



STATE OF WISCONSIN

PERSONNEL COMMISSION

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MIGUEL R. AMAYA,

Complainant,

v.

Secretary, DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 93-0104-PC-ER

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RULING
ON
TIMELINESS

On October 21, 1993, an investigator for the Commission issued an initial determination in this matter which reflected a determination of "no probable cause" on the complainant's claim of discrimination based on race. 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. The cover letter to the complainant was written on Commission stationery which listed the Commission's address as 121 East Wilson Street. Within 2 weeks after the letter was mailed, the Commission moved its offices to 131 West Wilson Street. 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. The 30 day period in §PC 2.07(3) is directory rather than mandatory. Dugas v. DHSS, 86-0073-PC-ER, 87-0143-PC-ER, 7/14/88.

In a letter dated Friday, November 19, 1993, postmarked the same date in Milwaukee and received by the Commission on November 23, 1993, the complainant requested a hearing before the Commission. The letter was addressed


to the Commission at its previous address at 121 East Wilson Street. Because November 20, 1993 was a Saturday, the complainant had until Monday, November 22, 1993, to get his appeal to the Commission. His appeal did not reach the Commission until the following day. The complainant was provided an opportunity to file any arguments as to why his appeal should be considered timely, but he did not respond.

Because the complainant's letter was mailed in Milwaukee on Friday, was not due at the Commission until the next Monday, and because of the change in the Commission's address which was not reflected in the cover letter to the initial determination, there is good cause for the one-day late filing of the appeal from that initial determination. Under the circumstances presented in this case, the complainant's appeal from the initial determination must be considered timely.

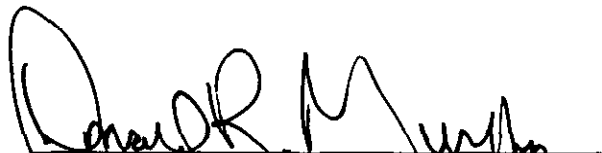
ORDER

The Commission will set a date for a prehearing conference and notify the parties.

Dated: January 11, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner