

STATE OF WISCONSIN

PERSONNEL COMMISSION

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REGINA HILL,

Complainant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 93-0077-PC-ER

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DECISION
AND
ORDER

This matter arises from a complaint of discrimination alleging that respondent retaliated against the complainant for engaging in fair employment activities by rescinding a job offer in April of 1993.

On January 21, 1994, an investigator for the Commission issued an initial determination of "no probable cause" in this matter. The cover letter to the initial determination stated that an appeal of the initial determination had to be "actually received by the Commission" within 30 days of the date of the letter in order to comply with the Commission's rules. Pursuant to §PC 2.07(3), Wis. Adm. Code:

Within 30 days after the service of an initial determination of no probable cause as to any claim raised in a complaint, a complainant may file, with the commission, a written request for hearing on the issue of probable cause as to that claim.

In Shelton v. DNR & WCC, 85-0123-PC-ER, 7/13/88, the Commission held that the 30 day period commences with the mailing (rather than receipt) of the initial determination and that the request for hearing is not perfected until it has been physically received by the Commission. In Dugas v. DHSS, 86-0073-PC-ER, 87-0143-PC-ER, 7/14/88, the Commission held that the 30 day period is directory rather than mandatory and that good cause for failing to comply with the period existed where the complainant's mother died on the day before the 30 day period would have ended and the complainant's union representative was absent from the state.

In the present case, the initial determination was mailed to the complainant at a post office box address in Milwaukee on January 21st.¹ The Commission received complainant's letter of appeal on February 23rd. The letter is dated February 18th and bears a Madison postmark of February 21st. According to the complainant, she received the initial determination on February 16th and mailed her letter of appeal on February 18th "which was well within the time for your office to have received it within 30 days." The 30th day after the date of mailing of the initial determination was Sunday, February 20th. By operation of §PC 1.07, Wis. Adm. Code, complainant had until the next day, Monday, the 21st, to file her appeal.

Complainant's mere assertion that she mailed her letter of appeal on February 18th is insufficient to support a finding that her appeal was timely filed. The complainant does not state where she mailed her letter, what time of day it was or whether it was in a postal box which called for a pick-up later that day or over the weekend. The only clear information in this record is that the envelope bears a Madison postmark of February 21, 1994, which was the last day on which complainant could timely file her appeal. Such a postmark could be consistent with the complainant having placed the letter in a Madison postal box on February 21st, or it might also be consistent with the complainant having placed the letter in a post box in Milwaukee late on February 18th, where the mail was not scheduled to be picked up until Monday, the 21st. Either of these two scenarios would clearly not be sufficient to establish good cause for having failed to comply with the 30 day requirement. The Commission notes that the complainant's response to the issue of timeliness is a letter dated March 9th. The envelope bears a Madison postmark of March 9th and the letter was received by the Commission on March 10, 1994.

Given the fact that the letter of appeal had to be received by the Commission on Monday, February 21st, even mailing it in Milwaukee on Friday the 18th does not establish good cause for failing to comply with the 30 day

¹The affidavit of mailing for the initial determination indicates that it was mailed to the complainant with a Zip code of 53201-0214. This code corresponds to the complainant's post box number (214) and was consistently used by the complainant on her complaint and other correspondence to the Commission prior to the issuance of the initial determination. In both her letter of appeal and her response to the issue of timeliness, the complainant used the same post box number, but listed her Zip code as 53201-0121. However, the envelopes to both letters still listed the Zip code as 53201-0214.

period. There is an insufficient basis on which to conclude that it was the actions of the postal service rather than the actions of the complainant which caused the receipt of the letter of appeal on February 23rd rather than on the 21st.

ORDER

The complainant's appeal from the initial determination of "no probable cause" is untimely and her complaint is dismissed.

Dated: March 29, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:Time-app of NPC ID


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Regina Hill
P.O. Box 214
Milwaukee, WI 53201-0214

Gerald Whitburn
Secretary, DHSS
P.O. Box 7850
Madison, WI 53707-7850

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.)