STATE OF WISCONSIN PERSONNEL COMMISSION

ROBIN ROGALSKI,

Complainant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 93-0125-PC-ER

FINAL DECISION AND ORDER

A hearing was held in the above-noted case on September 12-13, and October 12, 1994. The parties requested and were granted time to have a transcript prepared, a copy of which was received by the Commission on December 15, 1994.[1] The parties requested and were granted the opportunity to file written arguments, with the final brief received by the Commission on March 6, 1995.

Ms. Rogalski filed a charge of discrimination (complaint) with the Commission on July 30, 1993. An Initial Determination (ID) was issued on January 11, 1994, which concluded there was Probable Cause to believe that complainant was discriminated against on the basis of handicap by respondent when she declined respondent's offer of employment in October 1992.

The hearing issue was agreed to by the parties at a prehearing conference held on February 24, 1994, as shown below:

> Did the respondent fail to accommodate complainant's handicap as set forth in the charge of discrimination?

The parties agree to the basic facts. A statement of facts was included with Ms. Rogalski's initial brief. DHSS, in reply, said they agreed with her statement of facts but further noted that the parties stipulated to some of the facts recited in the ID too. The stipulated findings recited below are prefaced

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[1] As stated in Attorney Podbielski's letter of December 14, 1994, and as he clarified with the examiner by telephone on May 4, 1995, the transcript contains all hearing testimony but does not contain all conferences on the record some of which described stipulated facts.

by the letter "B" to denote those facts recited in Ms. Rogalski's initial brief or by the acronym "ID" to denote facts taken solely from the ID.

Facts which are not based on the parties' stipulation contain supporting citations to the record. Such citations are not intended to include all supporting evidence. Rather, the citations are given as examples of supporting evidence.

FINDINGS OF FACT

1. (B) Ms. Rogalski was rendered a quadriplegic as a result of cancer of the spine. She requires the use of a motorized wheelchair for mobility.
2. Ms. Rogalski has limited use of her left arm which she is able to use for balance and possibly to hold open a book. Her right arm is fairly strong but she has limited use of her right hand. She is unable to hold a pen to write with, so she uses her mouth. (T, 2) She operates a computer keyboard by using a mouth stick and a mouse. (T, 4)
3. Ms. Rogalski was born with her handicapping condition. She was and continues to be a client of the Division of Vocational Rehabilitation (DVR) in the Department of Health and Social Services (DHSS). The goal of DVR is to help people who are disabled become employed. (T 8-9)
4. (ID) From 1990 to early 1992, Ms. Rogalski worked for DVR at its Northeast office under an on-the-job-training (OJT) experience and as a limited term employe (LTE) functioning as a vocational rehabilitation counselor. Initially, her co-workers provided her assistance with her personal care needs, but managers of the office held a meeting in October 1991, and told employes they were not to provide personal care needs except on their own time. This meeting was held, at least in part, due to complaints of the staff to Mr. Alfonso DeBow, the office supervisor. Mr. DeBow felt it would be inappropriate to direct co-workers to perform personal care services for Ms. Rogalski because such tasks were not within their work classification. He also was concerned of potential liability issues if Ms. Rogalski suffered an injury from personal care services provided by co-workers. She left this employment when the LTE hours were exhausted. (T 5, 9, 16-18, 32, 40, 50-51, 57-68, 72-73, 75)
5. (B & ID) The issues in this case concern DVR's offer of employment to Ms. Rogalski in a second DVR office. Specifically, on or about September

30, 1992, Ms. Rogalski was offered a permanent position as a Vocational Rehabilitation Counselor I in DVR's Southwest office located in West Allis, Wisconsin. (T, 9, 19) The position was supervised by Mr. George Qualls.

6. (B & ID) DVR agreed to provide other accommodations requested by Ms. Rogalski, including: a) a speaker phone with an ultra lightweight handset, b) a 100 square foot work space with tables or shelves to spread out, c) access to a computer using a trackball and "sticky keys", and d) arrangement of forms for easy access.

7. (B) Ms. Rogalski also requested a scanner to scan information into a computer, which was a request DVR could not guarantee to provide due to the cost involved.

8. (B) Ms. Rogalski requested that DVR further accommodate her handicap by setting up her drink, as well as by setting up and later removing her lunch. She is able to eat and drink on her own.

9. (B) George Qualls, Supervisor of the Southwest DVR office, told Ms. Rogalski that her requests relative to lunch and water could not be provided by DVR and that it was Ms. Rogalski's responsibility to provide those items. DVR said these requests were denied because assistance with lunch and water falls outside the realm of job-related duties and, based on DHSS' policy these were not reasonable accommodations. Ms. Rogalski requested and was given extra time to think about the offer and to visit the office space.

10. Mr. Qualls felt he could not direct a co-worker to provide personal services for Ms. Rogalski. He expected that such a directive would lead to the co-worker filing a union grievance for being directed to perform personal care which were inconsistent with the co-worker's classification. He also was aware that DHSS policy did not permit him to require co-workers to provide personal care services for Ms. Rogalski. (T 105-106)

11. "Setting up her drink" meant ensuring someone was available to refill her water glass on a continual basis. "Setting up her lunch" included such tasks as cooking her meal in a microwave and/or cutting portions into smaller (bite) sizes (when appropriate), as well as putting out utensils and opening the food containers for Ms. Rogalski. (T, 15-16)

12. (B) It was medically necessary for Ms. Rogalski to drink water throughout the day in order to prevent urinary tract infections and the development of kidney stones, for which she previously had required removal by surgery. It was also necessary for Ms. Rogalski to take various prescription medications with food and/or water.

13. DHSS has a written policy on accommodations which is referred to as "Administrative Directive 69" (AD-69), dated July 10, 1992 (Exh. R-3), the text of which is shown below.

SUBJECT: [DHSS] Policy on Personal Work Place Supports

I. DEFINITION. The term personal work place support means non-work related assistance for employees with disabilities. This assistance is for personal needs which may include assistance with eating, drinking, administration of medication, dressing and toileting, among other personal activities, which occur in the work place.

II. POLICY. The responsibility for identifying, obtaining and financing personal work place support in the normal work environment lies with the employee who desires such assistance, not with the employer. An employee may obtain personal work place support from several sources such as family, friends, volunteer organizations and hired personal assistants.

A co-worker may provide personal work place support during work time only if the assistance is very brief, such as helping an employee remove or put on his coat. A co-worker may also provide more substantial personal work place support during non-work time, including break time, lunch time or before or after work. In any event, providing personal work place support may not interfere with the work of the co-worker providing the assistance or any other employee. [Underlining appears in the original document.]

Because of requirements of the federal Fair Labor Standards Act, it is important that an employee who provides personal work place support understand that it is not part of his or her job. If an employee agrees to provide personal work place support, this is an agreement solely between that employee and the employee who requests the support, and the Department is not a party to that agreement. Unless the two employees agree to the contrary, either one is free to discontinue the assistance for any reason at any time if they so choose.

If you have any questions about this policy, please contact your division affirmative action officer or the DHSS office of Affirmative Action and Civil Rights Compliance. You may also contact the Bureau of Personnel and Employment Relations with questions about the Fair Labor Standards Act or other matters related to this policy.

III. EXCEPTIONS AND SPECIAL CASES. This policy does not address unusual work situations, such as when the employee must be working away from the usual worksite. This policy also does not address the issue of reasonable work-related accommodations.

14. (B) There are 14 employees at the Southwest DVR office not including Mr. Qualls, consisting of 10 counselors, three program/clerical assistants and the program/clerical supervisor. Program assistants assist counselors in doing their jobs. Employees at the Southwest DVR office are allowed a 15 minute paid break in the morning and in the afternoon, as well as an unpaid 45 minute lunch break. A water fountain is in the office as are vending machines for soda, candy and coffee. A refrigerator and microwave purchased by the employees are also in the building.

15. (B) Ms. Rogalski contacted the Southeast Wisconsin Center for Independent Living (SEWCIL), an organization which assists disabled individuals, requesting assistance. SEWCIL was unable to assist Ms. Rogalski because of the minimal amount of time required on a daily basis. (SEWCIL found no one willing, for example, to travel to the Southwest DVR office merely for the time involved in setting up her lunch. T 22, 27, 45-46) She also discussed her situation with the assistant director of the Office on Handicapped, an office of the Milwaukee County Government, which also was unable to assist her.

16. (B) Unable to obtain assistance with her water and meals, Ms. Rogalski telephoned Mr. Qualls on October 6, 1992, and indicated she was declining the job offer because DVR would not accommodate her needs relative to water and lunch. Mr. Qualls explained that such requests were outside the scope of her job accommodations.

17. (B) Spring Ferguson, the Affirmative Action (AA) Officer for DVR, later called Ms. Rogalski back saying DVR would provide her additional time to request voluntary assistance from the staff at the Southwest office (which were her potential co-workers). Ms. Ferguson also reiterated the guidelines of AD-69, specifically that it was Ms. Rogalski's responsibility to make the water and lunch arrangements rather than DVR's responsibility.

18. (B) Ms. Rogalski sent a facsimile to employees of the Southwest office with a request for volunteers to set up her water and lunch. No one volunteered.

19. (B) Ms. Rogalski later spoke with Ms. Ferguson and declined the job offer. Ms. Rogalski said she was unable to take the position because DVR would not accommodate her water and lunch requests.

20. DVR has a "social security reimbursement fund" and set-aside funds to provide accommodations to its employees. Total available funds for this purpose on a statewide basis range from about $90,000-$120,000 a year. (T 128) The record does not indicate exactly how much of those funds were already obligated for the accommodation needs of staff. The record shows that the entire fund was unavailable in the uncontested fact that DVR could not guarantee purchase of a scanner for Ms. Rogalski due to the cost involved. (See finding #7 above.) In any event, there is no reason to believe from the record that DVR would have been successful hiring someone to assist Ms. Rogalski with drink and lunch when she was unable to do so through SEWCIL and Milwaukee County's Office on Handicapped.

21. Ms. Rogalski's drink and lunch needs would be required for her functioning whether she was at work or not. Such needs were not related to any specific job duty assigned to the counsellor position she was offered.

CONCLUSIONS OF LAW

1. Ms. Rogalski is a "handicapped individual", within the meaning of s. 111.32(8)(a), Stats.

2. It was Ms. Rogalski's burden to show by a preponderance of the evidence that DHSS unlawfully discriminated against her because of her handicap.

3. Ms. Rogalski did not meet her burden.

DISCUSSION

Ms. Rogalski argued in her initial brief (dated 1/16/95) that respondent's failure to provide her with drink and lunch assistance constituted discrimination because of her handicap in relation to terms and conditions of employment and that respondent had a duty to accommodate her handicap by providing such services (initial brief starting on p. 6).

General statutory framework - FEA

The Fair Employment Act (FEA) prohibits handicap discrimination in relation to specific actions, as shown by the text of s. 111.321 and 111.322, Stats., shown below in relevant part.

> 111.321: Prohibited bases of discrimination. Subject to ss. 111.33 to 111.36, no employer . . . may engage in any act of employment discrimination as specified in s. 111.322 against an individual on the basis of . . . handicap . . .
>
> 111.322: Discriminatory actions prohibited. Subject to ss. 111.33 to 111.36, it is an act of employment discrimination to do any of the following:
>
> (1) To refuse to hire, employ, . . . or to discriminate against any individual in . . . terms, conditions or privileges of employment . . . because of any basis enumerated in s. 111.321.
>
> 111.34(1) Employment discrimination because of handicap includes, but is not limited to:
> * * *
> (b) Refusing to reasonably accommodate an employe's or prospective employe's handicap unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise or business.
> (2) (a) Notwithstanding s. 111.322, it is not employment discrimination because of handicap to refuse to hire . . . or to discriminate against any individual in . . . terms, conditions or privileges of employment if the handicap is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment. . .

Both Parties Looked to the federal ADA and related guidelines for interpretive guidance.

Neither party could find legislative or case guidance on the state level regarding an employer's obligation under the FEA to provide personal services to an employee (or potential employee) which are unrelated to the performance of specific job duties. Both parties looked to Title I of the federal American Disabilities Act (ADA) and related regulations and guidelines (42 CFR Part 1630) for interpretive guidance.

It could be argued that it is inappropriate to use the ADA guidance discussed in the next section of this decision if the ADA or related regulations contained special language supporting the interpretation discussed below and if such special language were not included in the FEA. The interpretive

guidance discussed below, however, does not stem from any specific statutory or rule language in the federal law.

Like the state law (s. 111.321 & 111.322, Stats.), the ADA prohibits handicap discrimination in the terms, conditions or privileges of employment (42 USC 12112(a)). Like the state law (s. 111.34(1)(b) and (2)(a), Stats.) handicap discrimination includes an employer's failure to reasonably accommodate the employe/prospective employe's handicap unless the employer shows that the accommodation would impose an undue hardship on the operation of its business (42 USC 2112(b)(5)(A)). The relevant portions of the cited ADA provisions are shown below for convenience, along with the text of the related federal rules.

> 42 USC 12112(a) **General rule.** No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to . . . hiring, . . . and other terms, conditions, and privileges of employment.
>
> 42 USC 12112(b) **Construction.** As used in subsection (a), the term "discriminate" includes --
> * * *
> (5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;
>
> 29 CFR 1630.2(o) (federal rule): *Reasonable accommodation.*
> (1) the term *reasonable accommodation* means:
> (i) Modifications or adjustments to a job application process . . or
> (ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
> (iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
> (2) *Reasonable accommodation* may include but is not limited to:
> (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
> (ii) Job restructuring . . . acquisition or modifications of equipment or devices . . . the provision of qualified readers

> or interpreters; and other similar accommodations for individuals with disabilities.
>
> * * *
>
> (p) *Undue hardship*--(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the facts set forth in paragraph (p)(2) of this section.
>
> (2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
>
> (i) The nature and net cost of the accommodation needed . . .
>
> * * *
>
> (iii) The overall financial resources of the covered entity. . .
>
> (iv) The type of operation . . . of the covered entity . . .
>
> (v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Furthermore, the state and federal acts share a common purpose in regard to accommodations for the handicapped in the context of employment. Relevant statutory language from the ADA and the FEA is shown below to illustrate this point.

> 111.31, Stats. (FEA): Declaration of Policy. (1) The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their . . . handicap . . . substantially and adversely affects the general welfare of the state. Employers . . . t;hat deny employment opportunities and discriminate in employment against properly qualified individuals solely because of their . . . handicap . . . deprive those individuals of the earnings that are necessary to maintain a just and decent standard of living.
>
> (2) It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment and to enjoy privileges free from employment discrimination because of . . . handicap . . . and to encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state, the family and all the people of the state. It is the intent of the legislature in promulgating this subchapter to encourage employers to evaluate an employe or applicant for employment based upon the employe's or applicant's individual qualifications rather than upon a particular class to which the individual may belong.
>
> (3) In the interpretation and application of this subchapter and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified individuals regardless of . . . handicap . . .

> 42 USC 1201 (ADA): (a) Findings. The Congress finds that --
> * * *
> (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
> * * *
> (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion. . .
> (6) . . . studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
> (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations . . . based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability . . .
> (b) Purpose. It is the purpose of this chapter --
> (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; . . .

Guidance on the federal law (ADA)

The federal statute is found at 42 USC 1201, et seq. The related federal regulations are contained in 29 CFR Part 1630. The statute, regulations and guidelines can be found in Vol. 8, FEP Manual.

Ms. Rogalski cited as support for her legal arguments under the FEA, the following federal rules: 29 CFR 1630.2(o) (definition of *reasonable accommodation*) and 29 CFR 1630.4(i) (prohibits discrimination in terms and conditions of employment). DVR cited as support the same definition of *reasonable accommodation*, as well as 29 CFR 1630.9 (entitled "Not Making [a] Reasonable Accommodation"). DHSS' brief (p. 5-6) included specific excerpts from the guidelines to 29 CFR 1630.2(o) & 1630.9, which Ms. Rogalski attempted to distinguish from her own situation in her final brief (starting on p. 1).

The parties' disagreement over the meaning of the federal regulations noted in the prior paragraph lead the Commission to review the comments provided with Congressional history, as well as with publication of the final rules in 56 FR 35734, dated 7/26/92. A clear statement of intent was found regarding employee-requested accommodations which are unrelated to any specific job task, as discussed below.

The House Labor Report; HR Rept. #485, part 2, 101st Congress, Second Session (1990); contains the following statement on page 64:

> The legislation [ADA] also explicitly includes provision of qualified readers or interpreters as examples of reasonable accommodations. As with readers and interpreters, the provision of an attendant to assist a person with a disability during parts of the workday may be a reasonable accommodation depending on the circumstances of the individual case. Attendants may, for example, be required for traveling and other job-related functions. This issue must be dealt with on a case-by-case basis to determine whether an undue hardship is created by providing attendants.

The topic of providing attendants was discussed again in the Federal Register with the printing of the final regulations, Id., p. 35729.

> Many commenters discussed whether the provision of daily attendant care is a form of reasonable accommodation. Employers and employer groups asserted that reasonable accommodation does not include such assistance. Disability rights groups and individuals with disabilities, however, asserted that such assistance is a form of reasonable accommodation but that this part (of the federal regulation) did not make that clear. To clarify the extent of the reasonable accommodation obligation with respect to daily attendant care, the Commission (Equal Employment Opportunities Commission - EEOC) has amended s. 1630.2(o) to make clear that it may be a reasonable accommodation to provide personal assistants to help with specified duties related to the job.
>
> The (EEOC) also has amended the interpretive guidance to note that allowing an individual with a disability to provide and use equipment, aids, or services that an employer is not required to provide may also be a form of reasonable accommodation. Some individuals with disabilities and disability rights groups asked the Commission to make this clear.

The topic was addressed again in the same publication of the Federal Register on p. 35747, as shown below.

> The obligation to make reasonable accommodation is a form of non-discrimination. It applies to all employment decisions and to the job application process. This obligation does not extend to the provision of adjustments or modifications that are primarily for the personal benefit of the individual with a disability. Thus, if an adjustment or modification is job-related, e.g., specifically

> assists the individual in performing the duties of a particular job, it will be considered a type of reasonable accommodation. On the other hand, if an adjustment or modification assists the individual throughout his or her daily activities, on and off the job, it will be considered a personal item that the employer is not required to provide. Accordingly, an employer would generally not be required to provide an employee with a disability with a prosthetic limb, wheelchair, or eyeglasses. Nor would an employer have to provide as an accommodation any amenity or convenience that is not job-related, such as a private hot plate, hot pot or refrigerator that is not provided to employes without disabilities. . .

The information noted above was reviewed in a learned treatise. Ogletree, et. al., Americans with Disabilities Act; Employee Rights & Employer Obligations, s. 6.04[6]. The conclusion drawn was stated on p. 6-73, as noted below (without the citations).

> According to the EEOC, this clarification was included in the Interpretive Guidance "to make clear that it be a reasonable accommodation to provide personal assistants to help with specified duties related to the job." Thus, depending upon the circumstances of the individual case, assistants and attendants may be required on either a full- or part-time basis. Nonetheless, the ADA clearly does not obligate an employer to hire a full-time attendant to actually perform the essential job functions of an employee with a disability. The role of an attendant is limited to that of an assistant, not a replacement for the employee with a disability in performing the job functions.
>
> Also, an employer should not be obligated to provide an assistant to take care of the personal--rather than job-related--needs of an individual with a disability. The EEOC's discussion of its final regulations speaks of having an assistant help "with the specified duties related to the job," not with assisting in all types of duties. For example, daily care attendants may help an individual with a severe motor disability get up in the morning, get dressed, eat breakfast, and travel to work. These life activities may be crucial in allowing an individual with a disability to be ready to start a job; however, an employer would not be required to supply an attendant to assist the person in these activities. Reasonable accommodation extends only to job-related functions.

Ms. Rogalski argued that DHSS' failure to provide her with water and lunch assistance discriminated against her because of her handicap in relation to terms, conditions and privileges of employment. Her argument is

shown below and is taken from her initial brief, starting on p. 5 (cites omitted).

> The accommodations requested by complainant of setting up her water and lunch and later clearing it away relate to benefits and privileges of employment, areas covered by the (FEA) and (ADA). . . . DVR employees were entitled to a 45 minute lunch break. Although not required by law, DVR employees were also entitled to 15 minute paid breaks in the morning and the afternoon. Furthermore the (ADA) mandates that an employer include accommodations that enable the employer's employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities. . . . As a reasonable accommodation, an employer may be required to provide accessible break rooms or lunch rooms. These laws implicitly recognize that the ingestion of food and drink are necessary in order to perform the essential functions of one's job. While her coworkers would have been able to get their own liquids and eat lunch during the break period . . . it was only as a result of her handicap that she was unable to enjoy the benefits and privileges of employment i.e. eating lunch and drinking liquids during these periods. . . .

Commentary included with the federal register printing of the final rules, Id., however, illustrate that Ms. Rogalski has placed a wider burden on the employer than exists under the ADA. The commentary noted below appears on p. 35729.

> The (EEOC) has modified s. 1630.2(o)(1)(iii) to state that reasonable accommodation includes modifications or adjustments that enable employees with disabilities to enjoy benefits and privileges that are "equal" to [rather than "the same" as] the benefits and privileges that are enjoyed by other employees. This change clarifies that such modifications or adjustments must ensure that individuals with disabilities receive equal access to the benefits and privileges afforded to other employees but may not be able to ensure that the individuals receive the same results of those benefits and privileges or precisely the same benefits and privileges.

Ms. Rogalski's argument here is akin to a request of DHSS to ensure she receives the same results of the benefits and privileges of lunch and break times. DHSS, however, has the lesser responsibility to ensure she has equal access to such benefits. DHSS met this lesser responsibility by giving Ms.

Rogalski an opportunity to attempt to make arrangements for her drink and water needs through other sources.

Summary

The guidance discussed above is not dependent upon specific language in the federal law or regulations. As noted previously, the state and federal laws are sufficiently similar in their purpose and treatment of handicap accommodation provisions to refer to federal guidance where, as here, little or no guidance exists on the state level and both parties refer to federal guidance.

It is unfortunate that Ms. Rogalski could find no co-worker willing to provide her with lunch and drink assistance. The Commission, however, finds no legal obligation for DHSS to provide those services.

ORDER

That this case be dismissed.

Dated June 22, 1995.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

JMR

Parties:
Robin Rogalski
4848 N. Lydell Ave., Apt. 134
Glendale, WI 53217

Richard W. Lorang
Acting Secretary, DHSS
1 W. Wilson St., Rm. 650
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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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. 2/3/95