

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

JUDITH FARR, \*

Complainant, \*

v. \*

Secretary, DEPARTMENT OF \*

CORRECTIONS, \*

Respondent. \*

Case Nos. 93-0065-PC-ER \*

93-0111-PC-ER \*

\* \* \* \* \*

DECISION  
AND  
ORDER

The following factual information is derived from information supplied by the parties and appears to be undisputed.

The underlying complaints of discrimination/retaliation were filed by complainant on May 4 and July 9, 1993. On her notarized complaint forms, complainant indicated her address as 812 Henry Avenue, Beloit, Wisconsin; and her representative as Jo Reed, 1611 Yates Avenue, Beloit, Wisconsin. On or around August 8, 1993, complainant telephoned the Commission and indicated that her address had changed to 1611 Yates Avenue, Beloit, Wisconsin. On or around January 12, 1994, the Commission received a letter from complainant acknowledging her receipt of the Initial Determination, and indicating her representative as Jo Reed and complainant's address as 1611 Yates Avenue, Beloit, Wisconsin.

On March 16, 1994, a prehearing conference was held in this matter and Ms. Reed, acting as complainant's representative, and counsel for respondent agreed to the scheduling of a hearing on July 11, 12, and 13, 1994.

In a letter dated May 17, 1994, addressed to complainant at 1611 Yates Avenue, Beloit, Wisconsin, respondent stated as follows:

Enclosed is a notice of your deposition on May 27, 1994, in Beloit, Wisconsin, at 9:30 a.m. Since you are a party to this action, the notice of deposition has the same effect as a subpoena.

If you have any questions, please call me or the Personnel Commission.

Enclosed with this letter was a Notice of Deposition which stated as follows:

Pursuant to section 4.03, Wis. Adm. Code, and section 804.05, Stats., Notice is hereby given that Respondent requires the presence of Complainant Judy Farr, 1611 Yates Avenue, Beloit, Wisconsin, 53511, at the Probation and Parole Office located at 1146 Grant Street, Beloit, Wisconsin on May 27, 1994, at 9:30 a.m. for the taking of Complainant's deposition upon oral examination. The deposition shall be visually recorded and preserved pursuant to the provisions of ss. 885.44 and 885.46, Stats.

Dated and signed this 17th day of May, 1994.

In a letter dated May 23, 1994, Ms. Reed notified respondent as follows:

Please be advised that Ms. Farr will not be able to report on May 27, 1994, for the deposition you have scheduled at the Probation/Parole Dept. in Beloit, Wisc.

Ms. Farr is out of state and will not be back in the area until the July hearing.

If you have any questions please feel free to call me at 266-1872.

On May 24, 1994, respondent filed with the Commission a Notice of Motion and Motion for an Order Dismissing Complainant's Complaints and Rendering a Judgment of Default against Complainant based on her failure to appear for the scheduled deposition.

A prehearing/status conference was conducted on June 20, 1994. Complainant did not participate in this conference personally but instead was represented at this conference by Ms. Reed. At this conference, a briefing schedule was established in relation to the above-referenced Motion and this schedule was completed on August 1, 1994. The report of this conference also states as follows, in pertinent part:

During the course of discussion, Ms. Reed was asked by the hearing examiner why complainant did not appear for the noticed deposition and Ms. Reed explained that complainant had left the state and was driving cross-country at the time the notice of deposition had been served on Ms. Reed as complainant's representative of record. It also came out during the course of discussion that complainant was now in California.

The response to the subject Motion filed by Ms. Reed on complainant's behalf on July 12, 1994, and dated July 11, 1994; and addressed to counsel for respondent, states as follows, in pertinent part:

. . . Ms. Farr and her children lost their home in Beloit when she left Probation/Parole due to the extreme retaliatory behavior by DOC. She lived with Agent Reed for a couple of months and then her daughter sent for her and the siblings. Ms. Farr went to California and was involved in the earthquake. She lost what belongings she had in the earthquake, as did her daughter.

Ms. Farr has been traveling in California through shelters and other assistance programs in finding employment and housing. Ms. Farr can be reached at a Post Office Box #341643, Los Angeles, Calif. 90034. She must be notified of any hearing well in advance since she has limited funds and traveling expenses. She has been in California for approx. 6 months.

Ms. Farr has been trying to retain an Attorney to handle this case but with her non-ability to pay for services she has not been able to secure an attorney.

The letter that was sent to Ms. Farr at Jo Reed's home was not served on Ms. Farr but had to be sent to her via the post office box. She could not get to Beloit, Wisc., within a weeks notice. (She may not of received the information through her Post Office Box by May 27th, 1994.) A letter was sent to Attorney Smith advising him she was out of state and would not be back in the area until the July/94 hearing. He did not respond with any questions or concerns to me after I sent him the information. I gave him the opportunity to call and gave him my telephone number to do so.

It is my belief that your request for the Personnel Commission to decide DOC's Motion to Dismiss and for a Default Judgement is based on your Attorney knowledge of such legal hearings and you are using this knowledge against Ms. Farr who does not have the knowledge and opportunity afforded her.

Section 804.12, Stats., provides as follows, in pertinent part:

\* \* \* \* \*

(2) FAILURE TO COMPLY WITH ORDER. (a) If a party . . . fails to obey an order to provide or permit discovery, . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting

the disobedient party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

\* \* \*

(4) FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION . . .

If a party . . . fails (a) to appear before the officer who is to take the party's deposition, after being served with a proper notice . . ., the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others, it may take any action authorized under sub. (2)(a) 1, 2 and 3. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The circumstances present here are very disturbing to the Commission. First of all, complainant failed to notify the Commission or the respondent that her mailing address had changed. Complainant, despite this failure, then argued that service of the notice of deposition was flawed because it was not served on her at her new California mailing address. More importantly, however, complainant, through her representative, has given conflicting and apparently intentionally misleading information to the Commission and to the respondent relating to the reason for her inability to receive notice of or to be present or available for the scheduled deposition. Specifically, at the status conference, Ms. Reed indicated that, at the time the notice of deposition was received by Ms. Reed, i.e., on or around May 23, 1994, complainant had just left Wisconsin and was traveling cross-country and could not be contacted. However, in her response to the subject Motion, Ms. Reed indicated that complainant, as of July 11, 1994, had been in California for 6 months. The Commission considers this deception as a serious matter, and, in combination with complainant's stated unavailability for deposition prior to hearing (See Reed letter of May 23), as sufficient basis for granting respondent's Motion to Dismiss.

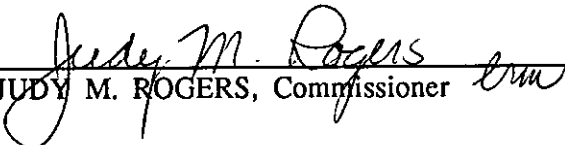
Order

Respondent's Motion is granted and these cases are dismissed.

Dated: August 23, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn

  
JUDY M. ROGERS, Commissioner

Parties:

Judith Farr  
PO Box 341643  
Los Angeles, CA 90034

Michael Sullivan  
Secretary, DOC  
PO Box 7925  
Madison, WI 53707-7925

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.)