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 EDWARD AMES,  
                     Complainant,  
 v.  
 Chancellor, UNIVERSITY OF  
 WISCONSIN - MILWAUKEE,  
                     Respondent.  
 Case No. 85-0113-PC-ER  
 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

This matter is before the Commission on respondent's motion to dismiss. Respondent contends that the complaint was not timely filed. The parties have filed briefs.

FINDINGS OF FACT

1. The complainant alleges that he was discriminated against on the basis of sexual orientation in reference to a series of decisions by respondent not to reinstate him.

2. The complaint was filed with the Commission on July 22, 1985 and states, in relevant part, as follows:

I was a Facility Repairman 3 (hereinafter: "FAC 3") employed by and at the University of Wisconsin - Milwaukee (UWM), an agency of the State of Wisconsin, from October, 1980 until January, 1983, when I resigned to seek alternative employment ...

In April, 1983, I asked Loren Kohel, the first line supervisor for the Physical Plan Services Department at UWM for reinstatement to my previously held position, knowing that both my old position and one previously held by Henry Weeden were unfilled. Mr. Kohel claimed that there were no positions open.

In March, 1984, upon learning that I was entitled to reinstatement at my previous position or one of lower pay range (see attached "Information for the State Employee Seeking Reinstatement"), I applied for two positions that were in a lower pay range than my

FAC 3 position: janitor in the UWM dorms and storekeeper 5. I was turned down for these jobs with no explanation.

In July, 1984, a former FAC 3 co-worker of mine, Steve Palmer, left his position. I interviewed for the position with Mr. Kohel in late August, 1984.

\* \* \* \*

On September 27, 1984, I called the UWM Personnel office and was told that the FAC 3 position that I had interviewed for had been filled by someone else.

CONCLUSION OF LAW

The complainant's July 22nd complaint was timely filed with the Commission as to the decision not to select the complainant for the Facility Repair Worker 3 position previously held by Mr. Steve Palmer.

OPINION

Respondent contends that the Facility Repair Worker 3 position, previously held by Mr. Palmer, was filled on September 17, 1984 and that the complaint was untimely because it was filed more than 300 days thereafter.

The time limit for filing a complaint of discrimination with the Commission is established by §§230.44(3) and 111.39(1), Stats. Those subsections read as follows:

§230.44(3) TIME LIMITS. Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later, except that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred.

§111.39(1) The department may receive and investigate a complaint charging discrimination or discriminatory practices or unfair honesty testing in a particular case if the complaint is filed with the department no more than 300 days after the alleged discrimination or unfair honesty testing occurred.

Complainant filed his charge of discrimination on July 22, 1985 and 300 days before that date was September 25, 1984.

In the case of Grimmenga v. DOR, 83-0007-PC-ER (8/10/83), the Commission held that where the complainant's employment was terminated by letter dated March 17, 1982, the 300 day time period for filing a complaint began on the date the employe received the letter rather than on the date of the letter. In its analysis, the Commission reviewed cases interpreting similar statutory language found in Title VII of the federal Civil Rights Act of 1964 and concluded:

In each case, the Court utilized the date the employe learned of a prior employment decision as the point at which "the alleged unlawful employment practice occurred" for the purpose of computing the period of limitations. The policy attributes of such an approach are obvious. An employe has no way of knowing of certain kinds of personnel transactions until they are communicated by management. It would be inequitable to permit a period of limitations to commence to run from the date of a transaction about which an employe was unaware and could not have been aware. Second, the approach suggested by the respondent could permit an employer to drastically reduce the amount of time available to an employe to file a charge of discrimination simply by withholding the notice of an adverse personnel transaction.

In keeping with the foregoing cases, discrimination should not be considered to have occurred under §230.44(3), Stats., in this case, until after the adverse decision was made and the complainant was so notified.

These same considerations apply to the present case. While the decision not to select the complainant was apparently made on September 17th, the complainant did not know of the decision until he called the respondent on September 27th and asked whether he had been selected. Even then, the complainant was apparently not advised of the date on which the selection decision had been made. As a consequence, if respondent's arguments on timeliness were accepted, complainant would not have been able to determine when the 300 day filing period began.

Respondent offers no case law in support of its contention that hiring cases are somehow different than other personnel actions and that the date of the hiring decision is controlling regardless of the notification date.

Because the complainant filed his complaint within 300 days of the date he was notified of the Facility Repair Worker 3 selection decision, his complaint is timely as to that allegation. As to the remaining selection decisions mentioned in the charge, complainant was notified outside of the 300 day time limit, and therefore, the Commission lacks jurisdiction to review those allegations.

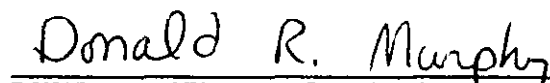
ORDER

Respondent's motion to dismiss is denied.


Dated: November 7, 1985

STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

UIC

  
LAURIE R. McCALLUM, Commissioner

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