

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

ERIC JONES, *

Appellant, *

v. *

President, UNIVERSITY OF *

WISCONSIN SYSTEM (Madison *

Extension), *

Respondent. *

Case No. 87-0102-PC *

* * * * *

RULING ON
 PETITION FOR
 REHEARING

This matter is before the Commission on appellant's petition for rehearing following dismissal of the appeal due to lack of prosecution. A copy of the Commission's dismissal order, dated December 3, 1987, is attached hereto. It sets forth the events that lead to the dismissal.

Appellant filed a petition for rehearing on December 21, 1987. The parties were then provided an opportunity to file arguments regarding the petition. Appellant's arguments in support of his petition are summarized in the following paragraph from the petition:

The Commission accurately states in the dismissal order that, "The Commission has no authority to present a case on behalf of a party or on its own behalf"... The difficulty here is that until Appellant received the Commission's order, he was not aware of the Commission's limited powers in these type of actions. Due to his lack of legal experience Appellant was horribly confused, and as a result quite frustrated with the Commission's seeming lack of interest in pursuing his claim. Appellant's feelings are graphically illustrated in the last sentence of the last paragraph of his November 16, 1987 memorandum. He stated: "I therefore expect that the Commission will not seek an easy way out but, instead pursue this claim vigorously to a successful end". Appellant unfortunately thought the Commission would conduct an investigation similar to the process utilized by ERD and EEOC, and then make a recommendation regarding the validity of his claim. He was totally unaware, until he received the dismissal order, that he had the burden to produce credible evidence to substantiate his claim. Although Appellant erred in his handling of the matter,

Wisconsin law makes it very clear that he is entitled to a hearing. s. 230.44(1)(d) stats.

Section PC 5.09, Wis. Adm. Code provides that requests for rehearing may be granted for the reasons specified in s. 227.49, Wis. Stats. Pursuant to that statute, rehearing will only be granted on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

The circumstances in the present case do not satisfy these criteria.

Accordingly, the Petition for Rehearing must be denied.

There has been no showing that the Commission's December 3rd Order is premised on either a material error of fact or of law, nor is the appellant alleging the discovery of new evidence. The Commission properly (and accurately) concluded in its December 3rd Order that the appellant did not wish to prosecute his claim. The appellant has now changed his mind and does wish to pursue his claim. The standards for granting a rehearing are simply not broad enough to allow the appellant to obtain a rehearing after the matter was properly dismissed because appellant did not wish to pursue his claim.¹


¹ Two additional facts relate to the basis for the Commission's December 3rd Order. The first is that by letter dated August 14, 1987, the Commission had informed the appellant that his failure to respond within 20 days could result in dismissal of the case for lack of prosecution. This letter arose from difficulties in reaching the appellant at the time set for a prehearing conference. In addition, the Commission provided appellant with a document entitled "Instructions for Unrepresented Appellants Before the State Personnel Commission" which stated, in part:

It is up to you to establish to a reasonable certainty, by a preponderance of the evidence, by means of calling witnesses (including yourself if you wish) and/or presenting exhibits, the facts necessary for your case.

ORDER

The appellant's petition for rehearing is denied.

Dated: January 14, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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