

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

VALERIE WELLS-PATTERSON, \*

Complainant, \*

v. \*

SECRETARY OF STATE, \*

Respondent. \*

Case No. 83-0049-PC-ER \*

\* \* \* \* \*

DECISION  
AND  
ORDER

On April 21, 1983, the complainant filed a charge of discrimination with the Commission alleging that she had been discriminated against on the basis of her race when she was discharged from her position in the Office of the Secretary of State. In May of 1983 the Commission asked the Secretary of State to furnish certain background information related to the complaint. One week later that information was submitted to the Commission. On November 10, 1983, the complainant was asked to furnish additional background information. The request was made in writing and was mailed to the complainant's home address as listed on the original complaint form. The complainant failed to respond to the letter.

Beginning in late January of 1984, the Commission sought to determine whether the case would be appropriate for pre-investigation mediation. The respondent agreed to participate in a mediation session. On February 15, 1984, a representative of the Commission left a message at complainant's home telephone number (as provided on the complaint form) asking her to call. On February 17th and in the absence of any response, a letter was sent to the complainant's home address (Todd Drive) asking her to call the

Commission during the week of February 20th to discuss the possibility of scheduling a mediation session.

On February 22, 1984, the complainant called the Commission's representative who explained the mediation process to her. The complainant agreed to contact the Commission by March 2, 1984, to indicate whether she wished to participate in the pre-investigation mediation effort. She also provided a new telephone number where she could be reached. After the complainant did not call back on the agreed-upon date, messages were left for her at her new telephone number on both March 6th and March 8th. On March 12th, a letter was sent to the complainant's address listed on the complaint form asking her to contact the Commission by March 16th. On March 20, 1984, the following letter was mailed via certified mail to the complainant's Todd Drive address:

On February 22, 1984, I spoke with you by telephone and you stated you would call me back by Friday, March 2nd. After not hearing from you, I left messages at the telephone number you had provided (267-6250) on both March 6th and March 8th. On March 12th, I sent you a memo asking you to call. I still have not heard from you.

Pursuant to §111.39(3), Stats., I am requesting you to contact me regarding your case. My telephone number is 266-9570. If you fail to respond within 20 days of the date of this letter, your complaint of discrimination will be dismissed.

The letter was returned to the Commission on March 22nd marked "Returned to writer. Not deliverable as addressed. No forwarding order on file."

On March 22nd, a representative of the Commission called the complainant's new telephone number to obtain an updated address. Although the complainant was not in, the person answering the phone provided complainant's current address. The Commission then sent a letter to the complainant at her new address giving her 20 days from March 22nd (i.e., until April 11th) in which to respond. Complainant finally contacted the

Commission on April 17, 1984, at which time she was provided an opportunity to file arguments in support of her contention that her complaint should not be dismissed. In a subsequent letter, the complainant made the following arguments:

I have been informed that my case is being reviewed for dismissal. The reason for this action is my non-response to attempts to further the mediation process. As I indicated to Mr. Stege, there are several reasons for this. There was some mix-up in where my mail was being routed, that resulted in several delays. Also I was out of town due to matters of a personal nature and unaware of his attempts to reach me.

When I finally did receive a letter, there was a 20-day notice in it. I did not become aware that this time included weekends until I contacted Mr. Stege and was informed that I missed the deadline.

The facts of this case raise a strong question as to whether the complainant has been diligent in pursuing her charge of discrimination. During the period from November of 1983 through April of 1984, the Commission made numerous attempts to obtain information from the complainant. With just one exception, the complainant never responded to the Commission's request until after the 20-day period set out in the March 22nd letter had run. However, the issue before the Commission is not whether the complainant has been duly diligent in pursuing her charge but whether the legislatively imposed standard found in §111.39(3), Stats., has been met:

The department shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the department concerning the complaint and if the correspondence is sent by certified mail to the last-known address of the person.

As provided in §111.375(2), Stats., the Personnel Commission, rather than the Equal Rights Division of the Department of Industry, Labor and Human Relations, has the authority to process discrimination complaints filed against state agencies.

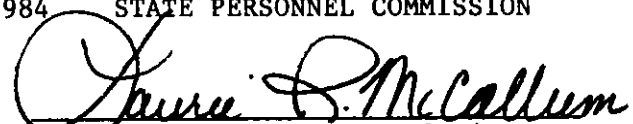
In this case, a certified letter dated March 22, 1984, was sent to the complainant giving her 20 days in which to respond. The twentieth calendar day was April 11th and the complainant did not respond until April 17th. Complainant contends she was not aware that the 20-day period referred to in the March 22nd letter included all calendar days instead of just work days. It is true that neither the March 22nd letter nor §111.39, Stats., specifies that the 20-day period is computed on the basis of calendar days. However, §990.001(4), Stats., which establishes rules of construction for computing time, would make no sense if the term "days" referred only to work days. For example, the rule sets forth specific provisions for when the final day in a statutory period falls on a Saturday, Sunday or legal holiday. These rules would have no application if all non-work days were automatically excluded from a statutory period for taking an action.

The language of §111.39(3), Stats., provides that the Commission "shall dismiss a complaint if the [complainant] fails to respond within 20 days." Given the circumstances of this case and having met the conditions set forth in the statute, this complaint should be dismissed.

ORDER

This matter is dismissed due to complainant's failure to comply with the requirements of §111.39(3), Stats.

Dated: May 3, 1984 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Commissioner

KMS:jat

  
DENNIS P. MCGILLIGAN, Commissioner

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