STATE OF WISCONSIN PERSONNEL COMMISSION

CHARLES M. THOMAS,

Complainant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 91-0013-PC-ER

DECISION AND ORDER

NATURE OF THE CASE

This case involves a complaint of discrimination on the basis of conviction record with respect to hire.

FINDINGS OF FACT

1. Complainant was convicted on January 23, 1987, of violations of §943.02(1)(a) and 939.05, Stats., which provide, inter alia respectively:

> 943.02(1) ... Whoever does any of the following is guilty of a class B felony:
> (a) By means of fire, intentionally damages any building of another without his consent;
>
> * * *
>
> 939.05 Parties to crime. (1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.
> (2) A person is concerned in the commission of the crime if he:
> (a) Directly commits the crime; or
> (b) Intentionally aids and abets the commission of it; or
> (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it.

Complainant was sentenced to an indeterminate term of not more than seven years.

2. In the spring of 1990, Complainant was serving this sentence at Sanger Powers Correctional Institution. He was in a minimum security status

and successfully involved in a work release program in which he was released from the institution on a daily basis to go to work at a Green Bay restaurant without being under direct supervision. His projected mandatory release (MR) date was December 1990.

3. Complainant applied and was certified for a Food Service Worker 3 (FSW 3) vacancy at Ethan Allen School (EAS), a juvenile offender institution in the Division of Youth Service, Department of Health and Social Services (DHSS), and was interviewed at Ethan Allen School on June 6, 1990.

4. The FSW 3 position in question is responsible for performing "the duties associated with a centralized tray system and warewashing service providing ... meal service to approximately 400 residents and staff." (Position Description (PD), Respondent's Exhibit 11) Part of these duties and responsibilities include the supervision of juvenile workers. This supervision involves disciplinary and security as well as job performance matters.

5. Complainant was interviewed on June 6, 1990, by Robert Jaquith, the EAS Food Service Administrator, and Paul Kobbs, a Food Production Manager 2. They also interviewed two other certified applicants that date. The interviews were structured and scored. At that time, Mr. Jaquith thought that these were all of the candidates he would be considering. He also thought that complainant was the best qualified of the three candidates.

6. During the course of the application process, complainant had filled out a conviction record form routinely used by EAS in its hiring process (Respondent's Exhibit 4) on which he referred to his 1987 arson conviction. He also referred to his conviction and his status at Sanger Powers during his June 6, 1990, interview.

7. Mr. Jaquith was unsure whether complainant could be hired in light of his conviction record and inmate status. Following discussions with EAS Security Director William Gauthier, they later eventually called John E. Ross, Director, Bureau of Residential Services, DYS, who is responsible for direct line supervision of EAS.

8. The telephone conversation between Mr. Ross and Mr. Gauthier occurred at some point on or before June 14, 1990.

9. Mr. Gauthier provided some background about the situation to Mr. Ross, including the facts that complainant had been convicted of arson and was incarcerated at Sanger Powers and was within about five months of his MR date.

10. Mr. Ross at that time decided that complainant should not be hired, on the basis of several factors, in summary as follows:

a) Mr. Ross was concerned about the arson conviction in the context of employment in a confined correctional institution where the potential for death or injury from a fire is more substantial than in some other settings;

b) Mr. Ross also was concerned about the potential for negative interaction between complainant and the juveniles for whom he would be responsible, many of whom are highly susceptible to being influenced by staff, both in the context of complainant being a potentially negative role model and potentially interacting with them in a negative manner behaviorally;

c) Mr. Ross was influenced in his thinking by the fact that complainant was still incarcerated and had not had any opportunity to demonstrate recidivist-free behavior following discharge from institutional confinement.

11. On June 8, 1990, EAS was contacted by Jose Rodriguez, who inquired when he would be interviewed. He had been on the FSW 3 certification, but due to a mix-up, EAS had thought he was not interested in interviewing.

12. In accordance with normal civil service procedure, Mr. Jaquith and Mr. Kobbs then interviewed Mr. Rodriguez on June 15, 1990. At that time, Mr. Jaquith knew that complainant could not be considered for hire, as he was aware of the conversation between Mr. Ross and Mr. Gauthier.

13. Mr. Rodriguez went through the same structured, scored interview as had the other candidates, and achieved the highest score. Both Mr. Jaquith and Mr. Kobb's considered him to be the best qualified of all the candidates.

14. Mr. Jaquith, whose hiring recommendations had in the past almost always been followed, recommended Mr. Rodriguez's hire, and he was appointed with an effective date of July 22, 1990.

15. Mr. Jaquith did not at that time go through an explicit one on one comparison between Mr. Rodriguez and complainant which would have included reference checks, because he knew complainant could not be considered further. However, in addition to having ranked Mr. Rodriguez highest on the interview process, he considered Mr. Rodriguez better qualified than complainant on an overall basis because of Mr. Rodriguez's education

(associate degree in food service management from Gateway Technical College, Racine) and army food service experience. Also, since the position in question had been vacant for two or three months at the time of the interviews, and he was eager to fill the job as soon as possible, he would have appointed someone who was available in July (as was Mr. Rodriguez) as opposed to a hypothetically equally-qualified candidate who was not available until several months later.

16. EAS has hired and employed persons with conviction records, including a person with an armed robbery conviction approximately 10 years before her appointment as a Youth Counselor.

17. For some period of time EAS had a trustee program which involved minimum security inmates from adult institutions performing certain kinds of functions at EAS as part of the inmate work program. They had no responsibilities with respect to the EAS juveniles. This program was discontinued prior to the matters involved in this case, in part due to concerns about having adult inmates in any kind of contact with EAS juveniles.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §§230.45(1)(b) and 111.375(2), Stats.

2. Complainant has the burden of proof, which he has sustained, of establishing by a preponderance of the evidence that he was denied employment on the basis of his arson conviction.

3. Respondent has the burden of proof, which it has sustained, of establishing its affirmative defense, pursuant to §111.335(1)(c), Stats., with respect to complainant's arson conviction on which it relied, that "the circumstances of [that conviction] substantially relate to the circumstances of the particular job."

4. Respondent has the alternative burden of proof, pursuant to Price Waterhouse v. Hopkins, 490 U.S. 228, 104 L. Ed. 2d 268, 109 S. Ct. 1775 (1989), and Jenkins v. DHSS, 86-0056-PC-ER (6/14/89), which it has sustained, of establishing by a preponderance of the evidence that it would have made the same decision even if it had not taken complainant's conviction record into account.

5. Respondent did not violate the Wisconsin Fair Employment Act (FEA) in connection with its failure to have hired complainant for the FSW 3 position.

OPINION

Pursuant to §§111.321 and 111.322, Stats., it is a prohibited act of employment discrimination to refuse to hire an individual on the basis of conviction record, subject to the employer being able to establish an affirmative defense pursuant to §111.335(1)(c)1., Stats., that would result in an avoidance of liability. In the instant case, respondent admits that it relied on complainant's arson conviction in its decision not to hire him as a FSW 3 at EAS. However, respondent attempted to establish two affirmative defenses.

The first affirmative defense is, as noted above, provided by §111.335(1)(c)1., Stats., which provides:

> (c) Notwithstanding §111.322, it is not employment discrimination because of conviction record to refuse to employ ... any individual who:
>
> 1. Has been convicted of any felony ... the circumstances of which substantially relate to the circumstances of the particular job.

The second affirmative defense is provided by the Commission's decision in Jenkins v. DHSS, 86-0056-PC-ER(6/14/89), which adopts the standard of analysis for mixed motive employment discrimination that had been utilized by the U.S. Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, 104 L. Ed. 2d 268, 109 S. Ct. 1775 (1989). Under this test, in a mixed motive case the employer "may avoid a finding of liability only by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's gender [or other basis] into account." 490 U.S. at 258, 104 L. Ed. 2d at 293.

With respect to the first affirmative defense, respondent relies heavily on Gibson v. Transp. Comm., 106 Wis, 2d 22, 315 N.W. 2d 346 (1982). In that case, the Transportation Commission refused to grant a school bus driver's license to a person who had been convicted of armed robbery. The Supreme Court held that in so doing, the Commission had not violated the FEA proscription against discrimination on the basis of arrest or conviction record because the decision fell within the statutory exception provided by §111.335(1)(c)1., Stats., (then, §111.32(5)(h)2b). The Court held that as a matter of law such a conviction "in and of itself constitutes circumstances substantially related to school bus driver license." 106 Wis. 2d at 29. The Court reasoned as follows:

> A conviction of armed robbery under Indiana law requires that the person be found to have participated in the taking of another's

> property by threatening to harm them with a dangerous weapon. It thus indicates a disregard for both the personal and property rights of other persons. It also indicates a propensity to use force or the threat of force to accomplish one's purposes. The armed robbery conviction indicates personal qualities which are contradictory to the extreme patience, level-headedness and avoidance of the use of force which ... are essential in a school bus driver.

106 Wis. 2d at 28.

This holding is very persuasive precedent with respect to the instant case. It certainly also is true that a conviction for arson "indicates a disregard for both the personal and property rights of other persons. It also indicates a propensity to use force ... to accomplish one's purposes." Id. If these personal qualities are incompatible with the qualities needed to drive a bus, they also are inconsistent with the qualities needed to work in a food service operation in a correctional institution for juvenile offenders, where the employe has some responsibility for the instruction and control of the residents, many of whom are very susceptible to being influenced by adult staff, and many of whom are interested in engaging in illegal or improper activities in the institution.

That case is also material with respect to complainant's contention that employment at EAS would provide relatively little opportunity for arson because of the security setting. Obviously this job offers less of an opportunity to commit arson than others that can be imagined -- e.g., a night security guard who works alone at a fireworks factory. However, Gibson illustrates the point that even in a job where the circumstances are not particularly conducive to committing the particular crime of which the employee has been convicted, the Court will permit the employer to consider the incompatability between the personal traits important for a particular job and the personal traits exhibited in connection with the criminal activity in question. There certainly is no reason to think that driving a school bus will provide a fertile arena for the commission of armed robberies, but the Court held as a matter of law that the personal qualities associated with an armed robbery conviction were incompatible with the desirable traits for a school bus driver. In the instant case, while it perhaps could be inferred that the job in question offers more opportunity for the commission of arson than driving a school bus offers for the commission of armed robbery, in any event, it remains the case that the personal qualities associated with the crime of arson are incompatible with

the qualities needed for a job that has responsibilities for the safety, direction and discipline of juvenile offenders.

The Court's willingness to let the employer consider factors such as this, as opposed to merely the questions of whether the job in question offers particularly good opportunities for commission of the crime for which the person was convicted, is more recently illustrated by County of Milwaukee v. LIRC, 139 Wis., 2d 805, 407 N.W. 2d 908 (1987). There the employer discharged a "crisis intervention specialist" responsible for "providing direct crisis intervention assistance in a social work capacity to members of the public with acute mental health problems," 139 Wis. 2d at 812, following his conviction of criminal offenses related to patient neglect in connection with his prior employment as a nursing home administrator. The Supreme Court rejected LIRC's determination that the employer had violated the FEA's prohibition of conviction record discrimination, not because the circumstances of the job were conducive to the same kind of criminal activity, but because the Court concluded as a matter of law that the circumstances of the employe's offenses substantially related to the circumstances of the crisis intervention specialist job. The Court held, with respect to "the proper 'circumstances' inquiry required under the statute," 139 Wis. 2d at 824, that there were at least three "circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person." Id. (emphasis added, footnote omitted). The Court's analysis of the circumstances of the offense and the job, on which it based its conclusion that as a matter of law there was a sufficient relationship under the statutory test, was as follows:

> The "circumstances" of the offense and the job are similar since in both contexts Serebin was in a position of exercising enormous responsibility for the safety, health, and life of a vulnerable, dependent segment of the population. The twelve misdemeanors indicate a pattern of neglect of duty for the welfare of people unable to protect themselves. The propensities and personal qualities exhibited are manifestly inconsistent with the expectations of responsibility associated with the job. (emphasis added)

139 Wis. 2d at 828. Similarly, in the instant case, the commission of the crime of arson indicates a disregard of the welfare of people who may be unable to protect themselves, which is inconsistent with the expectations of

responsibility associated with the position in question, in connection with the welfare of the juvenile offenders confined at EAS.

At the hearing, complainant contended that respondent went astray by not looking closely enough at his personal situation and work record, particularly at the fact that he had been engaged successfully in a work release program at Sanger Powers, where he was released each day to go to work and return. In his post-hearing reply brief, he now argues that:

> [T]he 'elements only' test as such is defined in County of Milwaukee v. LIRC, 139 Wis. 2d 805, 407 NW 2d 908 (1987) is the applicable and controlling law in this case. Complainant's whole case is essentially that the Department of Health & Social Services (Department) failed to follow this test.... If an applicant's conviction record is looked at and considered any further than required to ascertain whether the 'elements only' test is met, the employer is, by definition, entering into an unlawful area.
>
> The law simply does not allow an employer to use or consider information concerning an individual['s] status as a convicted criminal, as a prisoner, or as a parolee, as a basis in its hiring decisions.
>
> But this is exactly what the Department did regarding Mr. Thomas. It considered information that he had been convicted ("the recency of the offence, the Complainant's prior criminal record"), and information that he had been imprisoned or paroled. ("the status of the complainant's sentence"). This is diametrically opposed to the public policy of the State of Wisconsin as stated in §111.31, Wis. Stats. Complainant's reply brief, pp. 3-5.

In County of Milwaukee v. LIRC, the Court did not hold that it was improper to look at other factors in addition to the elements of the crime, but rather it held that it was not improper in some cases to consider only the elements of the offense: "[w]e reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. 139 Wis. 2d at 823-24 (emphasis added).

What respondent DHSS considered, in addition to the elements of the crime and the requirements and responsibilities of the position in question, were factors relating to the likelihood of recidivism: For example, Mr. Ross, the appointing authority, testified as follows:

> The fact that Mr. Thomas had not been in the community for any extended period of time to prove himself, for lack of a better description, weighed into it. For example, had he been out doing well in the community and off supervision for a number of years, 5-10 years, we would have looked into the situation further, in even greater depth.

There is nothing in either §111.335(1)(c)1. or in the case law interpreting it that prohibits an employer from considering the length of time that an applicant has remained crime free following the most recent conviction. A reading of the law that would prohibit such an inquiry would be contrary to the FEA's manifest intent of encouraging the employability and rehabilitation of the ex-offenders. Pursuant to such an approach, the time elapsed since a person's conviction would be irrelevant, when clearly this can be a significant factor in balancing the overall goal of §111.335 of preventing discrimination on the basis of conviction record against the goal of §111.335(1)(c)1. of protecting the employer against unreasonable risks.[1]

Furthermore, the Commission does not agree that in considering complainant's status in the correctional system, respondent improperly considered elements included in the definition of "conviction record" as set forth in §111.32(3), Stats.:

> "Conviction record" includes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor, or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

It is undisputed that respondent relied on complainant's conviction in making its decision. Its consideration of the other information related to his status in the correctional system -- e.g., that he was still incarcerated and had no "track record" of successful functioning on parole -- was related to an assessment of the risks that would be associated with his employment at EAS, and was not some kind of separate form of conviction record discrimination. The enumeration in the §111.32(3) definition of "conviction record" of "information that an individual has been ... placed on probation, fined, imprisoned or paroled," in addition to "has been convicted of any felony" was intended to ensure that an employer did not discriminate by relying on a collateral aspect of the criminal process. For example, it would be improper for an employer to discharge an employee after finding out that the employe was on parole. However, §111.32(3) does not prevent an employer who is

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[1] For example, the record reflects that EAS hired a person as a youth counselor who had been convicted of armed robbery approximately 10 years earlier, relying in part on the length of time that had elapsed since the offense.

considering the circumstances of the offense pursuant to §111.335(1)(c)1. (particularly when the employer is a juvenile correctional institution that is considering the employment of a person who is incarcerated currently) from considering such things as the length of time that the applicant might have successfully completed on parole, etc., in evaluating the risks involved in employing that person.

Complainant also contends that the testimony of Mr. Ross, the appointing authority, concerning the relationship between complainant's conviction record and the position in question, is inconsistent with and outweighed by the testimony of Mr. Jaquith, the EAS Food Service Administrator, who in most cases in the past made the effective decisions on hiring. Complainant contends as follows:

> [T]he fact that Mr. Thomas was convicted of this particular crime did not concern him [Mr. Jaquith] at the time he was considering Mr. Thomas for hire. He testified candidly that he saw no relationship between a conviction of the offense of arson and the particular circumstance of the job at EAS. Reply brief, p. 8.

This characterization of Mr. Jaquith's testimony ignores the fact that when asked the question: "What the crime was, wasn't important?", he answered, "[N]o, I don't deal with -- I'm not the person responsible for looking into this." Thus, his testimony that the type of crime didn't make any difference to him except to the extent that "the only thing that would probably stick out in my mind is probably some child abuse things," is not synonymous with testifying that "he saw no relationship between a conviction of the offense of arson and the particular circumstances of the job at EAS," as complainant puts it. To the extent his testimony in this regard can be considered inconsistent with Mr. Ross's testimony, it does not outweigh it, because of Mr. Jaquith's limited role in this area and the self-imposed qualifications on his own testimony.

While the record does not establish that respondent's reliance on complainant's conviction record was improper under the FEA, respondent also argued in the alternative that even if its reliance on the conviction record had been improper under the FEA, it could avoid liability because it would have reached the decision to hire Mr. Rodriguez rather than complainant even if it had not relied on complainant's arson conviction.

In Jenkins v. DHSS, 86-0056-PC-ER (6/14/89), the Commission considered the standard of causation that should be utilized in a mixed motive case. The Commission noted that in Price Waterhouse v. Hopkins, 490 U.S. 228, 104 L. Ed.

2d 268, 109 S. Ct. 1775 (1989), the Court declined to follow the approach, espoused by the employe, which essentially is what the Commission had utilized in the past -- i.e., that liability attaches once the employe demonstrates that an improper consideration played any part in the employment decision in question. See, e.g., Smith v. UW, 79-PC-ER-95 (6/25/82). The Commission's discussion included the following:

> In determining the weight to be accorded the U.S. Supreme Court's analysis of mixed-motive causation under Title VII in Price Waterhouse, it has to be particularly significant that in a case that produced four separate opinions, not one justice supported the "in part' test of causation urged by the plaintiff (and to which this Commission has adhered -- i.e., that if an improper basis played any causative role in the employment transaction, the employer is liable, but may limit damages by showing that the action would have occurred even without the illegal taint.

Accordingly, the Commission decided to follow the Price Waterhouse plurality standard of mixed motive causation: "when a plaintiff in a Title VII case proves that her gender played a motivating part in an employment decision, the defendant may avoid a finding of liability only by proving by a preponderance of the evidence that it would have made the same decision even it if had not taken the plaintiff's gender into account." 490 U.S. at 258, 104 L. Ed. 2d at 293.

In the instant case, respondent has satisfied its burden of proof as to the Price Waterhouse affirmative defense by establishing that it would have hired Mr. Rodriguez even if complainant had not been eliminated from consideration because of his arson conviction. Both Mr. Jaquith, the EAS Food Service Administrator, and Mr. Kobbs, a Food Service Supervisor who assisted in the interviews, testified that after they interviewed Mr. Rodiguez, they considered him the best qualified candidate, with respect to his education, his employment background, and his performance in the interview. This conclusion was supported by the candidates' scores on the structured interviews. Furthermore, Mr. Rodriguez had the definite edge of being available for work more or less immediately, while complainant had several months before his mandatory release. Mr. Jaquith testified that particularly because the position had been vacant for a few months prior to the interviews, he would have preferred to have hired someone who was available sooner if more or less similarly-qualified candidates were being considered. However,

complainant contends that for two reasons respondent can not prevail on this affirmative defense.

First, he argues that respondent's affirmative defense must fail because under Price Waterhouse: "[a]n employe may not prevail in a mixed-motives case by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision." 490 U.S. at 252, 104 L. Ed. 2d at 289 (emphasis added). Complainant argues that since respondent had determined he could not be hired prior to its interview of Mr. Rodriguez, the latter's qualifications did not enter into the former decision. This argument is unpersuasive because it relies on an artificial dichotomization of the staffing process.

In most hiring transactions, there are conceptually two complementary elements to the hiring decision -- one positive and one negative -- an applicant is hired and, by definition, all the other applicants are denied employment. When one of the unsuccessful applicants alleges that he or she was unlawfully discriminated against, this typically constitutes an allegation that he or she was denied employment because the employer was motivated by an illegal consideration -- here, a conviction record. Complainant's approach would lead to the irrational result that the availability of a Price Waterhouse defense depends on the completely arbitrary criteria of the order in which the employer goes through its decisional process.

For example, in the instant case, complainant's argument presumably would be unavailable if the facts had been that Mr. Gauthier had not been able to contact Mr. Ross for a decision on complainant's eligibility until after Mr. Rodriguez had been interviewed and had been determined to have been the best candidate. Another example would be a case in which a supervisor has two applications for a welder's job, one male and one female. He arbitrarily picks up the male's application first and notes with approval that he has 20 years of experience and is very well-qualified. He then picks up the second application, sees it is a women's name, and notes that this is no job for a woman. However, he then notices that the female applicant is far less qualified than the male applicant. The supervisor then hires the male applicant. There is no basis in logic or law why on these facts a Price Waterhouse defense would be available, while if the supervisor happened to have picked up the applications in the reverse order and effectively excluded the female before seeing the male's application, it would not be. However, this is where complainant's approach would lead.

The Price Waterhouse holding (requiring motivation by the non-discriminatory reason at the time of the decision) was directed at the situation where the employer is trying to rely, after the fact, on a consideration that was not part of the decisional process at the time of the transaction in question, but which in retrospect allegedly establishes "that the same decision would have been justified ... not ... that the same decision would have been made." 490 U.S. at 252, 104 L. Ed. 2d at 289 (emphasis added, citation omitted). In the instant case, since respondent was aware of Mr. Rodriguez's qualifications at the time it made the hiring decision, it is not prevented from trying to establish that it would have hired Mr. Rodriguez even if it had not decided that it would not hire complainant because of his arson conviction.

Complainant's second basis for contending that respondent fails with his Price Waterhouse affirmative defense is the assertion that Mr. Jaquith never made an actual one-on-one comparison between complainant and Mr. Rodriguez because complainant had effectively been eliminated from consideration at the time Mr. Rodriguez was interviewed. Mr. Jaquith testified in this regard that due to the effective disqualification of complainant, he did not have occasion to have completed the evaluation process as between the two candidates by doing a reference check on complainant. While the process thus had not been totally completed, this does not mean ipso facto that respondent failed to sustain its burden of proof, which is to establish by a preponderance of the evidence that it would have hired Mr. Rodriguez even if complainant had not been eliminated from consideration. It is reasonable to infer that Mr. Rodriguez's references were good enough not to have prevented his hiring, and in light of his having been considered the best-qualified candidate in terms of his education, experience, and interview, and considering the advantage he enjoyed over complainant with respect to having been available much sooner, there is at least a preponderance of the evidence in support of a finding that Mr. Rodriguez would have been hired had complainant not been eliminated from consideration, and his references had been checked.

In conclusion, since respondent has prevailed on both of its alternative affirmative defenses, it must be concluded that it did not discriminate against complainant when it did not hire him for the FSW 3 job at EAS.

ORDER

This complaint of discrimination is dismissed.

Dated: April 30, 1993 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:tmt

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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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.