

PETER STACY,
Appellant,

v.

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

**RULING ON
PETITION FOR
REHEARING
AND FINAL ORDER**

Case No. 99-0024-PC

NATURE OF THE CASE

This case involves an appeal of a transfer that was grieved through the non-contractual grievance process. On August 25, 1999, the Commission dismissed this case because of untimely filing. On September 9, 1999, the appellant filed a petition for rehearing pursuant to §227.49, Stats.

The Commission's decision included the following discussion of appellant's equitable estoppel contention:

Appellant's theory apparently is that the respondent should have responded to his second stage grievance in a timely fashion, and had it done so, the respondent would have denied his grievance as involving a non-grievable subject, and thus he would have known to file an appeal with the Commission. The problem with appellant's theory is that there is no reason why appellant should have inferred from respondent's inaction at the second stage that his grievance involved a grievable subject. Thus, any reliance on respondent's inaction as a reason for having failed to file a timely appeal with the Commission would have been misplaced and would not have been reasonable. While it is correct that respondent had a duty under § ER 46.06(2)(b)2, Wis. Adm. Code, to have answered the grievance within seven calendar days of its receipt, it does not follow from this that there was a reasonable connection between respondent's failure to answer and any reliance by appellant on that failure.

In his petition for rehearing, appellant contends that the commission overlooked his argument that respondent misled him when it scheduled a third step grievance hearing for August 11, 1999, and then on August 8, 1999, cancelled it. The latter date was

after the time for appeal to the commission had run. He argues that when respondent scheduled the third step grievance hearing, it led him to believe that the grievance process was the correct route to address the matter of his transfer: “Based on their actions, I believe it was certainly appropriate for a grievance procedure. Why would Corrections schedule a hearing if they had no intention of ever holding it other than for the possible reasons that I have outlined in this appeal?”

While appellant’s contention conceivably could raise an issue as to whether it was reasonable for him to have relied on the scheduling of the hearing as an acknowledgement by respondent that he was proceeding down the right road, complainant’s position is undermined by the fact that the time for appeal to the commission had already expired at the time respondent notified him of the August 11, 1999, third step grievance hearing.

Pursuant to §230.44(3), Stats., appellant’s appeal had to have been filed within 30 days of the effective date of the transfer—i. e., within 30 days of January 31, 1999, or no later than March 2, 1999. In appellant’s brief in opposition to the motion to dismiss he states that he received notice of the March 11, 1999, grievance hearing on March 6, 1999. Because the time for an appeal to the commission had already expired four days before March 6th, it is a moot point whether this notice may have reasonably caused him to believe he was pursuing the correct process.

Because appellant has not identified a material error of fact or law, or the discovery of new evidence sufficiently strong to reverse or modify the commission’s August 25, 1999, order, *see* §227.49(3), Stats., the petition for rehearing must be denied.

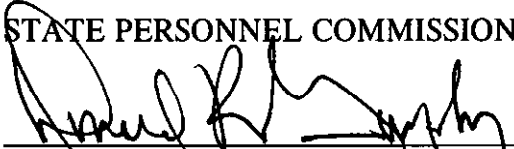
ORDER

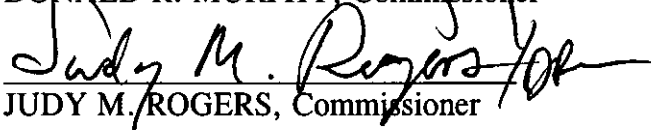
Appellant's petition for rehearing filed on September 9, 1999, is denied.

Dated: October 6, 1999.

AJT:990024Arul2

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Peter Stacy
747 River Ridge Rd
River Falls WI 54022

Jon E Litscher
Secretary, DOC
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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 oc-

curred 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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