

STATE OF WISCONSIN

PERSONNEL COMMISSION

RICKY POWELL,
Complainant,

v.

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

**DISMISSAL
ORDER**

Case No. 97-0147-PC-ER

Complainant alleged that he was discriminated against based upon his race and color. By a letter dated November 7, 1997, a member of the Commission's staff wrote to the complainant as follows:

The Personnel Commission previously wrote to you on October 13, 1997, and asked you to provide information regarding the above discrimination/retaliation complaint. To date, we have received no response.

If you wish to proceed with your complaint, you must submit the information as described in the enclosed correspondence. Your response must be received by the Commission within 20 calendar days of the date of this certified letter. If you fail to respond within the 20 day time period, I will recommend that your case be dismissed for lack of prosecution.

Pursuant to §111.39(3), Stats., which relates to claims filed under the Fair Employment Act:

The (commission) shall dismiss a complaint if the person filing the complaint fails 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.

As requested, this complaint was also filed with the Equal Employment Opportunity Commission (EEOC). To protect your rights with that agency, you must comply with their enclosed letter. Please note that

pursuant to EEOC regulations, you have 30 days in which to respond to the EEOC, as opposed to the 20 day period for responding to the Personnel Commission as set forth above.

If you have any questions, please feel free to call me.

Because the Commission's letter was dated November 7th and November 27th was a state holiday, the complainant's response was due no later than Friday, November 28th.

Complainant's response to the certified letter was dated November 27, 1997. The envelope bears a postmark of November 28th and it was received by the Commission on December 1, 1997. The complainant was provided an opportunity to file written arguments as to why his response should not be considered untimely. Complainant wrote, in part:

I feel that the commission should not dismiss my complaint case because my father who lives in Michigan was diagnosed with cancer in his right leg. Second of all I had a death in my family. Third, I think it is time for someone to deal with this situation that is going on at the Wisconsin Resource Center.

The arguments raised by the complainant do not change the fact that the complainant did not file his response within the 20 day period specified by statute. The Commission has previously dismissed complaints that were filed on the 21st day after the mailing of a certified letter, *King v. DHSS*, 88-0007-PC-ER, 5/29/91, and the 22nd day, *Billingsley v. DOR*, 87-0132-PC-ER, 7/13/88.

Complainant's charge is dismissed for lack of prosecution. Dismissal of this case has no effect on complainant's companion appeal that is pending before the Commission, nor does it dismiss complainant's proceeding before the Equal Employment Opportunity Commission.

Dated: January 11, 1998

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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Joe Leann
Secretary, DHFS
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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.)

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