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ROBERT A. THOM,

Appellant,

v.

Secretary, DEPARTMENT OF  
REVENUE,

Respondent.

Case No. 81-335-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission on respondent's motion to dismiss. Respondent has also moved that the Commission admit certain documents into evidence. The following findings are based upon the record in this matter and appear to be undisputed.

FINDINGS OF FACT

1. The hearing in this matter was originally scheduled for November 19-20, 1981.
2. The hearing was postponed at the appellant's request and over the respondent's objection until January 25-26, 1982. Appellant was notified in writing by the hearing examiner that he "should be on notice that it is unlikely that any further postponement will be granted."
3. Respondent appeared for the hearing scheduled on January 25, 1982 and was prepared to proceed.
4. Appellant failed to appear on January 25, 1982.
5. On the morning of February 17, 1982, a representative of the Commission placed a call to the appellant's residence but was unable to reach him and was unable to determine his whereabouts.
6. On January 27, 1982, respondent filed a motion to dismiss the appeal on the grounds that the appellant failed to appear on the duly scheduled date for hearing.

7. The Commission mailed a copy of the respondent's motion to the appellant on or about January 29, 1982 allowing him 15 days from January 29, 1982, in which to respond.

8. On February 17, 1982, appellant submitted a letter in reply to the motion, stating:

Due to the condition of the highway, the early hour, and the misfortune of getting stuck with no access to a phone or help and my own physical inability to do anything by myself, I therefore apologize for not being present.

9. Appellant's letter, received by the Commission on February 17, 1982, was the first communication from the appellant to the Commission since prior to January 25, 1982, the scheduled hearing date.

#### OPINION

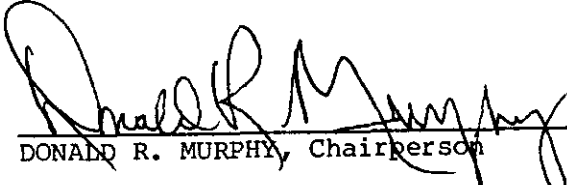
The appellant, in his letter, offers a statement as to why he was unable to reach the scheduled hearing. Even if the Commission accepts appellant's statements as accurate, appellant has failed to offer any justification for failing to appear or contact the Commission as to the second day of scheduled hearing on January 26, 1982. Not until he was served with a copy of respondent's motion to dismiss did the appellant notify the Commission. Based upon the facts recited above, the Commission concludes that the appellant has failed to carry his burden of prosecution. By granting respondent's motion to dismiss, respondent's request to have the Commission admit respondent's Exhibits 1 through 35 into evidence becomes moot.

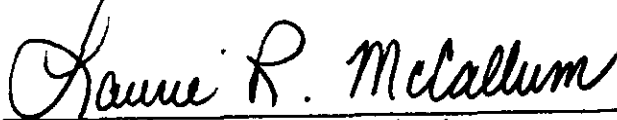
ORDER


Respondent's motion to dismiss is granted and this matter is dismissed,  
with prejudice, due to lack of prosecution.

Dated: March 8, 1982 STATE PERSONNEL COMMISSION

KMS:jmf

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

Parties:

Robert A. Thom  
Route 1, Box 232  
Scandinavia, WI 54977

Mark Musolf, Secretary  
DOR  
125 S. Webster, 2nd Floor  
Madison, WI 53702