

**DAWN M. BERNECKER,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF NATURAL  
RESOURCES, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondents.*

**RULING  
ON  
PETITION FOR  
REHEARING**

Case No. 00-0128-PC

On October 10, 2000, the Commission issued a ruling that dismissed the appeal, without prejudice, for failing to timely tender a filing fee required under §PC 3.02, Wis. Adm. Code. On October 30, 2000, the appellant filed a document the Commission has construed as a petition for rehearing. The petition states, in part:

In the Order, my check was rejected based on the timeliness of filing fee. The \$50.00 check was for the processing of my appeal, which was never done because of the timeliness issue. By cashing my check, the Personnel Commission accepted it, but tells me it is at the same time rejected. The [filing] fee required is quite unfair since it is our God-given right to voice our opinion when an obvious injustice in reclassifying positions has occurred.

You cannot have your cake and eat it too. Either return my check in the full amount of \$50.00 or process my appeal.

The findings set forth in the Commission's previous ruling show that appellant mailed a certified check to the Commission as her filing fee, but this initial check was received one day *after* the 30 day period established in §PC 3.02, Wis. Adm. Code. Appellant had specifically asked that if this check arrived late, it be returned to her and not be deposited. The Commission followed the appellant's directive, returned the check to her but noted that her case would be placed on the Commission's next agenda for dismissal "due to the absence of a filing fee."

Before the Commission entered a dismissal order, the appellant submitted a second cashier's check for the filing fee and explained why she felt she had submitted the first check in a timely fashion. By letter to appellant dated August 24, 2000, a member of the Commission's staff acknowledged receipt of the second check, and noted:

At your request, the Commission will process the latest filing fee check. However, your submission does raise an issue as to the timeliness of your fee.

The letter went on to establish a briefing schedule for the parties to submit written arguments on the timeliness of the fee. After processing the second check and after the briefing schedule had been completed, the Commission issued the October 10<sup>th</sup> ruling which held that the appellant's first check had reached the Commission one day late.

Section 230.45(3), Stats., provides:

The [personnel] commission shall promulgate rules establishing a schedule of filing fees to be paid by any person who files an appeal under sub. (1)(c) or (e) or s. 230.44(1)(a) or (b) with the commission on or after the effective date of the rules promulgated under this subsection. Fees paid under this subsection shall be deposited in the general fund as general purpose revenue -- earned.

While the Wisconsin Statutes provide State employees the option of appealing a decision to reallocate their position to a certain classification under §230.44(1)(b), those same statutes require that such an appeal be accompanied by a filing fee. Appellant submitted her first check on a conditional basis: The Commission was not to process that check *unless* it was received within the 30 day mandatory period established in §PC 3.02, Wis. Adm. Code. It was not received until the 31<sup>st</sup> day so the Commission returned the check to the appellant. Appellant concluded the check must have been received on the 30<sup>th</sup> day so she submitted a second check in order to pursue her appeal. The second check was submitted unconditionally by the appellant and the Commission's August 24<sup>th</sup> letter informed her that the check was being processed. Two months later, in her petition for rehearing, appellant has asked for the return of her check.

Appellant's request for the return of her second check appears to be premised on the incorrect belief that §230.44(3), Stats., which provides for the payment of a filing fee for this kind of appeal, somehow inextricably links the payment and processing of the fee with the right to have the appeal actually heard on the merits. (The merits of this appeal concern the proper classification of appellant's position). However, this view is not supported by the statutory language, which provides only that the fee is "to be paid by *any person who files an appeal.*" (emphasis added) *Id.* Thus the fee is linked to the filing of the appeal. The statute does not limit the payment of filing fees to cases in which the Commission reaches the point of addressing the substantive merits of an appeal.

Appellant's most recent letter, filed with the Commission on November 17, 2000, includes the following:

My check was rejected therefore no processing of my appeal could be done. Therefore there is absolutely no legal reason why I shouldn't have that money returned to me. . . My case couldn't be processed without my filing fee, which arrived one day after the deadline, therefore my case was dismissed. Since my appeal was not processed, my check should never have been deposited into the State Treasury.

Complainant in effect equates "processing" of her appeal with deciding it on its merits (i. e., the question of the correct classification of her position). Complainant's contention that there was no "processing" of her appeal is erroneous. The Commission has "processed" her appeal by deciding, after having obtained both parties' input, that her filing fee had not been filed in a timely manner in accordance with the Commission's rules at §PC3.02(5)(b)2., Wis. Adm. Code. There is no basis for a conclusion that "processing" an appeal requires a decision on the merits of the appeal.

The Commission concludes that the appellant has failed to show that the Commission's decision and order was premised on an error of law or fact or that the appellant has discovered new evidence of the nature described in §227.49(3), Stats.

Therefore, the document complainant filed on October 30, 2000, to the extent it constitutes a petition for rehearing,<sup>1</sup> must be denied.

ORDER

The appellant's petition for rehearing is denied.

Dated: November 21, 2000 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

KMS: 000128Arul2.1

  
JUDY M. ROGERS, Commissioner

Parties:

Dawn M. Bernecker	George E. Meyer	Peter Fox
Gov. Thompson Fish Hatchery	Secretary, DNR	Secretary, DER
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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.

<sup>1</sup> To the extent this document is not construed as a petition for rehearing but as an administrative request for the return of the second \$50 filing fee, it must be denied for the same reasons discussed above.

**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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