STATE OF WISCONSIN

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GINGER JAZDZEWSKI,	*	
	*	
Complainant,	*	
	*	
v.	*	INTERIM
	*	DECISION
Chancellor, UNIVERSITY OF	*	AND
WISCONSIN-MADISON,	*	ORDER
	*	
Respondent.	*	
×	*	
Case No. 92-0179-PC-ER	*	
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This matter is before the Commission on a question of whether an appeal from an initial determination was timely.

On September 14, 1993, an investigator for the Commission issued an initial determination of no probable cause to believe that complainant had been discriminated against based on sex. A copy of the initial determination was mailed to the complainant on September 14th, along with a cover letter, dated September 14, which stated, in part:

If you feel that this "no probable cause" determination is in error and if you wish to have a hearing on the issue of probable cause, then you must, within 30 days of the date of this letter, file a letter of appeal with the Commission. The appeal must be in writing. The letter should specifically state the grounds on which it is based. You should include your name, the case number and a statement that you request a hearing on the "no probable cause" determination. The appeal must actually be received by the Commission within the 30 calendar day period rather than merely having been mailed within that period. §PC 2.07(3), Wis. Adm. Code.

On October 15, 1993, the 31st day after the initial determination was mailed, the Commission received a letter of appeal from the complainant. The letter was sent to the Commission at its correct address via Express Mail Next Day Service. The label for the envelope indicates that it originated in Post Office ZIP Code 39211 where it was received at 10:41 a.m. on October 13, 1993, for Next Day Delivery by 3:00 p.m. Had the letter of appeal been delivered by 3:00 p.m. on the "next day," it would have been timely filed.

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The Commission has previously held that the 30 day period in §PC 2.07(3), Wis. Adm. Code is directory rather than mandatory. Dugas v. DHSS, 86-0073-PC-ER, 87-0143-PC-ER, 7/14/88. In Dugas, the Commission found good cause for failing to file the petition within the 30 day period where the complainant's mother had died on the day before the 30 day period would have ended and the complainant's union representative was absent from the state. In Rogers v. DQA & Ethics Board, 87-0010-PC-ER, 12/22/89; rehearing denied, 2/12/90, the Commission held that an appeal received on the 31st day was untimely, where complainant was represented by counsel, counsel and the complainant had both received copies of the initial determination, the appeal had been mailed at the 11th hour and the complainant had opted to rely on regular postal delivery.

Here, the complainant also waited until the 11th hour to mail in her appeal to the Commission.<sup>1</sup> However, the complainant, who is not represented by counsel, took the step to insure that the appeal would arrive at the Commission on the 14th when she sent it via Express Mail "Next Day Delivery". "Next Day Delivery" turned out to be "Second Day Delivery" through no fault of the complainant. The complainant has established that her expectation of next day delivery via Express Mail was reasonable. Given this set of facts, the Commission concludes that there was good cause for the one-day delay in filing the appeal, and the October 15th filing will be considered timely.

<sup>&</sup>lt;sup>1</sup>Complainant states that she did not receive the initial determination, which was mailed to her on September 14th, until September 22nd.

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## ORDER

Complainant's appeal, filed on October 15, 1993, of the initial determination of no probable cause is considered timely, and a prehearing conference will be scheduled.

Dated: <u>Auventur</u> 29, 1993

STATE PERSONNEL COMMISSION

AURIE R. MCCALLUM, Chairperson

KMS:kms K:D:temp-12/93 Jazdzewski

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