

**SCOTT J. BOUCHE,**  
*Appellant,*

v.

**President, UNIVERSITY OF  
WISCONSIN SYSTEM, and  
Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,**  
*Respondents.*

**RULING ON  
RESPONDENTS'  
MOTION FOR  
RECONSIDERATION<sup>1</sup>**

Case No. 96-0095-PC

Respondents request reconsideration of the Commission ruling dated October 29, 1996, which was mailed to the parties on October 31, 1996. The appellant was provided an opportunity to submit a response to the current motion but did not do so.

The Commission in the prior ruling noted that the appellant's filing fee was due at the Commission's office by 4:30 p.m. on August 12, 1996, that appellant mailed the filing fee from Milwaukee on August 8, 1996, in the "PM", and that the Commission did not receive the filing fee until August 13, 1996. Under these facts the Commission accepted appellant's fee payment as timely filed and such conclusion was based on the inference that appellant's appeal would have been received timely by the Commission but for the failure of DOA (the Commission's agent in processing mail) to process the Commission's mail on Friday, August 9, 1996, and on Monday, August 12, 1996.

Respondents state five objections to the prior ruling, as shown below with emphasis as it appears in the original document:

1. Appellant has not proved that his appeal fee was *in fact received* by DOA on or before the last day for filing an appeal fee to wit: on or before August 12, 1996, and therefore his appeal must be dismissed as untimely;
2. There is no evidence on which the Commission could reasonably infer that the Commission would have received the filing fee in a timely manner (i.e., on or before August 12, 1996) but for DOA's failure to have processed its mail on August 9 and August 12, 1996;

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<sup>1</sup> Respondents initially filed a combined motion for reconsideration and for an evidentiary hearing. They withdrew their request for an evidentiary hearing by letter dated December 2, 1996.

3. The Decision does not require that an appellant retains the burden under this apparent new precedent to prove, by the requisite standard of evidence, that his/her appeal fee was in fact received by DOA on or before the last day for filing an appeal fee;
4. The Decision does not provide instruction as to how an appellant proves that it filed its appeal fee timely when the filing is deemed to be complete upon receipt by DOA; and
5. The Commission does not provide guidance as to whether this Decision applies to all appeals to the Commission in determining whether an appeal is timely.

#### DISCUSSION

The Commission considered the issues raised in connection to Mr. Bouche's filing fee previously. In fact, the issues were discussed by the full Commission over several meeting dates. Respondents offer no arguments which have not already been considered by the Commission and resolved by the prior ruling. It is noted that this the contested ruling will have limited impact as precedent because the Commission changed its mailing address from the prior zip code of 53702 (whereby first class mail went through the DOA mailroom) to 53703 (whereby first class mail is delivered by the post office).

#### ORDER

That respondents' motion is denied, and this case will proceed to prehearing as previously scheduled for January 16, 1997, at 10:00 a.m.

Dated December 20, 1996.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

JMR  
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