

STATE OF WISCONSIN

PERSONNEL COMMISSION

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EUGENE J. HARTL,
 Complainant,
v.
Secretary, DEPARTMENT OF
INDUSTRY, LABOR AND HUMAN
RELATIONS,
 Respondent.
Case No. 82-PC-ER-126
* * * * *

DECISION
AND
ORDER

This matter is before the Commission upon an appeal of an initial determination of no probable cause to believe that discrimination occurred. The parties agreed to the following issue for hearing:

Whether there is probable cause to believe that respondent discriminated against the complainant on the basis of age as set out in the charge of discrimination.

At the beginning of the scheduled two days of hearing in this matter, the complainant asked for a clarification of a ruling regarding the order of proceeding/burden of proof. Complainant referred to a document entitled "Instructions for Unrepresented Appellants Before the State Personnel Commission" which was provided to him by the Commission and which states, in part:

In most appeals before the Commission, the burden of proof is on the appellant (with the notable exceptions of discharges and other disciplinary actions against permanent employes). Having the burden of proof means that you must proceed first with your case before the agency puts in its case.

Complainant argued that his case was premised upon several reprimands issued to him and that because the reprimands constitute discipline, the respondent had the burden of proof. The examiner rejected the complainant's

arguments and ruled that the burden of proof was on the complainant rather than on the respondent. The examiner then asked complainant whether, in light of the ruling on the burden of proof issue, he wished to request a postponement of the hearing. Complainant refused to make such a request, but at the same time effectively declined to proceed in presenting his evidence. Given these circumstances, and because numerous exhibits had previously been admitted into evidence pursuant to stipulation, the respondent agreed to proceed with its case in chief. Complainant subsequently was provided an opportunity to put in his case.

FINDINGS OF FACT

1. Complainant was born on August 11, 1919.
2. Commencing in 1968, complainant was employed in the Job Service Division of the Department of Industry, Labor and Human Relations.
3. Complainant worked as Local Veterans Employment Representative, (LVER) in the Kenosha Job Service office beginning in 1971. He was subsequently reclassified to the Job Service Specialist 3 level while carrying out LVER responsibilities.
4. In October of 1980, Sharon Bello-Janis became complainant's supervisor. Ms. Bello-Janis, though familiar with the Job Service generally, was relatively uneducated with respect to the role of a LVER.
5. Early in 1981, the Assistant State Director for Veterans' Employment in Wisconsin conducted an evaluation of veterans services being provided at the Kenosha Job Service office and made several suggestions for changes in the office's operation to insure better services to veterans.
6. On June 23, 1981, Ms. Bello-Janis verbally reprimanded complainant for failing to provide her with some application cards that she had requested.

On September 10, 1981, complainant was issued a written reprimand for non-performance of job assignments and inability to follow instructions.

On October 13, 1981, Ms. Bello-Janis requested, in writing, for complainant to submit certain reports by a specific date. On November 25, 1981, complainant was issued a letter of direction identifying the failure to submit "weekly plans" as a performance problem but also indicating satisfactory performance in other cases.

7. On January 8, 1982, Eric Baker became the district director for the Kenosha Job Service office after spending three years as the district director in Janesville. On January 12, 1982, all district directors were advised to develop a plan to implement changes in Job Service operations necessitated by federal budget cuts. One specified change was to change the Kenosha district from a separate district into merely a branch office of the Racine district.

8. Mr. Baker prepared a plan for merging the Kenosha district into the Racine district and maintaining a Kenosha branch office. Because Job Service policy was to have only one LVER within a district, it was necessary either to displace the person then acting as LVER in Racine (Flora Willis) or to displace the complainant. Mr. Baker chose to keep Ms. Willis in her LVER role, a decision which reflected her greater seniority. Mr. Baker then designated complainant to assume the Job Service Specialist 3 (JSS 3) position of WIN job club coordinator in Racine.

9. WIN is a work incentive program for Aid to Families with Dependent Children recipients. The job club program is a group session for providing guidance under WIN for finding work.

10. Complainant's experience in placement work as a LVER was appropriate for filling a post as a job club coordinator.

11. Mr. Baker's planned reassignment called for every JSS 3 in the Kenosha office to remain at that level (although in many cases they were given different job assignments) in either the Kenosha or Racine office, except for one person who agreed to voluntarily demote to the JSS 2 level to take a Disabled Veterans Outreach Program position in Kenosha. The supervisor of each JSS 3 informed Mr. Baker of the relevant backgrounds of the employes being reassigned but the actual decision to reassign was made by Mr. Baker.

12. The Kenosha employes were advised of their planned reassignments on January 18, 1982.

13. On January 25, 1982, complainant advised Mr. Baker in writing that he wished to retire effective February 26, 1982, with the understanding that he wanted to be able to stay at the Kenosha office until the date of his retirement.

14. On January 28, 1982, complainant was notified by Mr. Baker that he would be reassigned from his LVER position to Kenosha's unemployment compensation unit effective February 3, 1982, in order to meet existing budget limitations.

15. On February 2, 1982, complainant withdrew his resignation request. On the same date, Kenosha staff were notified that federal funding might be restored, so all anticipated job reassignments were placed on hold.

16. On February 18, 1982, complainant sent Mr. Baker a second letter of retirement indicating that arrangements had been completed with payroll. Complainant's last day of work was to be March 5, 1982.

17. On February 19, 1982, with federal monies restored, the planned reassignments of Kenosha office personnel were withdrawn.

18. Complainant commenced his retirement as announced in his February 18, 1982 letter.

CONCLUSIONS OF LAW

1. The Personnel Commission has jurisdiction over this matter pursuant to §§230.45(1)(b) and 111.375(2), Stats.
2. The respondent is an employer within the meaning of §111.31(6)(a), Stats.
3. Complainant was within the age range protected by the Fair Employment Act at the time of his retirement.
4. There is no probable cause to believe that respondent discriminated against the complainant on the basis of age.

OPINION

The standard to be applied in probable cause hearings is set out in §PC 4.03(2), Wis. Adm. Code:

Probable cause exists when there is a reasonable ground for belief supported by facts or circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

The complainant's theory in this case appears to be that he was forced into an early retirement because of harassment from his supervisors, and that the harassment was based on complainant's age. There is simply nothing in the record that would suggest that the disciplinary actions taken by Ms. Bello-Janis against the complainant were based on complainant's age rather than problems with his job performance. The record does suggest that there was a difference of opinion between Ms. Bello-Janis and the complainant as to the relative importance of the veterans programs in the overall responsibilities of the Kenosha district. The record also suggests that the complainant was reluctant to make changes in his work methods or to respond to requests for information from Ms. Bello-Janis. Differences of opinion as to the importance of a program and reluctance to respond to supervision

are not evidence of age discrimination. There was simply no evidence presented at hearing that indicated Ms. Bello-Janis treated complainant differently than other subordinates because of his age.

Complainant also is apparently arguing that the planned job reassignments that would have moved him from the Kenosha office to the Racine office were part of an extensive harassment scheme. However, the reassignment planning was done by Eric Baker, who had just arrived at the Kenosha office. Based upon the evidence presented at hearing, the planning was a reasonable means of resolving the staffing problems that were scheduled to occur at the JSS 3 level. There may have been other reassignment plans that would have been even more effective than the one developed by Mr. Baker, but nothing suggests the adopted plan was an attempt to discriminate against the complainant based on his age. The complainant made no effort to establish the ages of other employees affected by the plan just as he made no attempt to compare Ms. Bello-Janis' method of supervising employees who were outside the protected age class.

For the reasons outlined above, the complainant has failed to establish probable cause in this matter and the initial determination must be affirmed.

ORDER

The initial determination of no probable cause is affirmed and this matter is dismissed.

Dated: July 6, 1984 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

KMS:jat


DENNIS P. MCGILLIGAN, Commissioner

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