

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STEFFANY CAPUTO, Complainant,

vs.

GATEWAY TECHNICAL COLLEGE, Respondent.

Case 71
No. 67967
MP-4421

Decision No. 32453-A

Appearances:

Larry A. Johnson, Cross Law Firm, S.C., 505 Arcadian Avenue, Waukesha, Wisconsin 53186, appearing on behalf of the Complainant.

Michael Aldana and **Autumn M. Kruse**, Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of the Respondent College.

**ORDER DENYING PARTIAL
MOTION TO DISMISS**

On April 24, 2008, Steffany Caputo, hereafter Complainant, filed a prohibited practice complaint with the Wisconsin Employment Relations Commission against Gateway Technical College, hereafter Respondent or College, in which she alleged that certain actions of the College were taken as a result of Complainant's protected activities. On June 18, 2008, the Commission appointed Coleen A. Burns, a member of its staff, to act as Examiner in this matter and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Secs. 111.07(5) and 111.70(4)(a), Stats., and a hearing on the complaint was scheduled for August 5, 2008 in Kenosha, Wisconsin. On July 11, 2008, Respondent filed a Partial Motion to Dismiss. On July 25, 2008 Complainant filed its response to this Motion. On July 29, 2008, Respondent filed a response. Having considered the motion and the arguments of the parties, the Examiner makes and issues the following

No. 32453-A

ORDER

Respondent's pre-hearing Partial Motion to Dismiss is denied.

Dated at Madison, Wisconsin this 30th day of July, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

GATEWAY TECHNICAL COLLEGE

MEMORANDUM ACCOMPANYING ORDER
DENYING PARTIAL MOTION TO DISMISS

POSITIONS OF THE PARTIES

Respondent

Complainant alleges that she was injured during the course of her employment as a result of a meeting on September 27, 2007; was unable to work and took a medical leave of absence for several weeks as a result. In remedy of the alleged prohibited practices, Complainant is asking for “back pay and benefits.” Insofar as Complainant’s alleged injuries arose out of the course of her employment, her claims and request for relief are barred by the exclusivity provision of the Worker’s Compensation Act (WCA) and, thus, her claim for damages related to this incident must be dismissed. Complainant is fully aware of her remedy under the WCA, as she applied for recovery related to an alleged work-related emotional injury.

Whether or not Respondent’s worker’s compensation carrier accepted Complainant’s claim is not relevant to whether the conditions for liability under the WCA are met. It is sufficient that her claim for an injury arising out of her employment falls under the umbrella of the WCA.

Complainant’s claim for “make whole” remedies, including back pay benefits for her 18-day leave of absence stemming from an incident at work, should be dismissed as they are barred by the WCA’s exclusivity provisions. Respondent asks that those portions of her complaint be dismissed with prejudice and the Complainant be limited in the potential remedies that she may seek to only those not covered by the WCA.

Complainant

Complainant’s complaint does not request, as a remedy, that Respondent pay her medical expenses. Rather, Complainant requests a make whole remedy for Respondent’s participation in prohibited practices. The exclusivity provision of the WCA does not apply here.

Sec. 102.03(2), Stats., is clear with regard to what remedies the WCA is the exclusive remedy of. Sec. 102.03(1) lists the specific elements of a compensable claim under the WCA. It is only when the conditions in Sec. 102.03(1) are met that the WCA represents the exclusive remedy. WCA’s conditions were not met by Complainant’s claim as evidenced by the Department’s denial of her WCA claim.

The purpose of the WCA is to preempt actions based in tort by injured employees against their employers. Complainant's claim is not based in tort. Complainant is not barred from alleging and proving that Respondent's actions violated Sec. 111.70, Stats.

DISCUSSION

The Respondent's Motion is governed by Chapters 111 and 227. Through the operation of Sec. 111.70(4)(a), Stats., Sec. 111.07, Stats. governs the procedures by which prohibited practice complaints are handled. Chapter 227 of the Wisconsin Statutes states the framework common to administrative agency proceedings.

Sec. 227.01(3), Stats., defines a "Contested case" to mean "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order." This case is a contested case within the meaning of that section.

Chapter 227 does not provide a summary judgment procedure for dismissing a contested case prior to hearing. The right to a hearing under Chapter 227 is explicit, and the dismissal of a case prior to evidentiary hearing is not. That is also the case under MERA (Sec. 111.70, Stats.), and implementing regulations (ERC 12).

Whether or not the exclusivity provisions of the Wisconsin Worker's Compensation Act have any relevance to this proceeding cannot be fully resolved until there has been a full hearing on the merits. Accordingly, the Examiner denies Respondent's pre-hearing Partial Motion to Dismiss on the basis that it is premature.

Dated at Madison, Wisconsin this 30th day of July, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

Coleen A. Burns, Examiner

CAB/gjc
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