

STATE OF WISCONSIN

PERSONNEL COMMISSION

JAMES GANTHER,
Complainant,

v.

**Secretary, DEPARTMENT OF
REVENUE,**
Respondent.

**RULING ON
COMPLAINANT'S
PETITION FOR
REHEARING**

Case No. 99-0175-PC-ER

The Commission dismissed the above-noted case for lack of prosecution by ruling dated October 3, 2000, which was mailed to the parties the same day. The complainant filed a petition for rehearing.

OPINION

Petitions for rehearing are governed by §227.49, Stats., which provides as follows:

- (3) Rehearing will be granted only on the basis of:
- (a) Some material error of law.
 - (b) Some material error of fact.
 - (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Complainant raised many arguments already considered and discussed by the Commission in its ruling of October 3rd. The matters discussed previously are not repeated here. The Commission concludes that the prior ruling contained no error of law or fact within the meaning of §227.49(3)(a) & (b), Stats. Nor has the complainant presented new evidence meeting the requirements of §227.49(3)(c), Stats.

The complainant notes in his petition for review that the ruling appears contrary to the Commission's decision in *Jackson v. DOC*, 94-0115-PC-ER, 3/7/96. The Commission recognized this in its prior ruling. The *Jackson* case deviated from the Commission's other decisions addressing the issue of failure to prosecute and such deviation could not be

reconciled. For this reason the Commission noted in its prior ruling in this case: "To the extent this conclusion may be inconsistent with the Commission's decision in *Jackson v. DOC*, 94-0115-PC-ER, 3/7/96, that decision was incorrect." Complainant's reliance on the *Jackson* case under these circumstances is misplaced.

Section 111.39(3), Stat., provides that the Commission shall dismiss a complaint if the person filing the complaint fails to *respond* within 20 days to any correspondence sent by certified mail. Complainant contends he did *respond* within the meaning of the statute when he telephoned the Commission on June 26th. The Commission disagrees. During the telephone call on June 26th, complainant did not provide any of the information requested in the Commission's correspondence. Instead, he indicated that he would respond. The bald promise to respond provides no substantive response to the Commission's correspondence and, accordingly, does not meet the statutory requirements.

CONCLUSIONS OF LAW

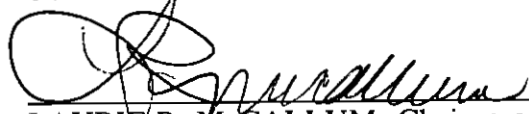
Complainant has the burden to shown entitlement to rehearing. He has failed to meet this burden.

ORDER

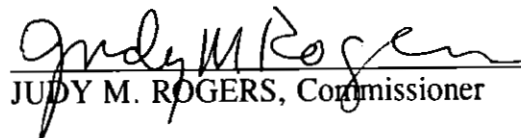
Complainant's petition for rehearing is denied.

Dated: November 8, 2000.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

JMR: 990175Cru12.doc


JUDY M. ROGERS, Commissioner

Parties:

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817 Sky Ridge Drive
Madison, WI 53719

Cate Zeuske
Secretary, DOR
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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.)

2/3/95