

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THOMAS SOLIN, Appellant,

v.

Secretary, WISCONSIN DEPARTMENT OF NATURAL RESOURCES and
Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondents.

Case 637
No. 63608
PA(der)-89

Decision No. 31424-A

Appearances:

Thomas Solin, appearing on his own behalf.

Daniel Graff, Attorney, Department of Natural Resources, P. O. Box 7921, Madison, WI 53707-7921, appearing on behalf of the Respondents.

RULING ON MOTION FOR COSTS AND FINAL ORDER

The Commission issued an Interim Decision and Order in this matter on November 4, 2005, rejecting the Respondents' decision to deny the request to reallocate Mr. Solin's position from Natural Resources Law Enforcement Supervisor to Natural Resources Program Manager, effective September 8, 2002.¹ On November 23, 2005, Respondents petitioned for reconsideration of the Interim Order and Mr. Solin filed a request for fees and costs two days later. On December 16, 2005, the Commission issued a Ruling Denying the Petition to Reconsider. The Commission convened a conference on January 4, 2006, in which the parties agreed that the Appellant would submit an amended application for fees and costs, along with supporting arguments, and Respondents would submit a brief by the same date. The final argument relating to Mr. Solin's request was received on February 7, 2006.

¹ While the Interim Decision referenced an effective date "in August 2002," the parties subsequently agreed that the correct date is September 8, 2002.

The Commission makes and issues the following

ORDER²

Appellant's motion for fees and costs is denied. The Interim Order issued on November 4, 2005, is adopted as the Final Order in this matter.

Within 20 days of the date of this Order, Respondents shall notify the Commission and Mr. Solin in writing as to the action they have taken to comply with the Commission's Order.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

² Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

DNR & OSER (Solin)

MEMORANDUM ACCOMPANYING RULING ON MOTION AND FINAL ORDER

The Commission addresses Mr. Solin's request for costs pursuant to that portion of Wisconsin's Equal Access to Justice Act (EAJA) found in Sec. 227.485, Stats. The request includes amounts for lost wages, air travel, car rental, parking, gasoline, motel and meals associated with attending the administrative hearing, photocopies, mailing costs and the fee for filing his appeal.

One of the eligibility requirements for receiving an award under the EAJA is established in Sec. 227.485(7), Stats.:

An individual is not eligible to recover costs under this section if the person's properly reported federal adjusted gross income was \$150,000 or more in each of the 3 calendar years or corresponding fiscal years immediately prior to the commencement of the case. This subsection applies whether the person files the tax return individually or in combination with a spouse.

Respondents raised the argument in their brief filed on January 23, 2006, that Mr. Solin had failed to establish that his gross income satisfied the eligibility requirement. Solin had an opportunity to file a response to Respondents' arguments but has not done so. Because he has failed to provide evidence that his gross income during the relevant period was within the statutory limit, the Commission must deny his motion for costs.³

³ Appellant's application included the following statement: "If additional documentation is required please let me know and I can supply that documentation." The Appellant has chosen to appear *pro se* in this matter and he cannot rely on the Commission to make a factual assumption and then direct him how to prepare a satisfactory response. Respondents' submission very clearly identified the gross income restriction.

This result is consistent with the conclusion reached in *SHOWSH v. DATCP*, CASE NO. 87-0201-PC (PERS. COMM. 11/28/88); REHEARING DENIED 3/14/89; REVERSED ON OTHER GROUNDS BY BROWN COUNTY CIRCUIT COURT, *SHOWSH v. WIS. PERS. COMM.*, 89-CV-445, 6/29/90; AFFIRMED BY COURT OF APPEALS, 90-1985, 4/2/91.⁴

The Appellant's motion for costs must be denied.

Dated at Madison, Wisconsin, this 7th day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

⁴ Even if the Appellant had produced information sufficient to satisfy the gross income limitation, existing precedent indicates that the vast majority of the costs that he requested would be denied. *RENTMEESTER v. WIS. LOTTERY*, CASE NO. 91-0243-PC (PERS. COMM. 9/9/94) (copying costs are not covered); *HEIKKINEN v. DOT*, CASE NO. 90-0006-PC (PERS. COMM. 4/16/90) (a *pro se* litigant is not entitled to compensation for the time s/he spends on the case); *WENGER v. RINEHART*, 114 Wis.2d 575, 583-84 (CT. APP. 1983) (travel costs of a party are not reimbursable).

