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VICKI WIPPERFURTH,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0135-PC

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RULING ON
 PETITION
 FOR
 REHEARING

This matter is before the Commission on the appellant's petition for re-hearing. The Commission's file reflects the following:

1. The appellant filed an appeal of a reallocation decision with the Commission on March 17, 1992.

2. A prehearing conference was held on July 29, 1992. The conference report, issued on August 7, 1992, reflected the following:

1) The parties discussed a number of issues and concerns related to the percentage of time that employees for whom appellant is the leadworker spend doing payroll and benefits tasks. The parties agreed to review the matter further and to discuss the impact that certain actions might have on appellant's classification either as of the time of the survey or prospectively.

2) The parties are asked to advise the Commission within 15 days if they wish to schedule further proceedings to address the appeal filled in the instant case.

3. On September 3, 1992, the appellant telephoned the Commission and stated that she wished to withdraw her appeal and would send in a confirming letter.

4. In a memo dated September 30, 1992, the appellant was advised that, absent some contrary indication from the appellant by October 12, 1992, she should assume that the Commission would dismiss her appeal at her request.

5. By order signed on October 16, 1992 and mailed to the parties on October 19, 1992, the appeal was dismissed "[a]t the request of the appellant."

6. In a letter postmarked October 19, 1992 and received by the Commission on October 20th, the appellant stated that she had "decided to continue with the appeal process."

7. By letter dated October 27, 1992, the appellant explained:

I received your letter dated September 30, 1992 after October 12, 1992, the date in which I should have responded. This letter had 5 separate postal stamps on it because the zip code was incorrect (53729 which was later changed to 53727). My zip code is 53529. Therefore, my response to your September 30, 1992 letter must have crossed in the mail with the order from the Personnel Commission dismissing my case.

8. By letter dated November 10, 1992, the appellant stated that she had never received a copy of the August 7, 1992, conference report. She also stated that she did not receive the Commission's September 30th memo until October 15, 1992 and that she responded to that memo on October 19th, when she returned to work, and backdated her response to October 9th "in order to comply with the deadline" indicated in the memo.


The submissions by the appellant have established that the order dismissing the appeal at the appellant's request was issued under a misapprehension of the appellant's intentions. Although the appellant may have decided on September 3rd not to pursue her appeal, she changed her mind before she received the Commission's dismissal order and wrote to the Commission in order to continue her appeal. The respondent opposes the appellant's petition on the basis that it took the appellant three months to respond to the 15 day "deadline" established at the July 29th prehearing conference and because she failed to telephone the Commission after having finally received the Commission's September 30th memo. However, the August 7th conference report shows that the 15 day period applied to the "parties" and was not specifically directed at the appellant. The Commission also notes that the appellant is appearing without the benefit of counsel.

By her letter postmarked October 19th, the appellant has established that she wished to pursue her appeal. Therefore, the Commission's order, mailed out to the parties on October 19th, dismissing the appeal at "the request of the appellant" was premised on a "material error of fact," which is a basis for granting a petition for rehearing under §227.49(3), Stats.

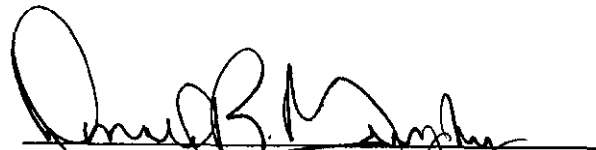
ORDER

The appellant's petition for rehearing is granted. The Commission will schedule a second prehearing conference.

Dated: November 13, 1992 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner