

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. DOA & 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.¹ 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.

¹Complainant states that she did not receive the initial determination, which was mailed to her on September 14th, until September 22nd.

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: November 29, 1993 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner