



If you have any questions, feel free to contact the undersigned at (608)266-8478.

The certified letter was returned to the Commission on February 5, 1988. The face of the envelope showed that notice of the certified mail was provided to the addressee on January 14, 19 and 29, 1988 and that the letter had been unclaimed at the post office. The Commission received no word from the complainant and by order issued on February 11, 1988, the Commission dismissed the complaint for lack of prosecution.

On February 24, 1988, after having telephoned the Commission, the complainant filed a letter which has been construed as a petition for rehearing:

I am sending this letter in receipt of our telephone conversation 2/19/88. This letter is sent with the intent to inform you and whomever else needs notification that I am not in agreement with the decision to dismiss my "Case No. 87-0149-PC-ER. I have not received any notification from your office in the form of certified mail and therefore, until such mail is received and I am allowed adequate time to act on same, I would like to request that my case not be "dismissed due to lack of prosecution".

The respondent was provided an opportunity to file a response to the petition.

Pursuant to s. 227.49(3), Stats., a petition for rehearing can 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.


In the present case, complainant's only contention is that because she did not receive the certified letter, the 20 day time period for responding to the letter did not commence to run. Such a result would be contrary to the specific language of s. 111.39(3), Stats., which refers to when the

certified letter is sent to the person's last known address rather than to receipt by that person. Under the complainant's interpretation, someone could keep their case open indefinitely by simply refusing to accept any certified mail sent them by the Commission.

Because the complainant has failed to meet the requirements of s. 227.49(3), Stats., the Commission must deny her petition for rehearing.

Dated: March 10, 1988 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. McCALLUM, Commissioner

KMS:rcr  
RCR02/1

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