



STATE OF WISCONSIN

PERSONNEL COMMISSION

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PATRICK DUTTER,
 Complainant,

v.

Secretary, DEPARTMENT OF
NATURAL RESOURCES,
 Respondent.

Case No. 93-0148-PC-ER

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INTERIM RULING

This complaint was filed on September 3, 1993, and alleged that the complainant was discriminated against based on handicap and was retaliated against for engaging in fair employment activities with respect to his resignation/termination from a position with respondent Department of Natural Resources, effective November 9, 1992. In a letter sent to complainant's attorney and dated September 16, 1993, a member of the Commission's staff requested that certain information clarifying the complaint be filed by October 1, 1993. Complainant's attorney did not respond until October 8, 1993, when he filed a letter requesting 20 additional days to respond to the Commission's questions. After having still not received the information, the Commission prepared a second letter, dated December 2, 1993, requesting the information. That letter specifically referenced the provisions of §111.39(3), Stats., which require dismissal of a complaint for the failure to respond "within 20 days to any correspondence from the [Commission] concerning the complaint and if the correspondence is sent by certified mail to the last known address of the person." The December 2nd letter was sent certified mail to the complainant's attorney. The Commission's file includes a "Receipt for Certified Mail" which bears a Madison postmark of December 3, 1993, indicating that the December 2nd letter was not mailed until that date.

On December 23, 1993, the 20th day after December 3rd, the Commission received a letter dated December 21, 1993, from complainant's attorney, requesting an additional 20 days to respond to the September 16th letter. The response also referenced meetings with representatives of DNR and requested that the complaint be cross-filed with the EEOC.

The Commission has previously ruled that the 20 day time period set forth in §111.39(3), Stats., commences on the date the letter is sent rather than on the date of receipt by the complainant. King v. DHSS, 88-0007-PC-ER, 5/29/91; Jackson v. DHSS, 87-0149-PC-ER, 3/10/88; Billingsley v. DOR, 87-0132-PC-ER, 7/13/88. Here, even though the letter was dated December 2nd, the only information in the file suggests that it was not mailed until December 3rd. Because the response was received on the 20th day thereafter, the conditions necessary for dismissal under §111.39(3), Stats., are not present.

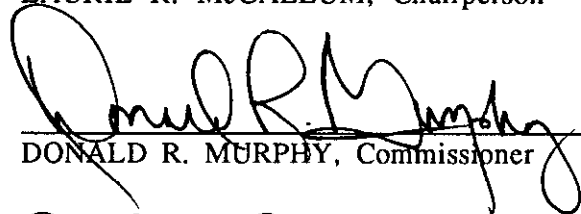
Due to the various delays that have occurred in obtaining a response to the Commission's September 16th information request, the Commission is providing the complainant a final opportunity to supply that information. In order for the response to be considered and to avoid dismissal for lack of prosecution, the requested information must be received by the Commission no later than February 28, 1994.

Dated: February 3, 1994

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner