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PASTORI BALELE,
 Complainant,

v.

Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES;
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS; and
 Administrator, DIVISION OF MERIT
 RECRUITMENT AND SELECTION;
 Respondents.

Case No. 95-0005-PC-ER

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ORDER

This case involves a charge of discrimination. As part of the investigation, respondents filed answers to the charges, and complainant responded. By letter of April 4, 1995, respondents were given 10 days in which to reply. Respondent DHSS filed its reply on April 18, 1995, without having made any attempt to obtain an extension. Complainant has now moved to reject this reply as untimely filed.

The Commission's rules provide at §PC 2.05(4), Wis. Adm. Code, as follows:

(c) If a respondent fails to answer or to produce requested information necessary for an investigation, the commission may make an appropriate inference, analyze the available evidence and issue an initial determination. If probable cause is ultimately found, conciliation is unsuccessful and a hearing on the merits of the complaint is convened, the hearing examiner or commission may exclude any evidence which should have been offered in response to the discovery request.

(d) If a respondent fails to file an answer when required by the commission under s. PC 2.04, the hearing examiner or the commission may invoke those sanctions described in par. (c).

Even if respondent's reply is considered not to be part of its answer, but more akin to a brief, the Commission would have the authority to disregard it in the exercise of its discretion, §PC 1.09, Wis. Adm. Code.

The respondent's reply was either one or two working days late, depending on whether one interprets the ten day period in the Commission's

April 4, 1995, letter, as running from the date of receipt or the date of posting.¹ No prejudice to complainant is likely under such circumstances, and none has been alleged. While the Commission certainly does not condone the late filing, rejection of the document would be too severe a penalty for the short delay involved,² and will not be ordered.

ORDER

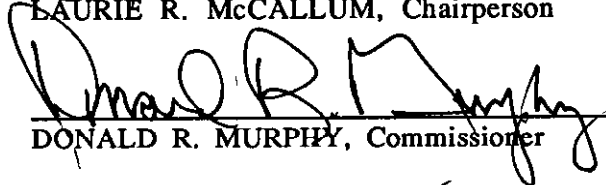
Complainant's motion for an order disregarding or rejecting respondent DHSS's reply is denied.

Dated: May 15, 1995

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/jan


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

¹ Respondent states it received the letter on April 5, 1995.

² Complainant cites Association of Career Executives v. Klauser et. al., with the assertion that "this Commission dismissed complainants case when they failed to file their brief on the date ordered by this Commission." However, he has provided neither a case number nor a date of decision, and the Commission is not aware of such a decision.