

STATE OF WISCONSIN
TAX APPEALS COMMISSION

KENAEYA POUEWELLS
810 Roscoe Avenue
South Beloit, IL 61080-2217,

DOCKET NO. 03-H-242

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

This matter comes before the Commission on the motion of the Wisconsin Department of Revenue (Department) to dismiss the petition for review on the basis that petitioner failed to prosecute her appeal, Wis. Stat. § 805.03, and on the basis that petitioner failed to comply with an order of the Commission, Wis. Stat. § 802.10(7). The Department also moves for an order reducing the amount of the assessment relating to year 1999.

Petitioner, Kenaeya Pouewells, appears *pro se* and has not submitted a reply to the motion. Attorney Donald J. Goldsworthy represents the Department and has filed an affidavit with exhibits in support of the motion.

Having considered the entire record, including the motion and affidavit of the Department, the Commission hereby finds, rules, and orders as follows:

FACTS

1. Under date of March 31, 2003, the Department issued to petitioner an assessment in the amount of \$2,715.64, including tax, interest, and a 25% negligence penalty, based upon its denial of petitioner's homestead credit claims for years 1997, 1998, 1999, and 2001.

2. On April 17, 2003, petitioner filed a petition for redetermination with the Department.

3. By notice dated July 28, 2003, the Department denied the petition for redetermination. The denial notice states, in part, "we have determined that such petition is denied since the information requested in the department's letter dated June 6, 2003 has not been provided."

4. On August 25, 2003, petitioner filed a timely petition for review with the Commission, and on September 16, 2003, the Department filed its answer.

5. On December 17, 2003, the Commission held a telephone scheduling conference in which petitioner and Department Attorney Goldsworthy participated. The December 18, 2003 Status Conference Memorandum and Order relating to that conference scheduled another telephone status conference for February 3, 2004 and further stated, in part:

Other matters discussed:

The Department sent Ms. Pouewells a December 9, 2003 letter setting forth the information it needs to substantiate some items on her Homestead Credit Claims for 1997 through 2001. We will discuss Ms. Pouewells' progress in complying with the Department's request during our next telephone status conference.

IT IS ORDERED

That Ms. Pouewells shall comply with the Department's request for information by **January 15, 2004** (Emphasis in original.)

The memorandum also ordered Attorney Goldsworthy to send the Commission a copy of his December 9, 2003 letter to petitioner, which he did on December 19, 2003.

6. On February 3, 2004, a second telephone status conference was held in which petitioner and Attorney Goldsworthy participated. The February 4, 2004 Status Conference Memorandum and Order relating to that conference scheduled the next telephone conference for April 14, 2004 and further stated, in part:

Other matters discussed:

Petitioner has supplied some, but not all, of the information requested in the Department's letter to her dated December 9, 2003. Additional verification of the rent she paid to her father is required.

IT IS ORDERED

(1) By February 10, 2004, Attorney Goldsworthy shall send a letter to petitioner listing the information the Department still requires and identifying unresolved issues. A copy of the letter shall be sent to the Commission.

(2) By April 1, 2004, petitioner shall send Attorney Goldsworthy as much information specified in the Department's letter that she has. If she obtains information prior to April 1, 2004, she shall send it to Attorney Goldsworthy as it is obtained.

(3) Prior to the next telephone conference, Attorney Goldsworthy shall have a schedule prepared showing the amounts the Department still believes are related to items which are unresolved.

7. On February 5, 2004, Attorney Goldsworthy filed a copy of his February 4, 2004 letter to petitioner.

8. On April 14, 2004, a third telephone status conference was held. Petitioner's father, not petitioner, participated in that conference along with Attorney Goldsworthy. The April 15, 2004 Status Conference Memorandum and Order relating to that conference scheduled the next telephone status conference for April 20, 2004 and further stated, in part:

IT IS ORDERED

That by Friday, **April 16, 2004**, Ms. Pouewells shall send directly to Attorney Goldsworthy as much information as she has which Attorney Goldsworthy requested in his February 4, 2004 letter to her. (Emphasis in original.)

9. On April 20, 2004, a fourth telephone status conference was held in which petitioner and Attorney Goldsworthy participated. The April 21, 2004 Status Conference Memorandum and Order relating to that conference stated, in part:

IT IS ORDERED

That by **April 21, 2004**, Attorney Goldsworthy shall mail another copy of his February 4, 2004 letter to Ms. Pouewells. (Emphasis in original.)

IT IS FURTHER ORDERED

That by **May 7, 2004**, Ms. Pouewells shall provide Attorney Goldsworthy with some of the information requested in that letter or inform him that she is unable to obtain any such information. (Emphasis in original.)

IT IS FURTHER ORDERED

That, if Ms. Pouewells does not provide Attorney Goldsworthy with any useful information relating to the February 4, 2004 letter and her 1997, 1998, 1999, and 2001 Homestead claims by **May 10, 2004** Attorney Goldsworthy may file a motion with the Commission to dismiss this case because of failure to prosecute, or

failure to follow orders of the Commission, or other grounds.
(Emphasis in original.)

10. On June 24, 2004, Attorney Goldsworthy filed a Notice of Motion to dismiss petitioner's petition for review on the bases of her failure to prosecute and failure to comply. Attorney Goldsworthy also moved:

For an order modifying respondent's action on the petitioner's petition for redetermination with respect to that part of respondent's assessment relating to calendar year 1999 by reducing the assessment for 1999 from the sum of \$940.00 plus applicable statutory interest and penalties, to the sum of \$868.00 plus applicable statutory interest and penalties.

11. On July 1, 2004, the Commission issued a Briefing Order which ordered petitioner to file a response to the motion no later than August 2, 2004. Petitioner failed to do so.

APPLICABLE WISCONSIN STATUTES

805.03 Failure to prosecute or comply with procedure statutes. For failure of any claimant to prosecute or for failure of any party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12(2)(a). Any dismissal under this section operates as an adjudication on the merits unless the court in its order for dismissal otherwise specifies for good cause shown recited in the order. A dismissal on the merits may be set aside by the court on the grounds specified in and in accordance with s. 806.07. A dismissal not on the merits may be set aside by the court for good cause shown and within a reasonable time.

802.10 Calendar practice.

* * *

(7) SANCTIONS. Violations of a scheduling or pretrial order are subject to ss. 802.05, 804.12 and 805.03.

RULING

Over a period of the past 10 months, the Commission has held four telephone conferences in this matter: December 17, 2003, and February 3, April 14, and April 20, 2004. Each Status Conference Memorandum and Order issued after those conferences ordered petitioner to provide information to the Department. Petitioner provided partial information to the Department after the December 17, 2003 conference, but nothing since that time. Petitioner, therefore, failed to comply with the February 4, April 15, and April 21, 2004 Status Conference Memorandum and Orders of the Commission.

Petitioner clearly has failed to prosecute her appeal and has failed to comply with Commission orders. The Department has shown good cause for granting its motion to dismiss on those grounds.

IT IS ORDERED¹

1. The assessment is modified by reducing that portion of the assessment for year 1999 from \$940.00 plus applicable interest and penalties to \$868.00 plus applicable interest and penalties.

2. The Department's motion is granted, and petitioner's petition for review is dismissed.

Dated at Madison, Wisconsin, this 1st day of November, 2004.

WISCONSIN TAX APPEALS COMMISSION

¹ This Ruling and Order is issued by a single Commissioner under the authority provided by Wis. Stat. § 73.01(4)(em)2 as created by 2003 Wisconsin Act 33, § 1614d.

Jennifer E. Nashold, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"