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MATTHEW R. MILLER,
 Complainant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

 Respondent.

Case No. 91-0106-PC-ER

* * * * *

DECISION
AND
ORDER

Nature of the Case

This is a complaint of discrimination on the basis of sex, sexual orientation, or handicap. A hearing was held on December 14, 1993, before Laurie R. McCallum, Chairperson. The parties were permitted to file posthearing briefs and the briefing schedule was completed on March 28, 1994.

Findings of Fact

1. In March of 1990, complainant was hired for a limited term employment (LTE) position in the Benefits Distribution and Mail Services (hereinafter "Benefits") unit of the Aids Administration Section, Bureau of Management and Operations, Division of Economic Support, Department of Health and Social Services. On May 7, 1990, complainant was appointed to a permanent position in this unit and required to serve a 6-month permissive probationary period.

2. The Benefits unit is responsible for the distribution and mailing of food stamps, Aid to Families with Dependent Children (AFDC) checks, and energy assistance checks. This distribution and mailing is required to meet very specific deadlines. As a result, consistent work attendance by unit staff is important in order to satisfy these deadlines, unscheduled absences result in reassignment of line and supervisory staff, and these reassignments interfere with the completion of other tasks.

3. During his employment as an LTE in the Benefits unit, complainant's use of leave time was higher than average and, at one point, he exhausted his earned leave time and had to take leave without pay. This concerned his supervisor, Gail Riedasch, and she brought her concern to complainant's attention. Complainant had unscheduled absences due to illness on March 27, April 30, and May 1, 1990. Complainant failed to call in his absences of April 30 and May 1.

4. Some time in May of 1990, Ms. Riedasch left her position in the Benefits unit and Linda Ashmore subsequently became the acting unit supervisor. Complainant's first-line supervisor while he was employed in both the LTE position and the permanent position in the Benefits unit was Gil Franco.

5. On or around June 25, 1990, complainant became aware of a memo prepared by Ms. Ashmore for distribution to Benefits unit staff which stated as follows, in pertinent part:

The following are procedures that I am requiring staff to follow regarding leave time:

1. Mail room and Output staff must call Gil at 266-8208 if you are not coming to work. (If Gil is not available you should talk to me.) Food Stamp Center and Energy staff should call Linda at 267-4573. You may call your co-workers to inform them you are not coming to work but you must also call your supervisor. If both Gil and I are unavailable, Food Stamp Center staff will take a message. Please be specific.

2. Vacation, personal holidays, and Saturday/legal holidays must be scheduled at least 24 hours in advance. This requirement is necessary so we can schedule work load needs.

3. Leave without pay will not be approved unless there is an unusual or non-recurring circumstance.

4. You are not to change your regularly scheduled work hours without your immediate supervisor's approval. You must work the hours that you are scheduled to work.

* * * * *

6. Complainant had unscheduled absences due to a broken tooth on June 11, 1990; and due to a "personal problem" on June 25, 1990. Complainant had unscheduled absences due to illness on July 10 and July 11, 1990.

7. In a memo dated July 11, 1990, to complainant, Mr. Franco stated as follows:

All sick days for either you or your family will require a doctor's note indicating the reason you are unable to perform job duties. This procedure is necessary due to your unusually high absenteeism rate for the past month of your employment. You have missed 4 out of 27 scheduled work days. You will not be allowed to take the time off as personal holidays if you do not furnish a doctor's excuse. Attached is a copy of DHSS work rules. Please read all of them and especially note rule #14 dealing with absenteeism. If you have any questions about the meaning of these rules, please see me.

If you call in sick, you must notify me prior to the start of your shift. Do not leave messages with coworkers unless I am absent that day. My telephone number is 266-8208. It is extremely important that you work the hours you are scheduled to work.

Ms. Ashmore directed Mr. Franco to write this memo after discussing with him her concerns relating to complainant's attendance record.

8. After receipt of this memo, complainant had unscheduled absences due to illness on July 26 (2.25 hours), August 1 (1.5 hours), and September 24, 1990; and unscheduled absences for reasons unrelated to illness or unspecified in the record on August 14 (4 hours), August 22, August 30 (3.5 hours), and September 12 (2.5 hours). Complainant had failed to follow required call-in procedures in regard to two unscheduled absences in June of 1990 and the August 30, 1990, unscheduled absence.

9. On September 25, 1990, complainant met with Ms. Ashmore. Ms. Ashmore advised complainant that attendance was very important, that she was concerned about the frequency and pattern of his unscheduled absences, that this attendance problem could have an impact on his passing probation, that he should strive not to have any additional absences during the remainder of his probation, and that his informal status as a leadworker made this problem even more of a concern. Complainant asked Ms. Ashmore questions about the responsibilities of a leadworker, expressed concern about passing probation due to his attendance record, indicated that he was HIV positive, requested that the doctor verification requirement be removed or modified so that a specific diagnosis would not have to be disclosed by his physician, and indicated that he intended to discuss the situation relating to his attendance with an affirmative action officer since he felt that Ms.

Ashmore was discriminating against him. It became apparent to Ms. Ashmore during this meeting that Mr. Franco had not impressed upon complainant the importance of consistent attendance. Ms. Ashmore indicated to complainant that she understood his concern relating to disclosure of a particular diagnosis on a doctor verification form, that it may be acceptable to state on the form that complainant was "too ill to work," and that she would follow up with DHSS staff in regard to his request relating to removal or modification of the doctor verification requirement.

10. In a memo to Mr. Franco dated October 18, 1990, Ms. Ashmore stated as follows:

Matt Miller and Amanda Scott have little or no leave balances left. Please prepare a memo to each of these employees instructing them to continue to bring in Dr.'s excuses for each absence. The Dr.'s excuses should cover each day of the absence. Indicate to them that LWOP will only be approved if there are unusual, non-recurring circumstance. Also recommend EAP and follow-up with Lila to find out what you should do if they choose not to make use of the Employee Assistance Program.

In some instances, excessive absenteeism can be considered a work rule violation and may result in disciplinary action. Make sure they are both aware of this. Also commend them for complying with the Dr.'s excuse requirement in the past. These memos are due for my review by October 19, 1990, as I had verbally requested these the first week of October.

11. In a memo to complainant dated October 23, 1990, Mr. Franco stated as follows:

I would like to bring to your attention something that concerns me. It is regarding your recent absences due to illness. I know we have discussed your use of sick leave before. Since you are still on probation and will be until November 9, 1990, I want you to be aware that excessive absenteeism could adversely affect your permissive probationary status.

I'm very pleased with your work as I've come to rely on your knowledge of the reports and their proper distribution. Unfortunately, as the lead worker, if you are continually absent your effectiveness is diminished.

You are to be commended on your compliance with provision of a doctors note for all unscheduled absences. It is my hope your absences will diminish and you will succeed in your lead worker position. I need you to continue providing acceptable doctor notes for unscheduled absences. An acceptable doctors note must include the following:

- be obtained on the day of illness.
- state the specific dates you couldn't work
- state a diagnosis which prevented you from working.
- be given to me or in my absence to Linda Ashmore on the day you return to work.

Please be sure your doctor notes contain the above information, because the requirement for an acceptable note has been modified. For example, in the past I accepted notes which said "illness." This will not be acceptable in the future.

I'm happy that you have accepted the lead worker position in the DES/Mailroom. I hope this position is challenging and rewarding for you. In this new position it is even more important that you show up for work as there is a lot to learn and you are the person people outside the work unit turn to for answers. Also you are the person unit staff look to for direction.

I also strongly recommend you contact the Employee Assistance Program. Excessive absenteeism is often an indication of other problems which impact on your work. The EAP program is confidential and free.

If you have any questions or concerns regarding this memo or any other problems related to work please feel free to talk to me about them.

12. After this memo was issued, Ms. Ashmore and Mr. Franco had discussions with each other and with other higher level supervisors and members of the DHSS legal, personnel, and affirmative action staffs relating to complainant's attendance. Ms. Ashmore became aware for the first time during these discussions that an employee's probationary period could be extended based on attendance concerns. After receiving advice both to terminate complainant and advice to extend his probation, Ms. Ashmore decided that complainant's probationary period should be extended. This decision was based on Ms. Ashmore's feeling that complainant had not received clear signals from Mr. Franco during his probationary period of the importance of consistent attendance and felt he should be given a chance to improve his attendance once this was made clear to him.

13. In a memo to complainant dated October 23, 1990, Mr. Franco stated as follows:

This memo is to inform you that I have requested an extension of your probation for an additional 128 hours. This is the number of hours you have been absent from the work unit.

I regret having to do this, but it is necessary for the sake of the work unit as you have been absent over 15 days in the past 5 months.

These involve 14 separate incidents. Also, several of these instances coincide with either scheduled vacation or weekends.

14. In a memo to Mr. Franco dated October 29, 1990, complainant stated as follows:

In the memo "Extension of Probation," reference is made to "14 separate instances" of being absent. After reviewing my records, it appears this figure is somewhat misleading in that it includes pre-scheduled and pre-approved vacation/personal holiday time and/or doctor's appointments which account for about half of these "instances." Were these times included when determining this figure?

Second, the memo "Leave Balances" is the first written notification I have received to date indicating I am a lead worker. I would greatly appreciate some clarification of the duties and responsibilities this entails as well as the identification of your performance expectations of a "lead worker." This information would enable me to more effectively function in this position.

I appreciate your consideration of these two concerns I have regarding these two memos dated October 23, 1990.

15. In a letter to complainant dated November 2, 1990, Silvia R. Jackson, Administrator, Division of Economic Support, stated as follows:

This letter is to inform you that your probationary period is being extended through November 28, 1990. This action is being taken pursuant to Section ER-Pers 13.05, Wisconsin Administrative Code, which allows a probationary period to be extended to cover absences from employment.

The purpose of this extension is to allow your supervisor to monitor your performance and attendance. I encourage you to discuss the expected performance standards you will need to meet to successfully complete this extended probationary period.

Complainant's probationary period ended on November 28, 1990, and, due to his consistent attendance and the lack of unscheduled absences during the period of extension, he was granted permanent status effective that date. The period of extension, i.e., 128 hours, corresponded to the number of hours he had been absent during his probationary period.

16. Complainant had unscheduled absences due to illness on October 16, 1990, and due to reasons unspecified in the record on December 4, 1990, and January 2 and January 25, 1991.

17. On or around February 5, 1991, complainant filed a written request with Mr. Franco to be relieved of his continuing obligation to provide certification for sick leave use. In a memo to complainant dated April 24, 1991, Mr. Franco stated as follows:

Since October 23, 1990, when the requirement for acceptable documentation was changed in regard to your providing medical certification for your use of accrued sick leave due to unscheduled absences you have shown improvement.

According to my records, you have had only 3 unscheduled absences in the past six months. Since you have shown improvement in the number of unscheduled absences you are now relieved of the requirement to provide medical certification for unanticipated absences due to illness. This is to take effect immediately.

18. In a memo to Mr. Franco dated May 1, 1991, complainant confirmed his resignation, effective May 3, 1991, from the Benefits unit and indicated that the resignation resulted from his acceptance of a promotional opportunity.

19. From the beginning of complainant's employment in the Benefits unit, it was common knowledge among his co-workers and his supervisors that he had asthma; and, beginning in May or June of 1990, it was common knowledge among his co-workers and his supervisors that he was homosexual.

20. In a handicap self-identification form complainant completed some time in May of 1990, complainant did not indicate that he needed or was requesting any type of accommodation.

21. The doctor verification requirement imposed on complainant was consistent with the requirement imposed on other employees with similar attendance records, and with applicable collective bargaining agreement and other applicable requirements.

22. Some time in or around October of 1990, complainant met with Affirmative Action Officer Ann Smith and they discussed, among other things, possible accommodations for complainant, including transfers to other positions where consistent attendance was not as critical.

23. Amanda Scott was a probationary employee in the Benefits unit during 1990 whose attendance failed to meet applicable requirements. As a

result, the doctor verification requirement was imposed on her and her attendance was the subject of several memos and counselings from Ms. Ashmore who was her immediate supervisor during her probationary period. Ms. Scott's probationary period was scheduled to end on August 13, 1990. Ms. Ashmore did not decide to extend Ms. Scott's probationary period since she was unaware at that time that this was an option and because Ms. Scott had not had an unscheduled absence during the final month of her probationary period. After becoming a permanent employee, Ms. Scott's attendance failed to meet applicable requirements and the doctor verification requirement was continued and progressive discipline begun.

24. Ms. Riedasch participated in the probationary termination of Helen Smalley. Ms. Smalley had been employed in the Benefits unit and her termination was based on her failure to meet attendance requirements.

Conclusions of Law

1. This matter is appropriately before the Commission pursuant to §230.45(1)(b), Stats.
2. The complainant has the burden to prove that respondent discriminated against him on the basis of his sex, his sexual orientation, or his handicaps as alleged.
3. The complainant has failed to sustain this burden.

Opinion

The issues to which the parties agreed are as follows:

1. Whether respondent discriminated against complainant on the basis of sex or sexual orientation in the terms and conditions of his employment on or around October and November of 1990.
2. Whether respondent discriminated against complainant on the basis of handicap or failure to accommodate in the terms and conditions of his employment on or around October and November of 1990.

Sex Discrimination

Although the stated issue refers only generally to "terms or conditions of employment," it is apparent from the record that complainant is challenging here the imposition of the doctor verification requirement for unscheduled absences and the extension of his probationary period.

The Commission has applied the method of analysis of disparate treatment cases set forth in McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973), and Texas Dept. of Comm. Affairs v. Burdine, 450 U.S. 2481, 101 S. Ct. 1089, 25 FEP Cases (1981). Pursuant to this method of analysis, the initial burden is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a legitimate, non-discriminatory reason for its action which the complainant may, in turn, attempt to show was a pretext for discrimination.

In the context of this case, a prima facie case would be demonstrated if the evidence showed that: (1) the complainant is a member of a protected group, (2) the complainant suffered an adverse term or condition of employment, and (3) the adverse term or condition exists under circumstances which give rise to an inference of discrimination.

In regard to the imposition of the doctor verification requirement, complainant has shown that he is a member of a group protected by his gender and that he suffered an adverse term or condition of employment as the result of the imposition of the requirement. However, complainant failed to show that his treatment in this regard would give rise to an inference of discrimination. The record shows that this requirement was imposed on both male and female employees, including complainant and Ms. Scott, when their attendance record exhibited certain characteristics over a certain period of time; that the requirement was suspended for these employees, including complainant, when their attendance records showed a certain pattern of improvement over a certain period of time; and that this was done in a consistent manner by respondent in accordance with applicable collective bargaining agreement and other applicable requirements. The record fails to show that complainant was treated any differently in this regard than Ms. Scott or any other female employee, and as a result, complainant has failed to demonstrate a prima facie case of sex discrimination in regard to the imposition of the doctor verification requirement.

In regard to the extension of complainant's probation, the record shows that complainant is a member of a protected group on the basis of his gender; that an adverse action was taken against him by his employer; and that, since a similar action was not taken against Ms. Scott, an inference of discrimination could be drawn. Complainant has made out a prima facie case of sex

discrimination in regard to this action. Respondent has offered as its explanation for this disparate treatment that Ms. Scott, unlike complainant, did not have any unscheduled absences during the last month of her probationary period; and that Ms. Ashmore, who effectively made the decisions to grant Ms. Scott permanent status at the end of her probationary period and to extend complainant's probationary period, was not aware until some time in October of 1990, i.e., after the end of Ms. Scott's probationary period, that extending an employee's probationary period was an option. Both of these explanations are legitimate and non-discriminatory on their face. Complainant appears to argue that pretext is shown by the fact that "he had never been advised by Ms. Ashmore or Mr. Franco that the possibility existed that he may be terminated, or that his probation would be extended if he had any further absences during his probationary period." (Post-hearing brief, page 7). However, the record shows that, as early as July 11, 1990, the complainant was advised in writing by Mr. Franco that he had an "unusually high absenteeism rate" during the previous month and he was referred to the applicable work rules in relation to absenteeism (See Finding of Fact 7, above); and that, on September 25, 1990, he was advised by Ms. Ashmore that his attendance problem could have an impact on his passing probation and that he should strive not to have any additional absences during the remainder of his probationary period (See Finding of Fact 9, above). Complainant also argues that the fact that Ms. Ashmore could not point in her testimony to more than one specific example of how complainant's unscheduled absences adversely affected the work unit demonstrated pretext. However, the record shows that the Benefits unit had an attendance policy which was consistent with the applicable collective bargaining agreement and other requirements and that this policy was applied to complainant's attendance record as well as that of Ms. Scott and other unit employees; and that failure to satisfy the requirements of this attendance policy was considered a very critical performance issue since employee absences in the Benefits unit required reassignments which interfered with the completion of other tasks (See Finding of Fact 2, above). Furthermore, it is axiomatic that excessive absenteeism impairs the performance of a work unit, particularly a work unit required to meet scheduled deadlines. Finally, complainant argues that Ms. Ashmore's listing of an absence for complainant in her records for August 8, 1990, when none of the records kept by others indicated such an absence demonstrates pretext.

However, the record does not show that this absence was one of those relied upon in the decision to extend probation and was more probably the result of an error by Ms. Ashmore made while compiling her records in preparation for hearing. Complainant has failed to demonstrate pretext here.

Sexual Orientation Discrimination

The analysis of this issue generally parallels that of the sex discrimination issue. One distinction, however, is that it is not clear from the record that Ms. Scott, who is the employee to whom complainant has compared his treatment, has a different sexual orientation than complainant so it is not clear that complainant has made out a prima facie case of sexual orientation discrimination. However, even if complainant had made out such a prima facie case, since complainant offers no new pretext arguments in regard to this issue and the Commission has already concluded above that complainant failed to demonstrate pretext in regard to his sex discrimination allegations, it is concluded here that complainant has failed to demonstrate pretext in regard to his sexual orientation discrimination allegations.

Handicap/Accommodation

As the Commission stated in Harris v. DHSS, Case Nos. 84-109-PC-ER, 85-0115-PC-ER (2/11/88), a typical handicap discrimination case will involve the following analysis:

- (1) Whether the complainant is a handicapped individual;
- (2) Whether the employer discriminated against complainant because of the handicap;
- (3) Whether the employer can avail itself of the exception to the proscription against handicap discrimination in employment set forth at §111.34(2)(a), Stats., --i.e., whether the handicap is sufficiently related to the complainant's ability to adequately undertake the job-related responsibilities of his or her employment (this determination must be made in accordance with §111.34(2)(b), Stats., which requires a case-by-case evaluation of whether the complainant "can adequately undertake the job-related responsibilities of a particular job");

(4) If the employer has succeeded in establishing its discrimination is covered by this exception, the final issue is whether the employer failed to reasonably accommodate the complainant's handicap.

It appears to be undisputed that complainant is handicapped on the basis of his asthma and his HIV positive diagnosis.

The second issue is whether the respondent discriminated against the complainant due to his handicaps. There are two ways that discrimination on the basis of handicap under this element can occur. The first would occur if respondent's extension of complainant's probation or imposition of the doctor verification requirement had been motivated by complainant's handicaps. The second would occur if respondent terminated complainant for reasons that were causally related to his handicaps. See Conley v. DHSS, 84-0067-PC-ER (6/29/87); Jacobus v. UW-Madison, 88-0159-PC-ER (1992). In regard to the first type, the record shows that Ms. Ashmore and Mr. Franco were aware of complainant's asthma at the time the decision was made to impose the doctor verification requirement and were aware of both complainant's asthma and his HIV positive diagnosis at the time the decision was made to extend his probation. However, complainant offers the same arguments here as offered in regard to his sex and sexual orientation discrimination allegations and, as concluded above, complainant failed to demonstrate pretext based on these arguments.

In order to establish the second type of handicap discrimination, it would be necessary for complainant to show a causal link between his handicaps and his attendance record in order to prove that he was discriminated against as alleged. In the record before us, complainant failed to specifically link any of his unscheduled absences to either of his handicapping conditions. Even if it could reasonably be implied for purposes of this analysis that his absences due to illness were attributable to his asthma or his HIV positive diagnosis, the record does not indicate the reason for many of his other unscheduled absences. In fact, according to the facts of record, during his employment in the Benefits unit, complainant had approximately 60 hours of unscheduled absences for illness and 34 hours of unscheduled absences for reasons other than illness or for unspecified reasons at the time the decision was made to extend complainant's probation; and that complainant had approximately 40 hours of unscheduled absence for illness and 16 hours of leave for reasons other than illness or for unspecified reasons at the time the

doctor verification requirement was imposed. Complainant has failed to show a clear causal relationship between his handicaps and his inadequate attendance record.

The Commission concludes that complainant has failed to show that he was discriminated against on the basis of his handicaps.

If the complainant had shown such discrimination, the next question would become whether respondent can avail itself of the proscription against handicap discrimination in employment set forth at §111.34(2)(a), Stats., i.e., whether the handicaps are sufficiently related to the complainant's ability to adequately undertake the job-related responsibilities of his employment. It appears to be undisputed that complainant's handicaps did not interfere with his ability to do his job on those days when he was in attendance. This, in combination with complainant's failure to show that his excessive absenteeism was primarily the result of his handicaps leads to the conclusion that the record does not show that complainant was unable to adequately undertake the job-related responsibilities of his employment.

The final issue under the Harris analysis is whether the respondent failed to reasonably accommodate the complainant's handicaps. Of course, in view of the Commission's finding that complainant's handicaps did not prevent complainant from adequately undertaking the job-related responsibilities of his employment, respondent did not have a duty of accommodation. If such duty had existed, however, the record indicates that the only accommodation complainant requested and argues should have been granted is the modification/removal of the doctor verification requirement. This does not appear to be the type of action contemplated by the duty of accommodation requirement of the Fair Employment Act, i.e., §111.34(1)(b), Stats. Such actions would include, for example, modification of the duties and responsibilities of the position, modification of the work setting or work equipment, modification of the work schedule, etc. The imposition of the doctor verification requirement, in contrast, is not directly related to complainant's performance of the assigned duties and responsibilities of his position. Furthermore, as discussed above, the imposition upon complainant of the doctor verification requirement was consistent with respondent's absenteeism policy and consistent with respondent's practice in regard to other employees. Complainant has failed to show that respondent had a duty of accommodation;

or that, if it had, the requested accommodation fell within the scope of such duty.

The Commission concludes that complainant was not discriminated against on the basis of his sex, his sexual orientation, or his handicaps as alleged.

Order

This complaint is dismissed.

Dated: May 27, 1994 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)
2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)