

STATE OF WISCONSIN

PERSONNEL COMMISSION

LESA THYRION,
Complainant,

v.

**Secretary, DEPARTMENT OF HEALTH
AND FAMILY SERVICES,**
Respondent.

**RULING ON PETITION
FOR REHEARING**

Case No. 96-0081-PC-ER

This is a complaint of handicap discrimination relating to a suspension without pay. A prehearing conference was held on February 4, 1998. As a result of this conference, a hearing issue was established and a hearing scheduled for June 1, 1998. At the time of the prehearing conference, complainant was represented by Attorney Sally-Anne Danner to whom was sent the conference report containing the notice of hearing and a subsequent scheduling letter confirming the date of hearing.

On May 29, 1998, the designated hearing examiner in this matter contacted Attorney Danner by phone since no witness list or exhibits had been filed with the Commission. Attorney Danner indicated that she had sent a copy of all the case documents to the last address complainant had provided her, that none of these documents had been returned, that she had not heard from complainant in over a year, and that she was withdrawing as counsel for complainant.

The hearing was convened as scheduled on June 1, 1998. Neither complainant nor her attorney appeared at the hearing. As a result, the hearing examiner sent the following letter on June 3, 1998, to the last address complainant had provided the Commission:

The above-referenced case was scheduled for hearing on June 1, 1998. The hearing date was established at a prehearing conference conducted on February 4, 1998. Your attorney, Sally-Anne Danner, was provided a copy of the prehearing conference report which provided notice of the

hearing date, and was again notified of the date of hearing in a letter from the Commission dated February 19, 1998. Ms. Danner has represented to the Commission that she sent a copy of this report and this letter to you.

Your failure to appear at the hearing provides a basis, pursuant to §PC 5.03(8), Wis. Adm. Code, for dismissing your case. If you feel that your case should not be dismissed, you must so indicate in writing on or before June 15, 1998. This writing should include an explanation for your failure to appear.

On June 18, 1998, the Commission dismissed this case based on complainant's failure to appear and failure to provide any explanation for this failure.

On June 19, 1998, the Commission received a letter from complainant in response to the Commission's letter of June 3, 1998, which stated as follows, in pertinent part:

I feel that my case should not be dismissed. I did not receive any information regarding the hearing date. It is still possible that Sally Danner did send a copy and it was not forwarded to my new address (126 Lance Way, Mt Home, Ark 72653) since Dec 97. But as of July 1st my address will return to 408 Dyer Place, Mt Home Ark 72563.

There is no way that I wouldn't respond to this matter after investing almost 3 years of my time and forfeiting my job.

On June 24, 1998, the Commission received from the post office a form which indicated that complainant was no longer at the Red Granite, Wisconsin, address to which the order of dismissal had been sent but that her forwarding address was: 408 W 3rd St, Mountain Home AR 72653-3523.

The Commission interpreted complainant's letter of June 19, 1998, as a petition for rehearing and, as a result, provided the parties an opportunity to provide argument in regard to the petition. Respondent filed its argument in accordance with the schedule established but complainant did not file an argument.

Even if complainant herself did not receive notice of the hearing, her attorney, whom complainant chose as her duly authorized agent, did receive proper notice of the

hearing. Any lack of notice to complainant was the direct result of complainant's failure to keep either her attorney or the Commission apprised of her whereabouts. This is clearly the complainant's responsibility, §PC 1.03(1), Wis. Adm. Code, and she has failed to provide any reason for her failure to meet it. As a result, it is concluded that complainant has failed to show good cause for her failure to appear at hearing.

The Commission, having reviewed its decision to dismiss this matter, concludes that this dismissal was proper, and this case should be dismissed.

ORDER

This petition for rehearing is denied.

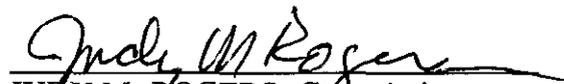
Dated: July 15, 1998

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM

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JUDY M. ROGERS, Commissioner

Parties:

Lesa Thyrion
408 Dyer Place
Mt Home AR 72653

Joe Leann
Secretary, DHFS
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