

STATE OF WISCONSIN

PERSONNEL COMMISSION

MICAH A. ORIEDO,
Complainant,

v.

**Superintendent, DPARTMENT OF
PUBLIC INSTRUCTION,**
Respondent.

**RULING ON
RESPONDENT'S
MOTION TO DISMISS**

Case No. 96-0124-PC-ER

This case is before the Commission on respondent's motion to dismiss for complainant's failure to appear at the hearing scheduled to begin on November 24, 1997. A short procedural summary is presented (in relevant part) in the following paragraphs.

On October 8, 1997, the Commission sent the parties notice that a hearing examiner had been assigned to conduct the hearing scheduled for November 24-26 & 28, 1997. By letters dated October 15 and 16, 1997, the assigned hearing examiner sent the parties letters containing instructions for hearing, including a reminder of the requirement to exchange witness lists and exhibits by 4:30 p.m. on November 19, 1997. (The exchange requirement had been detailed previously in the Conference Report dated 8/15/97.)

On November 17, 1997, complainant filed a request for hearing postponement which was addressed in a tape-recorded proceeding on November 19, 1997. The hearing examiner found that complainant had not shown good cause sufficient to grant the postponement request, as required by §5.02(1), Wis. Adm. Code. The good cause standard had been explained to the parties in the Conference Report dated 8/15/97. The hearing examiner's reasons for denying the postponement request were summarized by letter dated November 19, 1997.

Respondent appeared for hearing on November 24, 1997, with witnesses and previously-exchanged exhibits. Complainant had not exchanged any exhibits or witness list. Complainant did not appear at the hearing and did not provide advance notice that he would not appear. Respondent moved for dismissal pursuant to §PC 5.03(8)(a), Wis. Adm. Code.

By letter dated November 24, 1997, complainant was provided an opportunity to submit a written explanation for his failure to appear. The content of the letter is shown below with emphasis as shown in the original document.

Respondent moved to dismiss your case at the hearing this morning because you did not appear. The pertinent administrative code provision is shown below:

PC 5.03 Conduct of hearings. . . . (8) Sanctions. (a) Unless good cause can be shown, any party who fails to appear at a hearing after due notice is deemed to have admitted the accuracy of evidence adduced by the parties present and the hearing examiner and the commission may rely on the record as made. If the absent party has the burden of proof, the commission shall consider a motion to dismiss by the parties present without requiring presentation of any evidence.

You were the party with the burden of proof in this proceeding and, according respondent was not required to present any evidence today.

I will present respondent's motion to dismiss to the full Commission at its meeting on December 3, 1997. If you wish to submit an explanation as to why you did not appear and how such reason constitutes good cause for failing to appear within the meaning of §PC 5.03, Wis. Adm. Code, the Commission and opposing party must each receive your written materials by 4:30 p.m. on November 28, 1997.

Complainant did not file any written arguments by the established deadline of November 28th.

The Commission received a letter from complainant on December 2, 1997, which was dated the same as the receipt date. The content of his letter is shown below in pertinent part:

I am asking for an extension of time to respond to your letter of November 24, 1997 until December 19, 1997. The reason for this request is to allow me time to study and address the issue carefully. Please note that I am not an attorney and therefore I am not conversant with the various defenses which may be available to me for the proposed action.

OPINION

Complainant's request for an extension was not made until after November 28, 1997, the deadline established for his response. Further, the applicable administrative rule was provided for complainant's convenience in the Commission letter which provided him with an opportunity to explain why he failed to appear. His request for

an extension having been raised for the first time after the due date of his response is denied.

Based on complainant's failure to show good cause for failing to appear at the scheduled hearing, this case is dismissed.

ORDER

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

Dated: December 3, 1997.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


JUDY M. ROGERS, Commissioner

JMR
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Commissioner Donald R. Murphy did not participate in the consideration of this matter.

Parties:

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Madison, WI 53701-2604

John Benson
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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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