

STATE OF WISCONSIN

PERSONNEL COMMISSION

DEANNA FINLEY,
Complainant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN - MADISON,**
Respondent.

Case No. 95-0007-PC-ER

**RULING ON
RESPONDENT'S
MOTION TO DISMISS
FOR COMPLAINANT'S
FAILURE TO APPEAR
AT A SCHEDULED
HEARING**

Complainant's discrimination complaint was filed with the Commission on January 18, 1995. The matter was investigated and an Initial Determination (ID) was issued on September 15, 1996, finding no probable cause to believe that discrimination occurred as alleged in the complaint. Complainant filed a timely appeal of the ID and the matter went forward to a prehearing conference held on December 2, 1996. A Conference Report (dated January 23, 1997 and mailed to the parties the same date) memorialized the matters discussed at the prehearing conference.

The Conference Report reflects that the parties agreed to a scheduled hearing on February 27, 1997, starting at 9:00 a.m., to be held at the Commission's offices located at 131 W. Wilson St., Rm. 1004, Madison, WI 53703. The Conference Report further noted that witness lists and exhibits "must be exchanged" on February 24, 1997. Also noted was the requirement for a party to show good cause as a basis for granting a request to postpone the hearing, pursuant to §PC 5.02, Wis. Adm. Code.

Notice was mailed to the parties on January 15, 1997, that Judy M. Rogers, had been designated as the hearing examiner. The hearing date of February 27, 1997, was recited in the notice. On January 17, 1997, Commissioner Rogers sent the parties a letter entitled "Hearing Instructions", and such letter recited that the hearing was scheduled for February 27, 1997, and that hearing exhibits and witness lists were required to be exchanged on February 24, 1997. Both parties timely complied with the exchange requirements.

Respondent appeared at 9:00 a.m. on February 27, 1997, along with its witnesses. Complainant was not present at the scheduled starting time. The examiner suggested waiting 30 minutes for complainant to arrive as she was traveling from the east side of Madison and the Commission had heard that traffic was unusually heavy coming from that direction due to the weather. Complainant did not appear by 9:28

a.m. Respondent moved for dismissal based on complainant's failure to appear when she knew or should have known of the hearing date. Respondent's motion and supporting arguments were placed on the record. The same morning, the hearing examiner sent complainant a letter stating as shown below:

The hearing on your case was scheduled to commence this morning at 9:00 a.m., but you did not appear. The respondent was present with witnesses. We waited until 9:30 a.m., at which time the respondent moved for dismissal due to your failure to appear.

I will recommend dismissal of your case at the Commission's meeting on March 26, 1997, based on your failure to appear at hearing. If you wish to submit a written explanation of your failure to appear and for your failure to provide advance notice of the same, the Commission must receive such written explanation by March 14, 1997 (with a copy to respondent's attorney).

Complainant was present at the Commission offices at 9:00 a.m., the day after her scheduled hearing. The hearing examiner spoke with her briefly indicating that complainant had missed the hearing date, that the examiner had sent complainant a letter providing an opportunity to explain why she failed to appear and that she should call the examiner if she had questions after reading the letter. Complainant filed a timely response to the examiner's letter. The text of complainant's letter is shown below:

I apologize for missing the February 27th meeting. I have no excuse. It was an unfortunate error on my part and I feel very bad about it. Please reschedule the hearing date and please do not dismiss my complaint.

Respondent was provided an opportunity to submit a reply to complainant's request and did so by letter dated March 20, 1997. The text of respondent's letter is shown below in pertinent part.

The University maintains its position that this case should be dismissed. In addition to the reasons cited on the record in the February 27, 1997 Motion to Dismiss, the University maintains that it would be burdensome to request the witnesses to again reschedule their work days to attend the hearing. . . . In this case, the University appeared for the hearing and was prepared to go forward. Ms. Finley, to date, has not provided good cause for failure to appear and, in fact, claims she has no excuse for missing the hearing date.

OPINION

Complainant had the burden of proof at hearing to establish that discrimination occurred as she alleged in her complaint. Commission rules provide that if the party with the burden of proof fails to appear at hearing after due notice, the commission shall consider a motion to dismiss by the party present without requiring presentation of any evidence. §PC 5.03(8)(a), Wis. Adm. Code. Due notice of the hearing date was provided to both parties in this proceeding and, accordingly, the examiner allowed respondent to enter its motion to dismiss on the record.


The complainant now requests an opportunity for rehearing. She is not entitled to a rescheduled hearing without first showing good cause for her failure to appear at the hearing already scheduled. §PC 5.03(8)(a), Wis. Adm. Code. She acknowledged to the Commission that her failure to appear was not for good cause. Accordingly, her request for a second hearing opportunity is denied and respondent's request for dismissal is granted.

ORDER

That respondent's motion to dismiss is granted and this case is dismissed.

Dated: March 26, 1997.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

JMR
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Parties:

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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

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