
 PATRICIA VAN ROOY,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 INDUSTRY, LABOR AND HUMAN
 RELATIONS,
 Respondent.
 Case No. 84-0253-PC

INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission on Respondent's motion to dismiss this appeal as untimely, filed February 18, 1985. Both parties have filed briefs.

The material facts relating to this motion are undisputed. On November 12, 1984, the appellant was informed that another person had been selected for the position in question. On December 7, 1984, she filed a discrimination complaint with the Commission, which stated in part as follows:

"Discrimination in selection process for promotional opportunity to Job Service Specialist 3 - WEOP Job Club Coordinator/Leadworker ... Edwards Saenz, an unqualified male minority under 40 did not have prior WIN/WEOP work experience and was selected for the promotion ..."

On December 20, 1984, the appellant filed an amendment which included the following statement:

"On December 6, 1984, I forwarded a discrimination complaint received by your office December 7, 1984 and logged as Case No. 84-0196-PC-ER.

I wish to amend the document to also serve and be construed as letter of appeal filed under Statute 230.44, Abuse of Discretion in the selection process for promotion - Job Service Specialist 3 - WEOP Job Club Coordinator/Leadworker."

What the appellant is attempting to do with the proffered amendment is to add another legal theory, abuse of discretion, as set forth in §230.44(1)(d), Stats, with respect to the same underlying factual transaction, a failure of appointment, which was originally attacked on a discrimination theory in the original complaint filed December 7, 1984.

The Commission has held on a number of occasions that an amendment relates back to the date of filing of the original pleading if the claim asserted in the amendment arises out of the occurrence or transaction set forth in the original pleading. See Fish v. DOT, No. 79-83-PC (1/23/80); Oakley v. Bartell, No. 78-66-PC (10/10/78); compare, §802.09(3), Stats. Since the amendment filed December 20, 1984, should be deemed to relate back to December 7, 1984, when the original appeal or complaint was filed, it is timely, since December 7th is within 30 days of November 12th.

In his brief, respondent raises the following concern:

"If the filing of a timely discrimination charge could be used to permit the later filing of a civil service appeal 'by amendment,' the 30 day time limit would effectively be interpreted out of the statute."

However, in order for the amendment to be timely, the discrimination complaint must have been filed within 30 days of the transaction in question, such as occurred here. The 30 day time limit is still very much a part of the law.

ORDER

The request to amend the original appeal contained in the appellant's memo to the Commission dated December 19, 1984, and filed December 20, 1984, is granted. The respondents' motion to dismiss as untimely filed February 18, 1985, is denied.

Dated: April 12, 1985

STATE PERSONNEL COMMISSION

Dennis P. McGilligan / jmg
DENNIS P. MCGILLIGAN, Chairperson

Laurie R. McCallum / jrb
LAURIE R. MCCALLUM, Commissioner

Donald R. Murphy
DONALD R. MURPHY, Commissioner

AJT:jgf
JGF002/2

Parties

Patricia Van Rooy
2914 Geele Avenue
Sheboygan, WI 53081

Howard Bellman
Secretary, DILHR
P.O. Box 7946
Madison, WI 53707