STATE OF WISCONSIN PERSONNEL COMMISSION

JOSEPH PASSER,

Appellant/
Complainant,

v.

Secretary, DEPARTMENT OF CORRECTIONS

Respondent.

Case Nos. 90-0063-PC-ER
91-0119-PC-ER,
91-0144-PC

DECISION
AND
ORDER

NATURE OF THE CASE

These cases involve complaints of discrimination on the basis of handicap under the Fair Employment Act (FEA) (Subchapter II, Chapter 111, Stats.), particularly §111.34, Stats., and of violation of the Family and Medical Leave Act (FMLA) §103.10, Stats., and an appeal pursuant to §230.44(1)(c), Stats., of a discharge. A prehearing conference report dated September 27, 1991, sets forth the following statement of issues for hearing:

> 91-0119-PC-ER Whether respondent discriminated against complainant on the basis of handicap or retaliation in violation of the Fair Employment Act (FEA), §§111.34, 111.322, stats., or violated the Family Medical Leave Act (FMLA), §103.10, stats., in connection with the termination of appellant's employment.
>
> 91-0144-PC Whether there was just cause for the termination of appellant's employment.
>
> 90-0063-PC-ER Whether respondent discriminated against complainant on the basis of handicap in connection with his suspension with pay beginning on or about December 19, 1989, in connection with a new PPD that was implemented on or about February 6, 1990, on the basis of handicap or retaliation with respect to conditions of employment, as more specifically set forth in complainant's "Answers to Defendant's First Set of Interrogatories," dated August 16, 1990.

FINDINGS OF FACT

1. At all times relevant to these matters complainant has been a paraplegic, using a wheelchair.

2. Complainant commenced employment at Kettle Moraine Correctional Institution (KMCI) in 1987, and was employed there with permanent status in class in a position with the working title of Food Service Administrator (FSA) and the classification of Food Service Administrator 2.

3. Complainant's immediate supervisor was Associate Warden/Business Administrator Jane Gamble. She had served in complainant's position from 1979-1986.

4. Sometime in early 1989, the institution began receiving unsolicited magazines and supplies. Respondent determined that someone was filling in coupons, postcards, etc., and mailing them to suppliers to cause them to send unwanted material to KMCI.

5. An investigation into this matter was conducted by the KMCI institutional investigator, Lieutenant Stephen Haferman. He identified complainant as a primary suspect primarily because he was aware of a significant number of complaints about complainant by various KMCI employes, and he believed that complainant's difficulties with respect to these employes gave him a motive to retaliate.

6. The problem was referred to Sheboygan [the proposed decision inadvertently identified this as Fond du Lac County] County Sheriff's Deputy Kaczkowski. He had had some training and about seven years experience in screening handwriting samples. He did not have the expertise to conclude that handwriting samples were identical, but he regularly would screen handwriting samples to determine which were sufficiently similar to warrant forwarding to the State Crime Laboratory for formal analysis and which were so dissimilar as not to warrant forwarding to the lab.

7. At a meeting held just before complainant's suspension with pay between Deputy Kaczkowski, Ms. Gamble, Lt. Haferman, KMCI Warden Marianne Cooke, Deputy Warden-Security James Nagle, and a U.S. Postal Inspector from Milwaukee, Deputy Kaczkowski said that there was sufficient resemblance between the questioned documents and complainant's writing samples to warrant further evaluation by the lab. The KMCI management staff

that were present got the impression that Deputy Kaczkowski had no doubt that complainant was the one who had written the questioned documents.

8. In a decision that was concurred in by Ms. Gamble, Lt. Haferman, and then Associate Warden-Security James Nagle, Ms Cook decided to suspend complainant with pay effective December 19, 1989. It was a common practice at KMCI to suspend with pay employes who were being investigated for serious infractions while the investigation was under way. Additionally, Lt. Haferman, Ms. Gamble and Ms. Cooke were motivated in the decision to suspend by a security concern that complainant, once he was aware he was a prime suspect, might take some retaliatory action with respect to the food service operation, or the inmates might suspect that this could occur, with the possibility of a resulting disturbance.

9. The crime lab examined the writings in question and complainant's handwriting, but were unable to reach any conclusion whether or not complainant's handwriting was on the documents in question.

10. Following receipt of the crime lab report, respondent also found out that fingerprint tests also were inconclusive. Respondent then reinstated complainant to active duty, effective February 7, 1990. No apology was made to Mr. Passer at that time, at least in part because of management's perception that the evidence analysis had only been inconclusive, and complainant still was considered a suspect.

11. The focus of the investigation then turned to another suspect employe. He was suspended with pay while the crime lab performed a handwriting analysis. The crime lab was able to positively identify his handwriting on the suspect documents, and he confessed and was disciplined by management.

12. Management neither apologized to complainant nor notified him he no longer was a suspect after it had been determined conclusively that the other employe had been guilty.

13. After his return to active duty, Ms. Gamble presented him with a new PPD (Performance Planning and Development Report) (Appellant's Exhibit 7) dated February 7, 1992. This document covered the report period "From 2/90 thru 4/90." The results section was signed by Ms. Gamble on April 11, 1990, and by complainant on April 13, 1990. Complainant took issue with this evaluation in a number of particulars in summary as follows:

a) It was noted a climate report was not submitted on March 12. Complainant asserted that it had been submitted and placed on the business administrator's desk, but apparently disappeared.

b) It was noted that required conferences with Ms.Gamble had not been scheduled for two of the eight weeks. Complainant stated that: "compliance was followed except when she was not there part of Thursday and all day Friday in week of 3-23."

c) The report noted a February 16, 1992, "hostile, angry confrontation with Lt. Sutton in front of inmates and staff." Complainant denied this and asserted he "simply made a statement to him about giving the kitchen advance notice, if possible, when trainees are going to be at K.M." (Lt. Sutton had made his accusation in an incident report of which Ms. Gamble had been aware.)

d) The report referred to unsatisfactory management practices in complainant having given an employe a written recommendation not to eat the meals at KMCI because of cholesterol, which resulted in a grievance and request for a microwave oven. Complainant stated that this was a "[t]otal fabrication because recommendation was never presented in evidence in grievance procedure."

e) The PPD performance expectations had included the equipment of routing "all outgoing mail, inter-department mail and work orders through your supervisor's office." The results column noted: "2/21 mail submitted in a sealed envelope. 2/22 game playing discussion held." Complainant's response was that this requirement was "a discriminatory procedure. It is also an illegal act when supervisor opens said sealed mail." Complainant further asserted that this requirement implied he had been guilty of mail fraud and appeared to be punitive and retaliatory in nature.

(Ms. Gamble's rationale for requiring the routing of mail through her involved two incidents. One was that complainant had ignored institution procedure by having cancelled a purchase order without communicating with the business office. Second, after she had given him certain instructions regarding the color and texture of his menus, he indicated that he didn't think her comments were appropriate or should be complied with. He then sent a memo to a DOC staff person in Madison asking her to analyze his menus for color and texture without advising Ms. Gamble that he was doing this.)

14. Prior to the PPD referred to in the preceding finding, there was a PPD for the period January 1989 through June 1989 (Appellant's Exhibit 6). He was not evaluated for the period July 1989 through December 1989 because he was on his suspension when Ms. Gamble normally would have done the evaluation, and she did not think it would have been appropriate to have done the evaluation under those circumstances. PPD's are only required to be done annually, although supervisors have the option of doing them more frequently when it considers the employe is not meeting expectations.

15. Complainant did not receive a discretionary salary award (increase) in either 1989 or 1990 because Ms. Gamble marked him as "does not consistently meet expectations" on the "Discretionary Award Report Forms" she filled out, and pursuant to agency policy as set forth in a November 15, 1989, directive (Respondent's Exhibit 25). This failure to receive these salary adjustments were not caused by the fact that Ms. Gamble did not do a PPD for him for the period July 1989-December 1989.

16. In January 1989, complainant gave Ms. Gamble a note from his doctor (Appellant's Exhibit 22) which stated: "Strongly recommend a couch or cot in pt's office." Ms. Gamble passed this request through channels and the institution retrofitted or adapted an existing couch at the institution for complainant. This was a short, "love seat" type of couch which was too short for complainant to lie down completely and therefore fell short of what complainant wanted it for. Complainant never told anyone it was unsuitable or requested a different couch, because he felt it would not do any good.

17. Complainant requested a number of accommodations in connection with parking his car. These essentially were all provided, including the provision of one stall that required the destruction of a curb and the construction of a ramp.

18. Respondent purchased a substantial amount of new office equipment and special devices to accommodate complainant's needs when he was hired.

19. During the course of his employment at KMCI, complainant was granted a large amount of medical leave. Altogether, he was on the payroll for over 230 weeks prior to his termination effective August 15, 1991, and was absent for medical reasons during that period in excess of 88 weeks, or approximately 38% of the time.

20. The interpersonal relationship between complainant and Ms. Gamble was poor. The record does not support a finding that this was attributable to any animus on her part against complainant because of his handicap.

21. Complainant began his last period of leave without pay due to physical inability to work on May 18, 1990. This originally was through November 17, 1990, but was extended twice. Respondent finally decided to deny further extensions and terminate complainant's employment effective August 15, 1991, for the following reasons:

1) The reports from complainant's doctor did not indicate that complainant would be able to return to work in the foreseeable future.

2) Mr. Jabar and Ms. Gamble were having to fill in for complainant in this absence. There was significant work that was not getting done, particularly in connection with planning for an impending expansion of the institution and an expansion and remodeling of the food service operation.

21. As of January 1992, complainant remained unable to work, with no predicted date when he would be able to do so.

22. Complainant filed his first complaint of discrimination (No. 90-0063-PC-ER) on April 18, 1990. This complaint was served on respondent, and KMCI management who were responsible for the various personnel matters involving complainant were aware of this shortly after it was filed.

CONCLUSIONS OF LAW

1. 91-0144-PC

A. This matter is properly before the Commission pursuant to §230.44(1)(c) Stats.

B. Respondent has the burden of proof to establish by a preponderance of the evidence there was just cause for appellant's discharge. Reinke v. Personnel Board, 53 Wis. 2d 123, 191 N.W. 2d 833 (1971); Safransky v. Personnel Board, 62 Wis. 2d 464, 215 N.W. 2d 379 (1974).

C. Respondent has sustained its burden.

D. There was just cause for appellant's discharge.

2. 90-0063-PC-ER

A. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

B. Complainant has the burden of proof to establish by a preponderance of the evidence that respondent discriminated against him in violation of the FEA on the basis of handicap in connection with his suspension with pay beginning on or about December 19, 1989; in connection with a new PPD February 6, 1990; and on the basis of handicap or retaliation with respect to conditions of employment (requiring complainant to route his mail through his supervisor failure to have completed a PPD for the period July 1989-December 1989).

C. Complainant failed to sustain his burden of proof.

D. Respondent did not discriminate against complainant in violation of the FEA on the basis of handicap in connection with his suspension with pay beginning on or about December 19, 1989; in connection with a new PPD that was implemented on or about February 6, 1990; and on the basis of handicap or retaliation with respect to conditions of employment.

E. Respondent has the burden of proof with respect to the issue of accommodation as to parking and the provision of a couch.

F. Respondent sustained its burden of proof.

G. Respondent did not discriminate against complainant by failure to accommodate with respect to parking and to his couch.

3. 91-0119-PC-ER

A. This matter is properly before the Commission pursuant to §§230.45(1)(b), 103.10, Stats.

B. Complainant has the burden of proof to establish by a preponderance of the evidence that respondent discriminated against him in violation of the FEA on the basis of handicap or retaliation, or violated the FMLA (§103.10, Stats.) in connection with the termination of his employment.

C. Complainant failed to sustain his burden of proof.

D. Respondent did not discriminate against complainant in violation of the FEA on the basis of handicap or retaliation nor did it

violate the FMLA in connection with the termination of complainant's employment.

E. Respondent has the burden of proof as to accommodation.

F. Respondent sustained its burden of proof.

G. Respondent did not discriminate against complainant by failure to accommodate in connection with his termination.

OPINION

91-0144-PC

On an appeal of a discharge, the employer bears the burden of proving by a preponderance of the evidence that there was "just cause" for the termination. "Just cause" is demonstrated by showing a deficiency "'which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works.'" Safransky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N W. 2d 379 (1974) (citation omitted). When an employe is unable to be on the job for medical reasons for an extended period of time with no change in status in sight, clearly this satisfies the requirement of just cause See e.g., Jabs v. State Board of Personnel, 34 Wis. 2d 245, 250, 148 N.W. 2d 853 (1967) (termination of employe after about three months of absence due to illness upheld).

91-0119-PC-ER

This case involves claims under both the FMLA and the FEA. Complainant never argued his FMLA claim in his post-hearing briefs, and it is clear there was no violation of that law. Section 103.10(4), Stats., provides that "an employe who has a serious health condition which makes the employe unable to perform his or her employment duties" is entitled to take up to two weeks of medical leave per twelve-month period. In this case, respondent granted complainant far more than this amount of such leave. Furthermore, it can hardly be said that respondent terminated complainant's employment because he used the medical leave he was allowed to under the FMLA. Rather, it terminated his employment because, after having been absent on medical leave for about thirteen months, there was no end of his incapacity in sight.

With respect to his FEA handicap discrimination claim in connection with his termination, the framework for analysis is as follows:

1) Whether complainant was handicapped.

2) Whether respondent discriminated against complainant because of his handicap.

3) If so, whether respondent can establish under §111.34(2)(a), Stats., that the handicap was "reasonably related to [complainant's] ability to adequately undertake the job-related responsibilities of [complainant's] employment."

4) Whether respondent can establish there was no reasonable accommodation available pursuant to §111.34(1)(b), Stats. Conley v. DHSS, 84-0067-PC-ER (6/29/87).

With respect to the first issue, the parties have stipulated that complainant is handicapped. As to the second issue, it is clear that respondent discharged complainant due to his inability to work, which inability was because of his handicap. Therefore, it is considered from a standpoint of legal causation that respondent discharged complainant because of his handicap and therefore discriminated against complainant because of his handicap, see Conley. With respect to the third issue, it is undisputed that complainant was unable to work because of his handicap. Therefore, there is a clear direct relationship between the handicap and complainant's ability to work, and respondent has prevailed on its §111.34(2)(a), Stats., affirmative defense. Finally, respondent has demonstrated there was no denial of accommodation. The medical record in this case reflects that complainant simply was unable to work. The primary "accommodation" complainant contends respondent should have provided was a further extension of his leave Complainant has provided no authority for the proposition that the concept of accommodation includes keeping a job open for an employe who is unable to work and for whom there is no foreseeable return to work date. An accommodation normally is an alteration in the working environment or the provision of some special assistance that will enable the employe to perform the duties of his or her position, see Conley, or the provision of an alternative work assignment with duties that the employe can perform, see McMullen v. LIRC, 148 Wis. 2d 270, 434 N.W. 2d 830 (Ct App. 1988). The accommodation sought by complainant here does not fall within either of these concepts.

In his reply brief, complainant for the first time suggests that management should have considered a transfer. The problem with this

contention is that there is no evidence or reason to believe that he would have been able to have worked in a different job. The medical reports did not state or suggest there were particular demands of his Food Service Administrator job that were problematical, and he never requested a different job prior to his termination.

Turning to the charge of retaliation in connection with the termination, complainant has established a prima facie case, see Chander v. UW-LaCrosse, 87-0214-PC-ER, 88-0009-PC-ER (8/24/89). He filed a complaint of discrimination (90-0063-PC-ER) on April 18, 1990, this was served on respondent and made known to its agents, and complainant subsequently was discharged within a fairly close proximity in time. Respondent then articulated a rational, non-discriminatory basis for its action — an interest in filling the position in the context of substantial changes in the program, complainant's extended absence from the workplace, and the absence of any reason to believe he could return to the workplace anytime soon. As discussed above, respondent had a substantial, legitimate interest in proceeding as it did, and there is no basis on this record for a finding that respondent's rationale was a pretext and that respondent actually terminated complainant to retaliate against him for having filed his complaint.[1]

90-0063-PC-ER

This complaint involves a number of alleged acts of handicap discrimination with respect to certain personnel transactions or conditions of employment. The Commission first will address what may be characterized as alleged failure of accommodation issues.

With respect to parking, the record shows that respondent took care of all of complainant's requests for parking, and responded appropriately on the few occasions he complained of another car parked in his handicapped-designated parking space.[2] As to the couch, it was an inadequate

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[1] To the extent that evidence of alleged unfair treatment, which complainant relied on as evidence of pretext with respect to his handicap claim with respect to conditions of employment, potentially serves as evidence of pretext with respect to this claim, it is discussed below in that context and will not be repeated here.

[2] On occasion, when complainant came to work he chose to park in a regular parking space, see Respondent's Exhibit 24.

accommodation in the sense it was unsuitable for its intended use — enabling complainant to lie down from time to time during the day — because it was too short. However, the employe or his or her doctor must take some responsibility for providing information about the specific type of accommodation needed, see Betlach-Odegaard v. UW-Madison, 86-0114-PC-ER (12/17/90). Complainant's doctor provided neither specifications for the couch nor an explanation of its intended use. Complainant accepted the couch and did not request a longer one. If complainant had explained that the couch was too short when it was delivered, respondent presumably would have had to have provided another one to have satisfied its duty of accommodation. However, under the circumstances, since complainant accepted the couch that was proffered, it cannot be said that respondent failed in its duty of accommodation.

Complainant also alleges handicap discrimination with respect to his suspension with pay and certain other conditions of employment. Since these matters were fully heard on the merits, the Commission will simply assume that complainant has established a prima facie case as to each transaction rather than to go through each separately.

Respondent has articulated a legitimate nondiscriminatory reason for suspending complainant because of his status as a suspect and concerns about the security of the food service operation. In addition, the suspension was in accordance with standard operating procedure at KMCI. Complainant's main evidence of pretext with respect to this transaction is the conflict in testimony between KMCI management staff employes and Deputy Kaczkowski concerning his statement about his opinion as to whether it was complainant's handwriting on the questioned documents. The staff all testified that he had said he had no doubt that it was complainant's handwriting, while he denied that statement. In the Commission's view, while the preponderance of the evidence supports a finding that he did not make the statement attributed to him by respondent, the evidence also supports a finding that the management staff involved in the suspension decision had a good faith belief that deputy Kaczkowski had expressed the opinion that the evidence pointed strongly toward complainant. It is noteworthy in this regard that there were several people who shared this opinion and supported the suspension — Warden Cooke, Deputy Warden Nagle, Deputy Warden Gamble, and Lt Haferman. It is Ms.

Gamble to whom complainant attributed most of the alleged harassment. The concurrence of all of them in this matter makes it more difficult to find they had no basis for believing that complainant was a prime suspect. Also, Deputy Kaczkowski expressed the opinion there was some degree of correlation between complainant's writing and that contained on the questioned documents. It is more likely there could have been a misperception or miscommunication as to a matter of degree rather than as to the entire thrust of his opinion.

Complainant also relies on the fact that respondent never "cleared the air" with him, after the other employe confessed to the infraction, by apologizing, explaining exactly what had occurred, etc. In its post-hearing brief, respondent characterizes its failure to have notified complainant he was no longer a suspect as a "regrettable oversight." In the Commission's view, even if respondent's omission were not to be attributed merely to oversight, it does not necessarily follow that it is attributable to an animus against complainant because of his handicap. Based on the record in this case, it is at least as probable that it was attributable to the strained interpersonal relationship between complainant and Ms Gamble, his immediate supervisor and the most logical person to have tried to make amends after the other employe was conclusively determined to have been guilty It is clear on this record that their interpersonal relationship was not good.[3] On this record, there is no more reason to attribute this negative relationship to complainant's handicap than there is to attribute it to the other possible factors that were mentioned in the course of the hearing — the gender difference or the kinds of supervisor-subordinate stresses that occasionally are associated with that relationship.[4] However, there is some evidence that the problem between the two was not attributable to a negative bias against the handicapped on Ms. Gamble's part. She testified that the had a positive bias

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[3] For example, Ms. Jabar, who was complainant's immediate subordinate and in a good position to observe their interaction, testified to this.

[4] Without attempting to make value judgments about who was right or wrong in the numerous conflicts that arose in the context of this relationship, there are undisputed parts of the record that reflect that from a supervisory standpoint complainant could be considered a difficult employe in some respects. For example, when directed to route all mail through his supervisor, complainant submitted something in a sealed envelope and then accused her of acting illegally by opening it

toward people with handicaps because she had a grandfather confined to a wheelchair and had concerns that she would have the same future because of genetic reasons. Under all these circumstances, and considering that complainant has the burden of proof, the Commission cannot reach the conclusion that respondent's failure to have apologized or explained the situation to complainant either established, or constituted substantial evidence that would tend to show, that Ms. Gamble had a negative bias against complainant because of his handicap, and that respondent's explanation for the suspension was a pretext for a discriminatory motive.

Complainant has failed to establish that the PPD complainant received after he returned from his suspension (Appellant's Exhibit 7) was motivated by unlawful discrimination. Respondent established a reasonable basis for its PPD, and complainant did not show that the reasons given by respondent were pretextual. For example, complainant contends in effect that Ms. Gamble's stated concern about him sending his menus to a nutritionist in Madison without going through her was trumped up, and that what he did was relatively routine. However, complainant's contention is gainsaid by the fact that the nutritionist made a point of calling Ms Gamble to call her attention to the avoidance of the "chain of command." Related to this is complainant's assertion that other employes were not required to have routed their mail through Ms. Gamble. However, she had specific reasons for imposing this requirement on complainant (including the foregoing situation where he went "over her head" to Madison), and the other employes were not similarly situated to complainant.

Complainant contended that Ms. Gamble improperly omitted a PPD for the period July 1989-December 1989, and that this resulted in the denial of a salary increase. However, the record establishes that only one PPD per year was required, and Ms. Gamble had a reasonable basis for deciding not to complete this PPD because of complainant's status of being on suspension after December 19, 1989. Furthermore, the absence of this PPD had nothing to do with the denial of a pay increase, which was based on a "discretionary award report" that his performance was below expectations

Complainant testified about a number of matters that he contended showed harassment and a negative attitude on her part. For example, he testified she would come into the food service area without greeting him,

which complainant denied. The Commission has not made specific findings on all of these matters of dispute because it already has found that their interpersonal relationship was strained, and it would add little if anything to this decision to make further findings that, under all the circumstances, would at the most reinforce that finding.

In conclusion, in the Commission's opinion, it is clear on this record that respondent had just cause to have terminated complainant's employment when it did, and that there was no possible accommodation under the circumstances. With respect to conditions of employment, complainant's tenure was affected by some very unusual and unfortunate circumstances. It is understandable why complainant would be offended and angered by his suspension, albeit with pay, for an offense he did not commit, and then by management never either apologizing to him or explaining exactly what had occurred. However, complainant had the burden of establishing that he was suspended because of his handicap — i.e , that management was motivated by his handicap when it decided to suspend him — and this he failed to do. There were several members of management who concurred in the decision to suspend, not just Ms. Gamble, and they did have a rational basis for having done so, which was not shown to have been pretextual. It is clear that the interpersonal relationship between Ms. Gamble and complainant was poor, and this in all probability contributed to management's failure to have made amends with complainant after the guilty party had been conclusively determined. However, on this record, there is no basis on which to conclude that this rift between the two was attributable to an animus on Ms. Gamble's part with respect to complainant's handicap.

ORDER

Respondent's action terminating complainant's employment is affirmed and his appeal thereof (Case No. 91-0144-PC) is dismissed. Complainant's charges of discrimination (Case Nos 90-0063-PC-ER and 91-0119-PC-ER) are dismissed based on the conclusions that respondent did not violate either the FEA or the FMLA.

Dated: September 18, 1992 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT/gdt/2

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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227 49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227 53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to

§227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.