

\* \* \* \* \*  
 HARRY KAUFMAN,  
                     Complainant,  
 v.  
 President, UNIVERSITY OF  
 WISCONSIN SYSTEM (Eau Claire),  
                     Respondent.  
 Case No. 85-0010-PC-ER  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the Commission on respondent's motion to dismiss filed November 7, 1985. The ground for the motion is that the complaint was not filed within 300 days of the alleged discrimination, in accordance with §230.44(3), stats. The complainant, through counsel, has filed a brief in opposition to the motion.

The following statements, in respondent's motion appear to be undisputed:

"The complaint in this matter was filed on January 28, 1985 ... It alleges that the complainant was discriminated against on the basis of handicap and arrest or conviction record with respect to the terms and conditions of his employment at the UW-Eau Claire, and further because the UW-Eau Claire did not create a position for him at the close of his limited term employment. As the attached affidavit shows, Mr. Kaufman's employment began on July 11, 1983, and ended on November 25, 1983. He did not apply for any other position at the UW-Eau Claire during his employment there, and he has not applied for any position since then."

The complainant argues that the 300 day statute of limitations for filing a complaint of discrimination provided by §§230.44(3) and 111.39, is unconstitutional because it "does not afford a reasonable opportunity to exercise his constitutional right to remedy and statutory right of action thereby infringing on his constitutional rights of due process." While the

Commission lacks the power to decide whether a statute is unconstitutional, it notes in passing that the complainant cites no specific precedent for the proposition that a statute of limitations of this length for this type of claim is unconstitutional. Furthermore, this time limit is no more stringent than the limit for filing a charge of discrimination under Title VII.

The complainant also argues that the administrative procedures are unfair in that although there is a limited time for filing a complaint, "there is no time limit provided within which the Personnel Commission must set the matter for hearing." The complainant goes on to argue that "it is conceivable that a discrimination complaint may go for years without any response or assertion of defense by an employer even though he or she was given only ten months to file a complaint."

Again, the complainant cites no specific precedent for this contention. In this case, the complaint was filed January 28, 1985, and the motion to dismiss was filed November 7, 1985. It is not apparent how this offends fundamental fairness.

Complainant next cites Milwaukee Co. v. LIRC, 113 Wis. 2d 199, 335 N.W. 2d 412 (Ct. App. 1983) for the proposition that the defense of untimely filing is waivable, and argues that "... respondent has waived its defense by failing to assert it within a reasonable time after receipt of copy of the complaint, contrary to what is considered reasonable for any other civil action."

Obviously, the Commission is not bound by the rules governing civil actions in courts. However, the Commission rules governing equal rights proceedings provide at §PC 4.07(3), Wis. Adm. Code, that answers, which include assertions of "any matter constituting a defense," are not mandatory, and would normally be served and filed after the investigation and initial determination. Since the respondent here raised the affirmative defense

provided by the statute of limitations prior to the investigation and initial determination, it is difficult to perceive how this could constitute a waiver.

Finally, the complainant argues that "... in light of the relative time periods afforded to the Personnel Commission for processing these claims and the liberal amount of time allowed the respondent, the additional 130 days taken to file the complaint do not prejudice the respondent or the Commission and therefore constitutes harmless error." The complainant has cited no authority for the proposition that a statute of limitations is to be enforced only on a showing of actual prejudice, and the Commission is aware of none. Therefore, this argument also must be rejected.

ORDER

This complaint is dismissed as untimely filed.

Dated: January 9, 1986

STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

AJT:jgf  
JGF002/1

Parties

Harry Kaufman  
460 W. Vine Street  
Mondovi, WI 54755

Katharine C. Lyall  
Acting President, UW  
1700 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706