

STATE OF WISCONSIN

PERSONNEL COMMISSION

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SPENCER STEWART,

Complainant,

v.

Secretary, DEPARTMENT OF
REVENUE,

Respondent.

Case No. 92-0062-PC-ER

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ORDER
DENYING
PETITION
FOR
REHEARING

This matter is before the Commission on complainant's petition for rehearing filed on February 23, 1993. The Commission had dismissed this matter on February 3, 1993, because complainant had not petitioned within 30 days for a hearing on the issue of probable cause pursuant to §PC 2.07(3), Wis. Adm. Code, following service of the Initial Determination on November 9, 1992.

In his petition for rehearing, complainant asserts that he never received either the Initial Determination or the dismissal order. However, this file contains affidavits of mailing that reflect that these documents were mailed on November 9, 1992, and February 3, 1993, to complainant's address of record, which corresponds to complainant's return address used on his petition for rehearing. Copies of these affidavits are attached to this order.

Complainant apparently contends that the use of certified mail is necessary to establish proper service. There is no such requirement under either the statutes or the administrative code. The Administrative Procedure Act at §227.48(1), Stats., provides for service of decisions by mail, but does not specify that certified mail must be used, and there is no required method of service of the Initial Determination beyond the general provision set forth at §PC 1.05(2), Wis. Adm. Code, that "[p]apers may be served either personally or by mail." Furthermore, in In re Proposed Incorporation of Pewaukee, 72 Wis. 2d 593, 598, 241 N.W. 2d 603 (1975), the Supreme Court held:

"Under such statutory provisions for service it is usually held that:
". . . service may be effective when the notice is properly mailed, regardless of its receipt by the addressee; in such case the risk of mis-carriage or failure to deliver is on the addressee.' (citations omitted)

Section PC 1.05(2), Wis. Adm. Code, specifically provides that: "[s]ervice by mail is complete upon mailing."

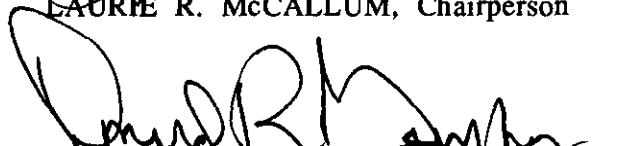
ORDER

Inasmuch as this petition for rehearing filed February 23, 1993, does not present any material error of fact or law or the discovery of any new material evidence, there is no basis for the granting of a rehearing pursuant to §227.49(3), Stats., and the petition for rehearing therefore is denied.

Dated: March 10, 1993 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr
Attachments


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Spencer Stewart
5162 Anton Drive, #204
Madison, WI 53719

Mark Bugher
Secretary, DOR
P.O. Box 8933
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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.