STATE OF WISCONSIN PERSONNEL COMMISSION

DAVID R. MARFILIUS,
Appellant,

v.

Chancellor, UNIVERSITY OF WISCONSIN-MADISON,
Respondent.

Case No. 96-0026-PC-ER

FINAL DECISION AND ORDER

NATURE OF THE CASE

This is a case of alleged violations of the FEA (Fair Employment Act), OSHA (Occupational Health and Safety Act), and FMLA (Family and Medical Leave Act). The July 30, 1996, conference report contains the following agreed statement of issues for hearing:

> 1. Whether respondent discriminated against complainant by retaliating against him for engaging in fair employment activities (wage claim) when he was given a written reprimand in January 1996 and when he was suspended for two days in February 1996.
>
> 2. Whether respondent discriminated against complainant for submitting an occupational safety and health report (sensor alarm) when he was questioned about his use of "snow days" in December 1995 and in January 1996.
>
> 3. Whether respondent discriminated against complainant by retaliating against him for occupational safety and health reporting (health and safety grievance) when he was given a written reprimand in January 1996 and when he was suspended for two days in February 1996.
>
> 4. Whether respondent discriminated against complainant in violation of the Family Medical Leave Act (a) when complainant did not receive medical leave for his January 23, 1996, absence, or (b) when he was suspended from employment in February 1996.

FINDINGS OF FACT

1. At all relevant times, complainant has been employed in a represented position in the classified civil service as a Hospital Supply Clerk in the Central Services Department, University of Wisconsin Hospital and Clinics.

2. On August 30, 1993, complainant filed a complaint with the Labor Standards Bureau, DILHR (Department of Industry, Labor and Human Relations; now Department of Workforce Development) concerning nonpayment of overtime, covering

the period of two years prior to the complaint. Eight of complainant's co-employes also filed similar complaints at that time.

3. These complaints were handled for respondent by Renae Bugge, Director of Employment Relations and Training, University of Wisconsin Hospital and Clinics, Center for Health Sciences, University of Wisconsin-Madison.

4. In a letter to the Labor Standards Bureau investigator dated September 13, 1993 (respondent's exhibit 5), Ms. Bugge advised that the pay issues identified in the complaints had first been called to respondent's attention by a union grievance which had been settled for the period of January 1, 1992-February 20, 1993. She further advised that beginning February 21, 1993, respondent had begun a practice of auditing all salary calculations for Central Services Department employes, and as a result of the complaints had extended the audit to cover the period beginning in August 1991. She further stated that as a result of the audits that had already been completed, checks would be issued to the employes involved.

5. As a result of the audits of payroll activity of both the Central Services Department and other departments, several hundred employes received a total in excess of $300,000 in back pay. The overtime pay issue did not have an adverse effect on any of the management employes who were responsible for the personnel transactions which are at issue in this case.

6. On August 24, 1995, complainant submitted a second step grievance concerning an unsafe working condition involving a wet floor due to a problem with a cartwasher. (complainant's exhibit 13). Management agreed to install non-slip mats and warning signs pending a more permanent resolution of the problem by the acquisition of a new cartwasher.

7. A new cartwasher eventually was acquired at a cost of about $200,000. This piece of equipment had been a priority of management for some time, and had been approved for the department's budget prior to 1995.

8. Complainant was part of a group of eight employes who submitted a group grievance (complainant's exhibit 14) at the first step on November 15, 1994, concerning an ethylene oxide (ETO) monitor that allegedly had been deliberately disconnected, and management had failed to take appropriate corrective action. There also was a complaint filed with DILHR concerning this matter, and in order to comply with the DILHR order and to avoid a further violation, respondent purchased a back-up ETO monitor.

9. On December 20, 1995, management conducted a pre-disciplinary investigation (PDI) with complainant and his representative to discuss certain unscheduled absences as set forth in respondent's exhibit 15 as follows:

November 13, 1995	8 hours	sick	conjunction with day off
December 8, 19995	8 hours	weather	conjunction with day off
December 13, 1995	8 hours	weather	

10. Present at this meeting were complainant; his union representative, Steve Preller; complainant's immediate supervisor, Francis Clifton; and employment relations specialist Neal Sprenger. As part of a discussion about the days complainant missed because of weather, management asked complainant about which roads complainant used to get to work from his Wisconsin Dells residence. Another aspect of this meeting involved a statement by management that employes were expected to be at work unless the roads to work were closed by a law enforcement agency[1]. This meeting ended abruptly, with no resolution of any of the issues, after complainant became upset with management and referred to them as snakes.

11. Management then scheduled another PDI for January 2, 1996, to discuss the absences that were to have been addressed at the December 20, 1995, PDI (the dates set forth above in Finding #9) as well as appellant's absence on December 21, 1995, when he called in sick.

12. At the January 2, 1996, PDI, complainant stated that he had been absent on December 21, 1995, because he had had trouble sleeping. On January 9, 1996, Mr. Clifton issued a written reprimand for this absence. This reprimand (respondent's exhibit 16) included the following:

> When asked about the 12/21/95 absence at the 1/2/96 PDI, you stated that you had trouble sleeping and therefore could not come to work. This is not a satisfactory explanation. This use of sick leave is highly suspicious because it immediately followed a PDI concerning unsched-

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[1] The relevant labor agreement (complainant's exhibit 22) includes the following provisions:

> 11/8/1 Employes who report late to work after having made an earnest effort to report to work on time but were unable to do so because of inclement weather or severe storm or heeding an official travel advisory issued by the State Patrol or Milwaukee County Sheriff's Department of road closings shall be allowed to work to make up for lost time . . . .
>
> 11/8/2 When the Employer approves employe requests not to report to work or allows employes to leave work before the end of the workday because of hazardous driving conditions or other reasons, the time the employe is absent shall be charged to vacation, holiday or compensatory time credits or leave without pay or the employe may make up time lost on the day, as the employe requests. . . .

> uled absences. Furthermore, you had a verbal reprimand for this type of behavior previously on 11/14/95. Therefore, this notification should be considered a formal **Written Reprimand**. Future violations of the Work Rules and/or Policies & Procedures will result in more severe disciplinary action. This could include a suspension without pay or termination of your employment.

13. Subsequent to this reprimand, complainant obtained a doctor's excuse dated January 18, 1996 (respondent's exhibit 22, p.2) which was signed by a doctor and which stated: "To Whom It May Concern: David Marfilius needs to be excused from work [on] 12/21/95 . . . due to stress induced insomnia . . . ."

14. Complainant also obtained at this time a note dated 1/18/96 from the same doctor (respondent's exhibit 22, p.1) which stated as follows: "To whom it may concern, David Marfilius has intermittent low back pain which has resulted in occasional absences from work as well as occasional health care visits. I anticipate that this will continue to result in occasional work absences." On January 23, 1996, complainant called in sick and referred to this note.

15. On January 31, 1996, management held a PDI with respect to this absence, following which Mr. Clifton imposed a two day suspension. The February 2, 1996, memo informing complainant of the suspension included the following:

> As discussed at the PDI, you have a note from a physician (1/18/96) stating you will miss work "occasionally" due to "intermittent low back pain." When you chose to call in sick on 01/23/96 you quoted this note on the telephone. After careful consultation with Human Resources and Employe Health it became apparent that this note is too vague and all-encompassing. When asked if you saw a doctor for this specific occurrence of pain you said, "No, you already had my note about lower back pain before I called in."
>
> At the PDI you produced a grain bill from a farmer's coop. You stated that moving this grain caused you to injure your back and that is why you did not come to work. You are encouraged to seek assistance for such activities in the future if they cause unscheduled absences. Next, your steward said you wanted this unscheduled absence to be considered "pending FMLA request." There is no provision in FMLA guidelines for such a status unless there is an unforeseen emergency. According to Employe Health and Human Resources, you do not have an approved FMLA request, nor have you officially applied for FMLA.
>
> This absence is highly suspicious for several reasons. The pain was so severe that you could not report to work; yet you did not seek relief by visiting a doctor. Additionally, this call-in followed discipline for unscheduled absences and quickly followed the presentation of the very broad doctor's excuse mentioned above. Also, you claimed this unscheduled absence was due to a strain that had occurred on that day

(grain bill), and your steward claimed it was an FMLA related unscheduled absence.

16. The UW Hospital and Clinics Policy and Procedure Manual Policy #9.13 concerning "ATTENDANCE AND PUNCTUALITY," para. III (respondent's exhibit 12), includes the following:

> A review of an employe's attendance or punctuality may be initiated if any of the following circumstances exist:
>
> A. three (3) unscheduled absences of any length in any 12 week period, including for reasons of illness or personal business,
>
> B. any "0" sick leave balance,
>
> C. the use of unscheduled leave under false pretenses,
>
> D. a pattern of unscheduled absence in conjunction with:
>
> - scheduled days off,
> - legal holidays,
> - weekends.
> - same days of the week,
>
> E. unscheduled absences:
>
> - immediately following discipline,
> - after working a double shift,
> - after working overtime,
> - after having a leave request denied,
> - under any other suspicious circumstances as determined by a department manager,
>
> F. tardiness on three occasions within a 12 week period. (Tardiness is defined as failing to report promptly, ready to work, at the scheduled starting time of the shift or taking unauthorized extended rest or meal periods.)

17. Mr. Clifton began his employment at UW Hospital and Clinics on December 5, 1994. At the times he implemented the written reprimand and suspension referred to above, he was unaware of complainant's involvement in the FLSA claim and complainant's OSHA activities concerning the ETO sensor and the cartwasher. He was not directed by anyone else in management to discipline complainant.

18. On March 28, 1996, complainant submitted an FMLA leave request form (complainant's exhibit 20) seeking FMLA coverage for January 22, 1996 (the absence which resulted in the suspension). This request was supported by a February 3, 1996, letter from the same doctor who had written the January 18, 1996, memo con-

cerning complainant's back which was quoted in finding #14, above. The February 3rd letter (also part of complainant's exhibit 20) included the following:

> He has occasionally been seen in the past for mild episodes of back strain which have usually been self-limited having improved in the period of several days. They have occasionally resulted in brief absences from work.
>
> Following are the dates which he has been seen and examined with back pain: June 8, 1979; August 11, 1980; November 16, 1989; January 22, 1993; February 19, 1993; and December 19, 1994. Furthermore, on occasions when he has been seen for routine preventive health care, when questioned, he has stated that he has had intermittent, brief back strains at other times for which he has not sought medical care.
>
> I anticipate that he will continue, over the years, to have occasional back strains which may result in occasional work absences.

19. Respondent denied complainant's request on the ground that his medical condition was not a serious health condition covered by the FMLA. This rationale was elucidated in an April 15, 1996, memo to complainant from Fran Ircink, a registered nurse in Employe Health Service (EHS) (complainant's exhibit 9), which included the following:

> After careful review of the State and Federal Medical Leave Acts as well as discussion with the EHS Medical Director, Dr. Hla, it is our opinion that the medical information provided by your physician in the February 3, 1996 letter does not constitute a "serious" health condition and therefore any request to use FML based on this information is denied.
>
> More specifically, the letter states that you have "occasionally" been seen in the past for "mild " episodes of back strain which have been "self-limited" having improved in the period of several days. You had six visits with your physician for back pain as indicated in the letter from June, 1979 until the last visit, December 19, 1994. We feel this does not constitute a serious/disabling health condition. There has been no inpatient care, and outpatient care has been widely scattered and intermittent.

20. At the hearing of this case before this Commission, complainant submitted other medical documents (part of complainant's exhibit 20) in addition to the documents referred to above. These included the following:

a) A February 2, 1996, prescription to be used for "muscle spasm,"

b) A physician's analysis of an X-Ray, dated February 19, 1975, which reads: "There is a slight scoliosis of the lumbar spine and minimal of the thoracic spine,"

c) A physician's treatment notes dated February 19, 1975, which includes the following: "This 15 year old . . . [o]ne week prior to this visit was tumbling and landed on his back while arched. Since that time he has had back pain at the junction of T-12, L-1. . . . X-rays reveal some narrowing of the T6-T7 vertebrae, but no evidence of disc space infection. . . .He was placed on hamstring stretching and William's flexion exercises and is to return to clinic as necessary."

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §§230.45.(1)(b), (g); 103.10(12)(b), Stats.

2. Complainant has the burden of proof as to all matters in issue.

3. Complainant has not sustained his burden of proof.

4. Respondent did not discriminate against complainant in connection with its questioning of him regarding his use of snow days, its imposition of a written reprimand and a two day suspension without pay, or its denial of FMLA leave for his January 23, 1996, absence.

OPINION

This opinion first will address the retaliation issues, which overlap in a number of areas, and then the issue of whether there was a substantive violation of the FMLA when complainant's request for FMLA leave for his January 23, 1996, absence was denied.

In *Strupp v. UW-Whitewater,* 85-0110-PC-ER, 7/24/86; affirmed, *Strupp v. PC,* Milwaukee Co. Cir. Ct., 715-622, 1/28/87; the Commission outlined the folowing method of analysis for retaliation cases:

> In order to establish a prima facie retaliation case, the complainant must show that he engaged in protected activity, that the respondent was aware of this, and that he suffered an adverse employment action under circumstances giving rise to an inference of unlawful motivation. The respondent then must articulate a legitimate, nondiscriminatory rationale for its action, and the complainant attempts to show that this rationale is pretextual. *Grant v. Bethlehem Steel Corp.,* 622 F. 2d 43, 22 FEP Cases 1596 (2d Cir., 1980). (p. 19(proposed decision)).

While it is questionable whether complainant established a prima facie case in all respects, where the entire case has been tried on the merits, and the parties have fully tried the question of whether the employer's adverse employment action was pretextual, whether a prima facie case was established "is no longer relevant," *US Postal*

Service Bd. of Governors v. Aikens, 460 U. S. 711, 715, 75 L. Ed. 2d 403, 410, 103 S. Ct. 1478 (1983), and the question of whether the employer intentionally discriminated against the complainant should be directly addressed,[2] *id.*

Because complainant filed a wage claim, two grievances concerning safety issues, and an application for FMLA leave, his employer is prohibited by law from discriminating against him because of those activities. §§111.322(2m)(a), 101.055(8)(ar), and 103.10(11)(a), Stats. However, in most cases, including this one, there is no discrimination unless the employe takes an adverse action against the employe:

> In the most general sense, employment discrimination is the treatment of some employes "less favorably than others because they belong to a protected class." *Racine Unified School Dist. v. LIRC,* 164 Wis. 2d 567, 595, 476 N. W. 2d 707 (Ct. App. 1991). However, it has been recognized that an element of a claim of employment discrimination is that the employe have suffered an adverse employment action of some kind. *See e. g., Rivers v. Westinghouse Electric Corp.,* 17 FEP Cases 767, 770 (E. D. Pa. 1978) (second element of prima facie case is "that plaintiff was the subject of adverse action." (citations omitted)). *Klein v. DATCP,* 94-0014-PC-ER, 12/20/95.

While there is no question but that a written reprimand and a two day suspension without pay are adverse employment actions, the same can not be said about respondent's questioning complainant about his use of "snow days." In *Klein*, the Commission denied a pre-hearing motion to dismiss for failure to state a claim with respect to a complaint about the predisciplinary process in connection with an allegation of sexual harassment against the complainant. The decision states:

> It is important to note that the allegations in this case involve more than the employer conducting an investigation, or contemplating the imposition of discipline. The letter directing complainant to appear at a meeting to discuss a possible work rule violation can be construed as accusatory or even judgmental . . .Complainant alleges that respondent failed to follow established policies for handling potential disciplinary matters. *Id.*, p. 3 (footnote omitted).

These factors are not present in this case. Complainant's theory that respondent's questioning was adverse to him is set forth in his post-hearing brief as follows:

> This [questioning about the roads] was a deliberate attempt to provoke me. It worked, as Rusty Clifton testified to I got very upset and called them snakes. I was then unable to sleep that night and couldn't get to

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[2] Certain elements of a prima facie case are also necessary elements of a substantive claim and therefore must be addressed at both stages. For example, in an age discrimination case, an element of both a prima facie case and an ultimately successful claim is coverage by the FEA — i. e., the complainant must be at least 40 years old, §111.33(1), Stats.

> work the next day. I told Rusty this at the next PDI but he stated that this was an unsatisfactory explanation and gave me a written reprimand.

The connection between respondent's questioning, complainant's emotional response and his alleged inability to sleep, and the subsequent reprimand for having missed work the day after the PDI, is far too tenuous to support a finding that the questioning was a proximate cause of the reprimand. There also is nothing in the record to support complainant's contention that respondent deliberately tried to provoke him, or that management could have foreseen that complainant would have reacted in a way that would have led to the written reprimand. To the extent that complainant is attempting to argue that management's statement about the "snow day" policy[3] was part of a related effort to harass him at this PDI, he also has failed to sustain his burden of proof on this contention. While it is possible that management enunciated a misinterpretation of the contract, the record does not support a finding that management was trying to deliberately provoke or harass complainant.[4]

Turning to the reprimand and the suspension, it is important to keep in mind that the Commission does not have before it the question an arbitrator would decide--whether there was just cause for the discipline imposed. Rather, the question here is whether respondent's stated rationale for imposing the discipline was pretextual, and whether respondent actually imposed the discipline because of complainant's protected activities. Again, the burden of proof is on complainant to establish this motivation by respondent.

Respondent's position is essentially that the discipline imposed was a good faith exercise of management rights and in keeping with its "ATTENDANCE AND PUNCTUALITY" POLICY" (respondent's exhibit 11). With respect to the reprimand for complainant's absence on December 21, 1995 (insomnia), this absence certainly could be considered to warrant review under respondent's policy, coming the day after the PDI. It does not appear unreasonable under the circumstances for management to have questioned his claim of insomnia.[5] Respondent considered complainant's absence on January 23, 1996, (back pain) to have been suspicious because it occurred shortly

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[3] See Finding #10, above. The hearing record on this point was somewhat muddled, as management's representatives were asked only if *Mr. Clifton* had made such a statement, while complainant's union representative testified that *Mr. Sprenger* had made this statement.

[4] In any event, even if it were concluded that the questioning about the "snow days" constituted an adverse employment action, complainant would have to show that respondent had been motivated in so doing by complainant's protected activities, and the record does not support such a finding.

[5] Complainant did not obtain the January 18, 1996, doctor's excuse until more than a week after the discipline was imposed.

after both other unscheduled absences resulting in discipline and the presentation of what management characterized as a "vague and all-encompassing" (respondent's exhibit 18) doctor's note "stating you will miss work 'occasionally' due to 'intermittent low back pain,'" *id.*, and was not accompanied by a doctor's visit.

Complainant's attempt to show pretext is undermined by the fact that his immediate supervisor (Francis Clifton) who imposed the discipline in question did not begin his employment at UW Hospital and Clinics until December 5, 1994, which was subsequent to complainant's involvement in the wage claim and the ETO grievance. Also, Mr. Clifton testified that he was unaware of both these activities and the cartwasher grievance at the time the disciplinary action was taken, and he had not been directed by anyone else in management to impose the discipline. There was no evidence to rebut this. Finally, the evidence established that the acquisition of a new cartwasher had been approved in the budget prior to the time that complainant raised the issue, although the bid had not been finalized at that time. In the Commission's opinion, respondent's handling of these disciplinary matters does not appear, in the context of their attendance policy and under all the circumstances, to be probative of pretext.

Complainant attempted to show that respondent treated other employes with purportedly worse disciplinary records differently. However, complainant has not demonstrated that there were other employes who were actually similarly situated to him who did not receive similar discipline. It does not appear that these employes were under the supervision of Mr. Clifton, who imposed the discipline against complainant. Furthermore, even assuming these other employes were not disciplined,[6] respondent's attendance policy (respondent's exhibit 11) calls for a review of an employe's attendance situation with the employe and a determination of whether "there is a mitigating reason for the poor record or possible abuse" before the imposition of discipline. The record does not establish that the reasons for their absences and other circumstances were comparable to complainant's.[7]

Complainant's FMLA claim essentially consists of two parts. The first is whether respondent retaliated against him for requesting FMLA leave when it imposed the suspension for the January 23, 1996, absence. The second is whether its refusal to

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[6] Two supervisors testified essentially that they did not recall that any of these employes being disciplined.

[7] For example, part of respondent's rationale for investigating and ultimately imposing discipline for complainant's absences on December 21, 1995, and January 23, 1996, is that they occurred shortly after a PDI and the imposition of discipline, respectively.

grant FMLA leave for that date violated the substantive provisions of the FMLA – that is, whether that absence qualified under the law as medical leave.

As to the first aspect of this claim, there is no evidence that respondent imposed the suspension because of, or in retaliation for, complainant's request for FMLA leave. As to the substantive aspect of his claim, the key question is whether complainant's back condition met the definition of a "serious health condition" as defined at §103.10(1)(g), Stats.:

> "(g) "Serious health condition" means a disabling physical or mental illness, injury, impairment or condition involving any of the following:
>
> 1. Inpatient care in a hospital . . . .
>
> 2. Outpatient care that requires continuing treatment or supervision by a health care provider.

In *MPI Wi. Machining Div. V. DILHR,* 159 Wis. 2d 358, 370, 464 N. W. 2d 79 (Ct. App. 1990), the Court defined the term "disabling" as follows: "incapacitation, or the inability to pursue an occupation or perform services for wages because of physical or mental impairment" (footnote omitted), regardless of whether the impairment is of extended duration. The Court also held that the term "continuing treatment or supervision by a health care provider" requires "direct, continuous and first-hand contact by a health care provider subsequent to the initial outpatient contact." 159 Wis. 2d at 372. In the instant case, respondent's denial of complainant's request for FMLA leave was based on the conclusion that his condition did not satisfy the latter element – "continuing treatment or supervision by a health care provider." Respondent did not specifically address the first element in its post-hearing brief. Therefore, the Commission will only address the question of whether complainant has satisfied his burden with respect to the second element of "continuing treatment or supervision by a health care provider."

The FMLA permits an employer to require an employe applying for FMLA leave to submit a certification from a health care provider. In this case respondent required a medical certification. In lieu of having his health care provider fill out the form provided by management, complainant elected to rely on other communications from his health care provider. None of the documentation complainant either submitted to respondent or offered at the hearing before this Commission reflects that complainant received inpatient care. The record also fails to establish that complainant was subject to "direct, continuous and first-hand contact by a health care provider." *MPI Wi. Machining Div.*, 159 Wis. 2d at 372. The medical documentation complainant

submitted at the hearing reflects that he saw a doctor when complainant felt it necessary in response to back strains. His doctor's letter of February 3, 1996, reflects that he was seen for this purpose six times in fifteen years, with a nine year hiatus from August 1980 to November 1989, and with more than a year hiatus (from December 19, 1994-January 23, 1996) prior to the absence in question. Complainant also did not see a doctor at all in connection with the January 23, 1996, absence for which he sought FMLA leave. This does not constitute "direct, continuous and first-hand contact by a health care provider."

Complainant also claimed in his reply brief that respondent violated the FMLA by requiring that he complete certain forms in order to apply for a leave of absence. This question is outside the stipulated FMLA issues for hearing which encompass only the following questions: "[w]hether respondent discriminated against complainant in violation of the Family Medical Leave Act (a) when complainant *did not receive medical leave* for his January 23, 1996, absence, or (b) when he was *suspended from employment* in February 1996." Conference report dated July 30, 1996 (emphasis added). In any event, even assuming that this issue were part of this case, while it could be argued that respondent could not require the completion of a form as a prerequisite for application for FMLA leave,[8] respondent did not require complainant to submit his medical certification by having the health care provider fill out the space provided on the form, but acceded to complainant's request to consider the medical documents already submitted. Furthermore, since respondent ultimately denied complainant's leave application, and this denial did not violate the FMLA, requiring complainant to use the form could not have affected the imposition of the suspension

[8] The FMLA does not require that an employe "make a formal application to invoke the FMLA's protections." *Jicha v. State,* 164 Wis. 2d 94 100, 473 N. W. 2d 578 (Ct. App. 1991).

ORDER

The Commission having concluded that no discrimination has occurred, this complaint is dismissed.

Dated: April 24, 1997 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

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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