

.STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

GREG M. DOYLE, *

Appellant/Complainant, *

v. *

Secretary, DEPARTMENT OF *

NATURAL RESOURCES, and *

Administrator, DIVISION OF *

MERIT RECRUITMENT & SELECTION, *

Respondents. *

Case No. 86-0192-PC *

* * * * *

DECISION
AND
ORDER

In an Interim Order dated November 3, 1988, the Commission stated as follows:

The Motion for Judgment is granted as to Case No. 86-0192-PC and denied as to Case No. 87-0007-PC-ER. Respondent is ordered to cease and desist from using the subject exam or the employment register created using the results of the subject exam. A decision finally disposing of the instant case will not be issued until appellant has an opportunity to file a motion for costs and the Personnel Commission issues a decision on such motion if one is filed.

Such Order and the accompanying Decision was mailed to the parties on November 3, 1988. Also on November 3, 1988, the following letter was mailed to counsel for appellant:

Enclosed please find an interim decision and order issued by the Personnel Commission in the above matter. Under the circumstances set forth in §227.485(5), Stats., the prevailing party has 30 days after service of the decision to submit an itemized application for fees and other expenses and the state agency which is the losing party then has 15 working days to respond in writing. Any application you file should comply with the requirements of §227.485(5), Stats., and §PC 5.05, Wis. Adm. Code.

On January 10, 1989, counsel for appellant filed what he characterized as a "NOTICE OF MOTION AND MOTION TO TAX ATTORNEYS FEE" and what was, in essence, an application for fees and other expenses within the meaning of §227.485(5), Stats.

Section 227.485, Stats., provides, in pertinent part:

* * * * *

(3) In any contested case in which an individual, ... is the prevailing party and submits a motion for costs under this section, the hearing examiner shall award the prevailing party the costs incurred in connection with the contested case, unless the hearing examiner finds that the state agency which is the losing party was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

* * * * *

(5) If the hearing examiner awards costs under sub. (3), he or she shall determine the costs under this subsection, except as modified under sub. (4). The decision on the merits of the case shall be placed in a proposed decision and submitted under ss.227.47 and 227.48. The prevailing party shall submit, within 30 days after service of the proposed decision, to the hearing examiner and to the state agency which is the losing party an itemized application for fees and other expenses, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The state agency which is the losing party has 15 working days from the date of receipt of the application to respond in writing to the hearing examiner. The hearing examiner shall determine the amount of costs using the criteria specified in s. 814.245(5) and include an order for payment of costs in the final decision.

It is clear from the record in this case that appellant's application for fees and costs was not filed within 30 days of the date of the service of the Commission's Interim Decision and Order on appellant. The Interim Decision and Order was mailed on November 3, 1988, and appellant's application for fees and costs was filed with the Commission on January 10, 1989, more than 60 days later. It is also clear that the 30-day filing requirement of §227.485(5), Stats., is

mandatory, not directory. The appellant has failed to offer, in response to respondent's brief in opposition to appellant's application for fees and costs, any explanation for the filing delay. As a result, the Commission must conclude that appellant's application for fees and costs fails to meet the requirements of §227.485, Stats., and must be denied.

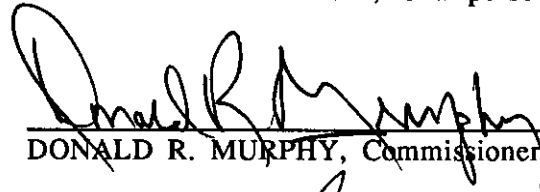
Order

Appellant's application for fees and costs under §227.485, Stats., is denied.

Dated: February 8, 1989

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

LRM/lrm

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