

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

JAMES KRUEGER, *

Complainant, *

v. *

Secretary, DEPARTMENT OF HEALTH *
AND SOCIAL SERVICES, *

Respondent. *

Case No. 92-0065-PC-ER *

* * * * *

DECISION
AND
ORDER

This matter involves a complaint of retaliation for taking medical leave in violation of §103.10, Stats. On April 22, 1992, the Commission mailed to complainant on initial determination of "no probable cause," accompanied by a letter dated April 22, 1992, which included the following:

If you feel that this "no probable cause" determination is in error and if you wish to have a hearing on the issue of probable cause, then you must, within 30 days of the date of this letter, file a letter of appeal with the Commission. The appeal must be in writing. The letter should specifically state the grounds on which it is based. You should include your name, the case number and a statement that you request a hearing on the "no probable cause" determination. The appeal must be actually received by the Commission within the 30 calendar day period rather than merely having been mailed within that period. §PC 2.07(3), Wis. Adm Code.

The last day for filing a timely appeal pursuant to §PC 2.07(3), Wis Adm. Code, was May 22, 1992. Complainant's appeal of the initial determination was filed on May 26, 1992.

A letter accompanying the appeal from Bev Krueger asserts that she tried to deliver the appeal on May 22, 1992, but that:

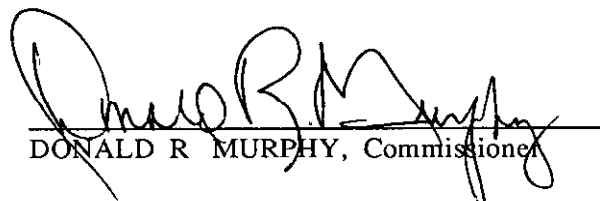
Although I thought I allowed enough time for driving I had problems on the East Belt-line getting here. When I arrived at your office I could find no one to leave the letter with.

While under certain circumstances the effect of failure to file a timely appeal under §PC 2.07(3), Stats, can be avoided where there is good cause for that failure, see Rogers v. DOA, 87-0010-PC-ER (12/22/89), rehr. denied (2/12/90), all that is asserted here is that enough time was not allowed to effect delivery of the appeal on the last possible day. This is not a sufficient basis for a finding of good cause. Compare, Dugas v. DHSS, 86-0073-PC-ER, 87-0143-PC-ER (7/14/88) (complainant's mother died on next to last day and complainant's union representative was absent from the state).

ORDER

Because complainant failed to file a timely appeal of the no probable cause determination, this complaint is dismissed

Dated: July 8, 1992 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner

AJT/gdt/2


GERALD F. HODDINOTT, Commissioner

Parties:

James Krueger
339 E Main St
Evansville WI 53563

Gerald Whitburn
Secretary DHSS
1 W Wilson St
P O Box 7850
Madison WI 53707

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.