

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 PETER JAY MEHLER,
 Complainant,
 v.
 Secretary, DEPARTMENT OF
 HEALTH AND SOCIAL SERVICES,
 Respondent.
 Case No. 94-0114-PC-ER
 * * * * *

DECISION
 AND
 ORDER

This complaint arises from the actions of respondent's Program Certification Unit which concluded that the complainant did not possess the requisite qualifications for status as a mental health professional in a certified outpatient psychotherapy clinic. Complainant alleges that as a consequence of this action, he was terminated from his employment/partnership with Milwaukee Physicians and Therapist, S.C.

The complaint was initially filed with the Equal Rights Division of the Department of Industry, Labor and Human Relations,¹ which then referred it to the Commission.

The Commission's jurisdiction under the Fair Employment Act is limited to processing complaints of discrimination/retaliation against "each agency of the state... as an employer." §111.375(2), Stats. Here, the alleged misconduct relates to the regulatory authority exercised by the state, rather than its authority as an employer.

¹The complaint bears a notation from a staff person at the Equal Rights Division that "[t]here appears to be no basis under discrimination laws - Rabbi Mehler states he cannot specify religion or any such basis."


ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: December 22, 1994 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:temp 1/95 Mehler


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Peter J. Mehler
8075 Seneca Road
P.O. Box 17588
Milwaukee, WI 53217

Gerald Whitburn
Secretary, DHSS
P.O. Box 7850
Madison, WI 53707-7850

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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)