

3. On January 24, 1983, the complainant filed a complaint of handicap discrimination with the Commission, alleging as follows:

I teach tailoring. In order to have the materials I need to teach effectively, I need to shop in Madison stores. I have been forbidden to do this because I am handicapped and I "might fall" and the Dept. would be liable for worker's compensation. I am expected to walk up and down several sets of stair steps during my working day because of my involvement with mending and 'dress out' for the residents and for the Institution. There is no telephone near my class room which is located on second floor. A telephone has been requested for that area but the request was denied. Other vocational teachers have nearby offices and telephones. Ordering materials and supplies under these conditions is impossible and the lack of such supplies may cause discontent and anger amongst the inmates.

My handicap has to do with movement-walking because of a broken hip in 1968 which was corrected to some extent with a total hip replacement in 1973. There is often times stiffness and pain that persists when activities are strenuous and continual.

4. The May 8, 1980 memo continued to be in effect at the time the complaint was filed.

CONCLUSION OF LAW

The complaint was timely filed with the Commission based upon a continuing violation theory.

OPINION

The complainant has charged that the respondent has discriminated against her in two ways: the complainant argues that "the employer's continuing order prohibiting Mrs. Olson from shopping for [necessary] materials" constitutes an unreasonable restriction on complainant's work assignment. Complainant also argues that the respondent has failed to make reasonable accommodation for her handicap by assigning her to a second floor classroom and by not providing her with ready access to a telephone.

Respondent concedes that the effect of the May 8, 1980 memo "is continuing until it is changed."

The Commission has previously applied the continuing violation theory to complaints of discrimination filed with the Commission. WFT v. DP, 79-306-PC (4/2/82); Hoepner v. DHSS, 79-191-PC (6/30/81). In the present case it is clear that, although the purchasing policy was adopted over two years before the complaint was filed, the policy continued in effect during 1981, 1982 and 1983 and continued to dictate the methods used by the complainant for purchasing material during that period. Assuming, arguendo, the policy to be discriminatory, then the continuing refusal to permit the complainant to shop for materials in Madison would have to be considered as a continuing violation, rather than merely the continuing effects of a past violation. Delaware State College v. Ricks, 449 U.S. 250, 24 FEP Cases 827 (1980).

The same conclusion is reached as to what the complainant alleges to be a failure by respondent to reasonably accommodate complainant's handicap, i.e., the assignment of the complainant to a second floor classroom and the lack of a telephone on the second floor. Based upon the theory of continuing violation, the complaint must be considered to have been filed within the 300 day limit set out in §230.44(3), Wis. Stats.

ORDER

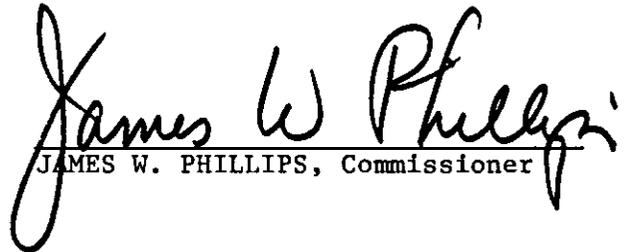
The respondent's motion to dismiss is denied.

Dated: April 27, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

KMS:lmr


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

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