

STATE OF WISCONSIN

PERSONNEL COMMISSION

**LINDA KLEINSTEIBER,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS**  
*Respondent.*

**INTERIM DECISION  
AND ORDER**

Case No. 97-0060-PC

#### NATURE OF THE CASE

This is an appeal of a termination. A hearing was held on March 31 and April 1 and 9, 1998, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the briefing schedule was completed on June 29, 1998.

#### FINDINGS OF FACT

1. Appellant received a Bachelor of Science degree in nursing in 1975, and a Master of Science degree in health services administration in 1988. She has been employed by respondent since June of 1980. From June of 1980 until January of 1994, she functioned as the Chief of Nursing and Ancillary Services for the Bureau of Correctional Health Services; and from January of 1994 until her termination in May of 1997, she functioned as the Manager of the Health Services Unit (HSU) at the Oakhill Correctional Institution (Oakhill). In this latter position, appellant supervised the staff nurses, managed the administrative functions of the HSU, interpreted and applied applicable policies and procedures, and served as the HSU's liaison to the other units of the institution, including security, treatment, business office, education, and buildings and grounds. Appellant did not report to the warden of Oakhill, but to the Bureau of Health Services. Appellant had not been disciplined by respondent at any time prior to her termination in May of 1997.

2. Ginseng is a plant the root of which is used as an herb. Some research has shown that it boosts energy level and stabilizes blood pressure. It is the medical judgment of the staff physician at Oakhill that ginseng should not be taken by a patient taking a variety of medications for a serious health condition until the treating physician has an opportunity to review the possible interaction of these medications with ginseng even though, generally, ginseng has a positive effect on a patient's general health.

3. The following represents the authorized practice at Oakhill in 1996 for an inmate to obtain an over-the-counter substance such as ginseng or vitamin supplements:

a. If the substance is stocked for the general inmate population:

i. in the canteen, the inmate would obtain the substance directly from the canteen and pay for it himself from his inmate trust account.

ii. in the HSU, the inmate would request the substance directly from the HSU, and the HSU medication nurse would dispense it to him without cost to the inmate.

b. If the substance is not stocked, has been requested by an inmate, and is to be received/maintained/dispensed by the HSU:

i. The inmate would complete a "blue slip" request for the substance and submit it to the HSU;

ii. The request would be reviewed for approval by the HSU physician or the HSU manager—if the inmate has a serious health condition, the request would be reviewed by the HSU physician.

iii. If the request is approved by the HSU, the inmate could order the substance directly from the vendor for delivery to the HSU;

iv. If the request is approved by the HSU, the approval would be documented on the inmate's patient chart in progress notes, in the inmate's patient medication profile, and/or on the HSU's physician order sheet.

v. Once the substance is received at the HSU, it is kept in the medication room at the HSU and dispensed by the HSU medication nurse.

vi. It was the preferred, but not the consistent or required practice at the time of appellant's termination, for a special needs form to be completed for an over-the-counter product such as ginseng or vitamins which was to be shipped directly to, maintained, and dispensed by the HSU.

c. If the substance is not stocked, has been requested by an inmate, and is to be paid for/received/maintained by the inmate:

i. The inmate would complete a vendor order form and an Oakhill disbursement request form and submit it to an Inmate Complaint (IC) Officer for approval;

ii. The IC Officer would review the request for the purposes of determining whether the inmate has sufficient funds in his trust account to cover the cost of the order;

iii. If the request is approved by the IC Officer, it is forwarded to the Oakhill business office which cuts a check from the inmate's trust account, and sends the check and the order form to the vendor. Except in exceptionally unusual circumstances, e.g., an inmate is obviously ordering a firearm, the business office does not review the appropriateness of the item being ordered.

iv. The inmate would then request that the HSU complete a special needs form authorizing the use by the inmate of the item ordered. If the inmate has a serious health condition, this request would be reviewed for approval by the HSU physician. The special needs form, if approved by the HSU, would be forwarded to the Oakhill property room.

v. Once the ordered substance is received by Oakhill, it is forwarded to the property room where it is inspected and reviewed to determine if it is authorized for possession by an inmate in general, and if an HSU-approved special needs form is on file for this particular substance.

vi. If the substance is approved by the property room and released to the inmate, this is documented on the inmate's property inventory form.

4. On April 29, 1996, the Vitamin Factory, a New Jersey catalogue order company, received an order from Oakhill inmate Hector Mojica for ginseng tablets and vitamin C tablets. This order directed that the tablets be sent directly to appellant in the HSU. This order had been approved by the IC Officer and a check cut for the order by the Oakhill business office. Inmate Mojica had not obtained prior approval from the HSU for this order, and had not obtained appellant's prior approval for this order to be sent directly to her. Appellant did, however, receive these tablets at the HSU, notify inmate Mojica that they had been received, and place them in the HSU medication room for dispensing to inmate Mojica. Inmate Mojica believed that only part of this order had been sent so he wrote a letter of complaint to the Vitamin Factory. A representative of the Vitamin Factory contacted appellant by phone and spoke with her on May 13, 1996, about inmate Mojica's letter. Appellant indicated during this phone conversation that she had received "the whole order" and would discuss the matter with inmate Mojica.

5. Although appellant testified at hearing that she obtained authorizations from both the HSU physician, Dr. Vijoya DasGupta, and from John Thompson, the Correctional Officer 3 who was in charge of the Oakhill property room at the time, before she dispensed the ginseng and vitamin C to inmate Mojica, her testimony in this regard was not credible. Mr. Thompson testified not only that appellant had never called him to request such authorization, but also testified that he would never provide such authorization based on a telephone call, i.e., the proper paperwork had to be

completed and it had not been. Appellant testified that she contacted Dr. DasGupta to determine whether the ginseng and vitamins should be provided to inmate Mojica, and that part of her concern related to the fact that inmate Mojica had a very serious health condition. Dr. DasGupta testified that appellant did not contact her for this purpose, and there was no documentation of any such contact in inmate Mojica's medical records. If appellant had been concerned enough to contact Dr. DasGupta for this purpose, it stands to reason that she would have been careful to document any approval obtained from Dr. DasGupta. Such documentation would also have been consistent with the testimony of appellant that documentation of medical orders is especially important in regard to inmates with very serious health conditions, such as inmate Mojica. Finally, appellant did not mention these contacts during either the investigatory meeting or the pre-disciplinary meeting relating to her termination (See Findings 12 and 15, below).

6. During the summer of 1996, a security audit of the HSU was undertaken. Part of the reason the audit was initiated was the impression by the security unit at Oakhill that appellant did not take security issues in the HSU seriously enough. This had not been a matter of concern to the security unit during the tenure of appellant's predecessor in the HSU Manager position.

7. On September 13, 1996, inmate Mojica placed a second order with the Vitamin Factory. This order was for vitamin A and C tablets, and again directed that the tablets be sent to appellant at the HSU. Again, appellant received the tablets at the HSU and dispensed them to inmate Mojica without approval from Dr. DasGupta or the Oakhill property room.

8. On November 5, 1996, inmate Mojica placed an order with Nature's Distributors, Inc., a catalogue company in Arizona. The order was for selenium, lecithin, and acidophilus, and again directed that the tablets be sent to appellant at the HSU. Some time in February of 1997, appellant returned the substances to Nature's Distributors with a note indicating that inmate Mojica was not authorized to have these substances.

9. Some time in the spring of 1997, certain HSU staff nurses complained to the Bureau of Health Services about appellant's performance as Oakhill HSU manager. One of the bases for the complaint was appellant's practice of obtaining and dispensing ginseng and other substances to inmate Mojica without proper authorization.

10. This complaint was referred to Cynthia Schoenike, Assistant Administrator, Division of Adult Institutions (DAI); and Sharon Zunker, Director of the Bureau of Health Services, DAI. In late March of 1997, Ms. Schoenike and Ms. Zunker appointed Dale Poliak, Health Services Sector Chief, Bureau of Health Services, and a former HSU manager at Green Bay Correctional Institution; and Cindy O'Donnell, Assistant Administrator of the DAI, and a former security chief for DAI and a former security director at Waupun Correctional Institution and at Oakhill.

11. Appellant was sent a letter advising her that an investigatory meeting had been scheduled for April 4, 1997. This letter did not inform appellant of the circumstances which were under investigation. This was consistent with respondent's customary practice.

12. The investigatory meeting was held as scheduled. Present were appellant, her attorney Thomas Allen, Mr. Poliak, and Ms. O'Donnell. Appellant was treated with courtesy during the meeting, and was provided full opportunity to respond to each of the questions asked by the investigators. This meeting lasted approximately one hour. When appellant was asked her understanding of Oakhill's practice regarding the handling of over-the-counter substances at Oakhill, she indicated there needed to be a physician's order for something out of the ordinary such as ginseng and that this order needed to be documented on the inmate patient's medication profile sheet. Prior to being questioned about the matter involving her providing substances to inmate Mojica through the HSU, appellant was given the Oddsen warning by the investigators. This warning relates to the use of the information provided during an investigatory interview for purposes of a criminal prosecution. This warning surprised and concerned appellant. Some time after the warning was given, appellant was shown a copy of the invoice from the Vitamin Factory for the first order (See Finding 4, above). Upon

viewing it, appellant very emphatically indicated that inmate Mojica had placed this order without her permission and that she had sent the products back.

13. After the investigatory meeting had ended, Ms. O'Donnell immediately placed a call to the Vitamin Factory and was advised that the order had not been returned, that appellant had actually placed the order and had telephoned to verify that she had received it, and that a second order had been placed by appellant as well.

14. Soon after the investigatory meeting had ended, Mr. Poliak interviewed inmate Mojica. Inmate Mojica indicated that he had ordered certain substances and had them sent to appellant at the HSU at appellant's direction; that he had received two orders but that the third order that was placed had been returned; and that, when he asked appellant why the third order had been returned, she told him that they couldn't do that any more. Mr. Poliak then reviewed inmate Mojica's medical file and found no physician's order for ginseng or for vitamin C.

15. On April 24, 1997, a pre-disciplinary investigation (PDI) was conducted at which the same individuals who had been at the investigatory meeting were present. This PDI related to only a few of the situations discussed at the investigatory meeting. The purpose of a PDI is to permit the employee to offer mitigating information in relation to the circumstances which have been investigated and which are under consideration as the basis for discipline. Appellant had the impression at the PDI that the investigators were looking for additional information to consider but she only provided narrowly tailored answers to specific questions and did not volunteer additional information. When appellant was asked again about the invoice she had been shown at the investigatory meeting, she indicated that she had been advised by her attorney not to discuss this matter further with the investigators. However, later in the PDI, appellant indicated that, "I thought it was the order that had come in recently and not the earlier one;" and, when asked when she had sent an order back, indicated, "Since January—I can't remember exactly when it was." During the PDI, appellant offered no other information about the first or second orders of substances for inmate

Mojica even though she had recalled, prior to the PDI, inmate Mojica's complaint to the Vitamin Factory relating to the first order.

16. No other Oakhill inmate ordered and received over-the-counter substances in the same manner as appellant had permitted inmate Mojica to do.

17. In a letter dated May 12, 1997, Ken Sondalle, Administrator, DAI, stated as follows, in relevant part:

This is official notification of termination from employment as a Health Services Nursing Supervisor in the Health Services Unit at Oakhill Correctional Institution, effective Tuesday, May 13, 1997. This action is being taken based on violations of Department of Corrections Work Rules:

- #A2 Failure to follow policy or procedure, including but not limited to the DOC Fraternalization Policy and Arrest and Conviction Policy.
- #C1 Unauthorized or improper use of state or private property, services or authorizations, including but not limited to vehicles, telephones, electronic communications, mail services, credit cards, computers, software, keys, passes, security codes and identification while in the course of one's employment; or to knowingly permit, encourage, or direct others to do so.
- #[A]6 Falsifying records, knowingly giving false information, or knowingly permitting, encouraging or directing other[s] to do so. Failing to provide truthful, accurate and complete information when required.

This action is being taken based on the following incidents:

Two orders of ginseng were placed with the Vitamin Factory, one in April, 1996, and one in September, 1996, both of which were shipped to you in the Health Services Unit at Oakhill Correctional Institution. Inmate Mojica paid for the ginseng. There were no written physician orders by Dr. Dasgupta for ginseng in Mr. Mojica's medical record.

The Vitamin Factory when contacted had no record of the ginseng being returned, but did have a record of a phone call



from you on May 13, 1996, indicating you had received the whole order.

Another order placed to Nature's Distributors Inc. On February 28, 1997, was returned for a refund.

Inmate Mojica received the ginseng because of your authorization as the Health Services manager at Oakhill, without written orders by the Institution Physician.

During the investigatory interview on April 4, 1997, regarding the ginseng and vitamins, you stated Inmate Mojica ordered these and had it sent to you without your knowledge and you immediately returned it to the company. A copy of the invoice was given you from the Vitamin Factory dated April 29, 1996. You did not indicate you had facilitated the ordering of these items on two separate occasions, circumventing security inspections or medical authorization.

Wisconsin Statute 302.095 prohibits delivering articles to inmates "contrary to the rules of regulations and without the knowledge or permission of the . . . warden or superintendent of the prison, in the case of a prison shall be imprisoned for not more than 2 years or fined not more than \$500.

D.O.C. Internal Management Procedure #8 states that vitamins and food supplements must be purchased through the institution canteen only.

The other allegations regarding time sheets and on call units have been determined to be a performance issue and not a work rule violation.

Your actions indicate a willingness to use your position to obtain items for inmates without documentation of medical necessity. In doing so you have compromised your position and allowed yourself to be subject to blackmail from this inmate or other inmates who may have been aware of these incidents. You have also compromised the security of the institution, staff, and inmates. In addition, you failed to provide truthful, accurate, and complete information when required.

Your behavior and exercise of poor judgment has destroyed your credibility as a Health Services Manager who is responsible for the management of delivery of health services including but not limited to

provision of prescribed pharmaceuticals, responsibility for management of controlled substances as the holder of the DEA license for the unit and its practitioners, and the supervision of numerous employees who are expected as part of their employment to follow the Department Work Rules and Policies and Procedures of the Department, Division of Adult Institutions, and Bureau of Health Services.

18. Waupun Correctional Institution HSU Manager CH was terminated for fraternization with an inmate. CH was shown to have provided items, including an earring, to the inmate on more than one occasion; to have kissed and otherwise touched the inmate; and to have written personal correspondence to the inmate and to have had personal contact with the inmate's family outside the institution.

19. Nursing Supervisor LH was suspended without pay for 10 days and demoted to a non-supervisory position for permitting and participating in the neglect of an inmate's medical needs, and for denying some of the allegations supported by the results of the investigation.

20. Generally, respondent holds supervisors to a higher standard than those in non-supervisory positions.

21. Respondent's fraternization policy provides as follows, in relevant part:

. . . This policy is designed to eliminate any potential conflict of interest or impairment of the supervision and rehabilitation provided by department employees for inmates, clients and residents in correctional settings. . . .

Employees of the Department of Corrections:

- 1) may not have a relationship with an inmate, client or resident under the supervision or custody of the Department of Corrections . . . ;

Relationship includes an employee: . . .

- d) extending, promising, or offering any special consideration or treatment to an inmate, client or resident; . . .
- f) providing or receiving goods and/or services with or without remuneration for or to inmates . . . ; . . .

22. It would be a violation of this fraternization policy to provide an item or a favor to one inmate without making it available to other inmates. Any type of fraternization in a correctional setting is considered a serious rule violation because providing even a small item or favor compromises the authority of the institution employee providing it, and may ultimately compromise the security of the institution as the inmate, holding over the employee's head his knowledge of the employee's rule violation in providing the item or favor for the inmate, demands larger and more serious items and favors.

23. Mr. Sondalle was not aware, at the time of his decision to terminate appellant, of the Oakhill practice which permitted an inmate to obtain over-the-counter medications directly through the HSU (See Finding 3.b., above), upon the authorization of the HSU manager.

#### CONCLUSIONS OF LAW

1. Respondent has the burden to show that there was just cause for the imposition of discipline.
2. Respondent has sustained this burden.
3. Respondent has the burden to show that the discipline imposed was not excessive.
4. Respondent has failed to sustain this burden.

#### OPINION

The two-step analysis for disciplinary cases was discussed by the Commission in *Barden v. UW-System*, 82-2237-PC, 6/9/83, as follows:

First the Commission must determine whether there was just cause for the imposition of discipline. Second, if it is concluded that there is just cause for the imposition of discipline, the Commission must determine whether under all the circumstances there was just cause for the discipline actually imposed. If it determines that the discipline was

excessive, it may enter an order modifying the discipline. (citations omitted.)

The just cause standard was described in *Barden*, relying on the Wisconsin Supreme Court case of *Safransky v. Personnel Board*, 62 Wis.2d 464, 215 N.W.2d 379 (1974), as follows:

. . . one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to impair his performance of the duties of his position or the efficiency of the group with which he works. (citations omitted.)

If just cause is shown, the focus of the inquiry shifts to the question of whether the discipline imposed was excessive. Some factors which enter into this determination include the weight or enormity of the employee's offense or dereliction, including the degree to which, under the *Safransky* test, it did or could reasonably be said to tend to impair the employer's operation; the employee's prior record (*Barden v. UW*, 82-2237-PC, 6/9/83); the discipline imposed by the employer in other cases (*Larsen v. DOC*, 90-0374-PC, 5/14/92; and the number of the incidents cited as the basis for discipline for which the employer has successfully shown just cause (*Reimer v. DOC*, 92-0781-PC, 2/3/94).

Under the facts present here, it is important to underscore that the record shows that the Oakhill HSU manager had the independent authority to authorize the ordering of over-the-counter medications by an inmate for shipment to and maintenance by the HSU for dispensing to the inmate. It is also important to underscore that the record does not show that it was a consistent and required practice at Oakhill at the time of appellant's termination for staff of the HSU to complete a special needs form for over-the-counter medications such as ginseng or vitamins which were to be maintained in the HSU, but that it was the preferred practice. Taking these factual findings into account, the record demonstrates that appellant's actions, as relevant here, were deficient in the following ways:

1. Appellant accepted two shipments of ginseng/vitamins ordered by inmate Mojica without inmate Mojica having received prior approval from appellant or Dr. DasGupta;

2. Appellant failed to obtain Dr. DasGupta's approval, consistent with standard health care practice, prior to dispensing the ginseng/vitamins to inmate Mojica;

3. Appellant failed to document the dispensing of ginseng/vitamins to inmate Mojica in the inmate's medical records;

4. Appellant did not follow the preferred practice of recording inmate Mojica's ginseng/vitamins on a special needs form.

5. Appellant provided incorrect information at the investigatory meeting which she failed subsequently to correct.

Respondent has represented here that the actions for which appellant was terminated were considered to be particularly significant in a disciplinary context primarily because some of them constituted fraternization, a type of prohibited conduct considered to have serious security ramifications in a correctional setting. It is a stretch to characterize any of appellant's actions as constituting fraternization. Although the record shows that no other inmate received an over-the-counter product in the same manner as appellant received the ginseng/vitamins he ordered, the record does not show that any other inmate had a desire to order and pay for similar over-the-counter products for dispensing to him by the HSU, or that this would reasonably be considered "special consideration or treatment" by inmate Mojica or any other similarly situated inmate. The record shows that appellant, as the HSU manager, had the authority to approve the ordering of over-the-counter medications by inmates for receipt and dispensing by the HSU; and, presumably, would have approved this for other inmates had a request been presented to her. The fact that other inmates did not take advantage of this process does not mean that this process was not generally available to inmates. Fraternization does not involve providing something to an inmate which is generally available to the entire inmate population of an institution.

Although it has been shown that appellant provided the ginseng/vitamins to inmate Mojica without his having obtained prior approval from her, it cannot be concluded that this constituted special treatment or consideration. First of all, appellant's approval was sought and granted through inmate Mojica's direction of the shipments to her, and her receipt of the shipments and placement of their contents on inmate Mojica's medication shelf in the HSU for dispensing to him. As a result, it cannot be said that appellant's actions allowed inmate Mojica to avoid the approval process. Secondly, although the requirement for prior approval was not satisfied, respondent has failed to show that the timing of the approval would have security implications here, i.e., inmate Mojica's access to the ginseng and vitamin tablets would not have been different had prior approval been obtained.

The only other aspect of appellant's conduct at issue here which is argued to have security implications is her failure to have completed a special needs form. The record shows that this was the preferred practice at Oakhill during the relevant time period, although not one consistently followed or enforced. Appellant, however, as a supervisor, should have been aware of the practice and should have followed it and she so admits.

Appellant's health care practice deficiencies, i.e., her failure to obtain Dr. DasGutpa's approval before dispensing ginseng or vitamins to inmate Mojica, and her failure to note in inmate Mojica's medical records that he was receiving such substances, were *significant deficiencies in view of inmate Mojica's serious health problems and the complications that could be created by failing to carefully review and document each health care treatment he received.*

Finally, the record shows that appellant was less than forthcoming during the investigation of the shipments made to the HSU of over-the-counter products for inmate Mojica. Appellant had to have realized, as the result of the questions asked of her at the investigatory meeting, that respondent was seeking information on the shipments which had been accepted by the HSU, not the shipment which had been returned to the vendor. Despite this, and despite being asked again about the invoice for a shipment

which had been accepted, she provided no further information about this shipment or the other one which had been accepted. This evidences an intent to obstruct if not to deceive. This conclusion is buttressed by the credibility determination in Finding of Fact 5, above.

Based on the above, it is concluded that there was just cause for disciplining appellant.

The inquiry then shifts to the question of whether the discipline imposed was excessive. The level of discipline imposed here, i.e., termination, appears to have been primarily premised on the conclusion that appellant, a supervisor, had engaged in fraternization. However, as discussed above, respondent has failed to show that appellant's actions which formed the basis for her termination actually constituted fraternization, or that such actions even had significant security implications. It also appears from the record that Mr. Sondalle, the primarily decision-maker here, did not realize at the time that discipline was imposed that appellant, as the HSU manager, had the independent authority to authorize the ordering of products such as ginseng or vitamins by an inmate for shipment to and maintenance by the HSU for dispensing to the inmate. The level of discipline imposed here appears from the record to rely to a not insignificant extent on Mr. Sondalle's impression that appellant did not have this authority. Moreover, the deficiencies in appellant's work performance and conduct which respondent has actually shown here appear to be primarily health care practice deficiencies which the record shows the respondent does not view as seriously in the disciplinary context as fraternization or other actions with significant security implications. Based on this, the Commission concludes that the level of discipline imposed was excessive. In addition, the record shows that the conduct under consideration here is most closely comparable to that described in Finding of Fact 19, above, involving Nursing Supervisor LH. LH was found to have permitted and participated in the neglect of an inmate's medical needs, and to have provided false or misleading information during the investigatory process. The fact that the health care practice failings of LH appear to have been more significant than those of appellant are

balanced by the fact that appellant's failure to follow special needs form procedures did have security implications not present in LH's situation. Based on this, the Commission concludes that a more appropriate level of discipline would be a 10-day suspension without pay and a demotion to a non-supervisory position.

ORDER


The action of respondent is modified to a ten-day suspension without pay and a demotion to a non-supervisory position. This matter is remanded to respondent for action in accordance with this decision. Jurisdiction is retained over this matter pending completion of the remedy phase of these proceedings.

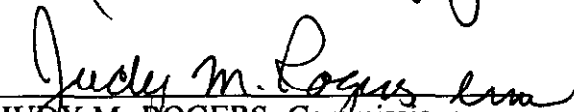
Dated: September 23, 1998

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STATE PERSONNEL COMMISSION

  
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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