STATE OF WISCONSIN

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RULING ON PETITION FOR REHEARING

This matter is before the Commission on complainant's petition for rehearing arising from a dismissal order issued on Feburary 11, 1988 due to lack of prosecution.

The complainant's charge of discrimination alleged discrimination based on race and retaliation based on both fair employment activities and whistleblowing. The complaint was filed on October 26, 1987. On December 1, 1987, a member of the Commission's staff wrote to the complainant and asked her to provide certain information by January 1, 1988. When no response was forthcoming, a second letter was sent to the complainant on January 13, 1988 via certified mail. That letter provided, in part:

Do you wish to proceed with the complaint? If you do, please submit the information requested in the December 1, 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.

Jackson v. DHSS Case No. 87-0149-PC-ER Page 2

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

The certified letter was returned to the Commission on February 5, 1988. The face of the envelope showed that notice of the certified mail was provided to the addressee on January 14, 19 and 29, 1988 and that the letter had been unclaimed at the post office. The Commission received no word from the complainant and by order issued on February 11, 1988, the Commission dismissed the complaint for lack of prosecution.

On February 24, 1988, after having telephoned the Commission, the complainant filed a letter which has been construed as a petition for rehearing:

I am sending this letter in receipt of our telephone conversation 2/19/88. This letter is sent with the intent to inform you and whomever else needs notification that I am not in agreement with the decision to dismiss my "Case No. 87-0149-PC-ER. I have not received any notification from your office in the form of certified mail and therefore, until such mail is received and I am allowed adquate time to act on same, I would like to request that my case not be "dismissed due to lack of prosecution".

The respondent was provided an opportunity to file a response to the petition.

Pursuant to s. 227.49(3), Stats., a petition for rehearing can only be granted on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) 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 the present case, complainant's only contention is that because she did not receive the certified letter, the 20 day time period for responding to the letter did not commence to run. Such a result would be contrary to the specific language of s. 111.39(3), Stats., which refers to when the

Jackson v. DHSS Case No. 87-0149-PC-ER Page 3

receipt by that person. Under the complainant's interpretation, someone could keep their case open indefinitely by simply refusing to accept any certified mail sent them by the Commission.

Because the complainant has failed to meet the requirements of s. 227.49(3), Stats., the Commission must deny her petition for rehearing.

Dated: March 10 , 1988 STATE PERSONNEL COMMISSION

DENNIS P. McGILLIGAN, Chairperson

KMS:rcr RCR02/1

DAURIE R. McCALLUM, Commissioner

Parties:

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