 PETITION FOR  
 REHEARING

This matter is before the Commission on complainant's petition for rehearing following dismissal of the complaint due to lack of prosecution.

Complainant filed her complaint of discrimination on March 10, 1987. Commission staff made various efforts to schedule a conciliation meeting with the parties. After those efforts were unsuccessful, a Commission employe sent complainant a letter dated October 6, 1987, requesting additional information relating to the complaint. After not receiving any reply to the request, a second letter was sent to the complainant via certified mail on November 9, 1987. That letter included the following language:

The Commission had previously written to you on October 6, 1987, requesting information and documents to clarify the charge of discrimination that you had filed. Without this information, we are unable to proceed with an investigation in the above referenced case. To date, I have not received a response from you.

Do you wish to proceed with the complaint? If you do, please submit the information requested in the October 6, 1987 letter (copy attached). The information must be submitted within 20 calendar days of the date of this letter. If you fail to respond within the 20 day time period, I will recommend that the case be dismissed for lack of prosecution. Pursuant to s.111.39(3), Stats., which relates to claims filed under the Fair Employment Act:

The (commission) shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the (commission) concerning the complaint and if the correspondence is sent by certified mail to the last known address of the person.

If you have any questions, feel free to contact the undersigned at (608)266-8478.

The certified letter was returned to the Commission unclaimed on November 30, 1987. On December 3, 1987, the Commission dismissed the complaint "due to lack of prosecution."

On December 23, 1987, complainant filed a petition for rehearing in which she stated that on November 17, 1987, she had mailed at least some of the information requested in the October 6th letter, that she had not realized the Commission had not received this material, and that she was unable to collect the certified mail due to her work hours and a lack of transportation.

The Commission did not receive any communications from the complainant during the 20-day period commencing on the date of November 9, 1987 certified letter. Based upon the explicit language of s. 111.39(3), Stats., and the failure of the complainant to timely respond to the November 9th letter, the Commission properly dismissed the complaint. The language of the statute is not broad enough to permit consideration of the reasons it was inconvenient for the complainant to pick up the certified letter at the post office.

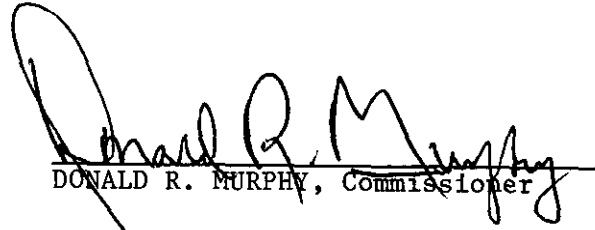
Because there has been no material error of law or fact in the Commission's December 3rd order, the Commission issues the following

ORDER

Complainant's petition for rehearing is denied.

Dated: January 13, 1988 STATE PERSONNEL COMMISSION

KMS:rcr  
RCR03/2

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

Parties:

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