

STATE OF WISCONSIN

PERSONNEL COMMISSION

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CLIVE ADAMS,

Complainant,

v.

Chancellor, UNIVERSITY OF
WISCONSIN-MADISON,

Respondent.

Case Nos 90-0051, 0052-PC-ER

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RULING
ON
POSTPONEMENT
REQUEST

This matter is before the Commission on the complainant's objection to the hearing dates and a request for a postponement of the hearing for a period of approximately six and one-half months. During a prehearing conference held via telephone on August 3, 1992, a hearing was scheduled for February 4 and 5, 1993. The conference report reflects:

The hearing was scheduled over the objection of complainant who had requested the hearing be scheduled for August 19 and 20, 1993. Complainant indicated he will file a written objection to the hearing dates and will request a formal ruling by the Commission.

* * *

The complainant also indicated that he has had contact with several attorneys and that he intends to have legal representation at the hearing.

The conference report, which was issued on August 4, 1992, incorrectly listed the dates of hearing as February 4 and 5, 1992, rather than 1993. This error was corrected by a letter from the Commission to the parties dated November 3, 1992. In a letter dated November 13th and received by the Commission on November 20th, the complainant, who was residing in Louisiana, requested the hearing be postponed until August of 1993 and listed the following grounds for the request:

- 1) The current February hearing date cause me undue hardship.

2) I won't be permanently moved back to Madison, Wisconsin until August of '93.

3) The August, 1993 hearing date does not prohibit, deny, or materially affect the respondent's due process rights to a hearing.

4) The August, 1993 hearing date does not prohibit, deny, or materially affect the complainant's or respondent's capability to subpoena witnesses because both parties witnesses work for the State and live in Madison, Wisconsin or the surrounding Wisconsin area.

The respondent objected to the request, arguing that the complainant had "already been accommodated beyond any reasonable standard."

A review of the case file reflects the following:

1. These complaints were initially filed with the Commission in March of 1990, and arise from hiring decisions made no later than June of 1989.

2. After an investigation was conducted by the EEOC, the complainant appealed from the EEOC's investigatory determination of no reasonable cause, and a conciliation/prehearing conference was scheduled for August 5, 1991.

3. At the complainant's request, the August 5, 1991 conference was postponed because the complainant was recuperating from a back injury and indicated he would be moving from Madison, Wisconsin to Baton Rouge, Louisiana "for approximately six months" and "requested this postponement be for several months " The complainant was directed to contact the Commission "on or about November 1, 1991 to determine a new date" for the conference.

4. After not having heard from the complainant, the Commission wrote him on February 24, 1992 asking him to advise as to the status of his cases.

5. In a letter received by the Commission on March 23, 1992, the complainant requested the proceedings be placed "on hold" until October of 1992, because he would "be back in Wisconsin by October to live "

6 After the respondent objected to such a postponement, the Commission convened a prehearing conference on April 24, 1992. The conference report reflects that the parties agreed to a telephone status conference to be held on August 3, 1992 for the purpose of setting a specific date for hearing, "tentatively scheduled on January 1993 "

7. By letter to the Commission received on May 8, 1992, the respondent noted that its position at the April 24th conference was that it wanted the hearing to be held "as soon as possible and without delay" and that the hearing date of January of 1993 "was scheduled over Respondent's objection."

The results of the August 3rd conference are already summarized, above

The Commission has considered the complainant's postponement request and the written arguments of the parties and has reviewed the case files. Based upon that record, the Commission denies the request. There has already been a significant delay in the hearing of these matters. The respondent has consistently raised objection to further postponements in these matters since March of 1992. The complainant's postponement request appears to be premised on the distance between his present residence in Louisiana and the hearing site in Wisconsin. The Commission recognizes that travel to the hearing may generate some expense and inconvenience for the complainant. However, the fact that the complainant has moved out of state is not a sufficient basis for postponing a hearing another six and one-half months, where the proceeding has already been postponed approximately one year for the same reason. In August of 1991, complainant indicated he would be living in Louisiana "for approximately six months." In March of 1992, the complainant indicated that he would be living in Wisconsin by October of that year. Complainant, who is still living in Louisiana, now indicates that he will begin residing in Wisconsin in August of 1993. If the Commission were to rely on the complainant's current assertion and schedule the hearing in August of 1993, that would mean the hearing would be held more than 4 years after the events which serve as the basis of these complaints. The circumstances do not justify such a delay.

Respondent has requested that the Commission order complainant to advise whether he intends to appear at the hearing and to pursue this matter. Complainant will be given 10 days from the date of the entry of this order in which to so advise the Commission and the respondent

ORDER

The record here does not justify a further postponement and the complainant's request is, therefore, denied. Complainant is to notify the Commission within 10 days of the date of this order whether or not he intends to pursue this matter at the hearing on February 4 and 5, 1993

Dated: December 29, 1992 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner