
 DENNIS BIDDLE,
 Complainant,
 v.
 Secretary, DEPARTMENT OF
 INDUSTRY, LABOR AND HUMAN,
 RELATIONS, and Secretary,
 DEPARTMENT OF HEALTH AND
 SOCIAL SERVICES,
 Respondents.
 Case No. 85-0118-PC-ER

DECISION
AND
ORDER

This complaint of discrimination is before the Commission on respondent's motion to dismiss as untimely filed. This motion was filed August 2, 1985. The complainant has submitted a written response.

Mr. Biddle's complaint of discrimination, and supporting documents, were filed with the Commission on July 29, 1985. The statement of discrimination was set forth as follows:

"On January 20, 1979, I requested a formal leave of absence from my Supervisor, Thomas Pfeifer, and it was subsequently rejected by him and also his supervisor, the director of the Work Incentive Program (WIN) Richard Balian on January 26, 1979. On January 27th I was admitted to Deaconess Hospital and the diagnosis was heart attack. In that there was justifiable reason substantiated by the attached documentation I am requesting that the improper decision to deny me leave of absence from Tom Pfeifer and Richard Balian is sufficient justification to request that these two areas be restored, i.e., classification status and seniority dates."

One of the attachments is a copy of a letter dated June 17, 1985, from Mr. Biddle to the Superintendent of the Ethan Allen School for Boys. In that letter, the complainant sets forth that he was forced to separate from state service due to health problems on March 9, 1979, after he had been denied a

leave of absence by his supervisors at DILHR, and that he reinstated with DHSS on November 30, 1981, as a Youth Counselor 1 at Ethan Allen. He went on to state:

"I had been informed of this by personnel at Ethan Allen that covered employes cannot have their classification or seniority dates reinstated after they have resigned from the previous employment.

In that there was a justifiable reasons substantiated by the attached documentation I am requesting that the improper decision to deny me leave of absence from Tom Pfeifer and Richard Balian is sufficient justification to request that these two areas be restored, i.e., classification status and seniority dates."

Also attached was a copy of a memo dated July 9, 1985, from DILHR employment relations to the superintendent which contained in part the following:

This memo is in response to your June 27, 1985 request for information concerning the above Ethan Allen employe.

1. Because Mr. Biddle voluntarily resigned from state service and was reinstated in November 1981, the 1979-81 WSEU contract (which was extended to December 1981) required a new seniority date effective November 1981.
2. Since Mr. Biddle has not held a Job Service Specialist classification within a three year time period he is not eligible for reinstatement to that classification.

The last attached document was a copy of a memo dated July 11, 1985, to Mr. Biddle from the superintendent, which contained the following:

At your request I followed up with the Department Personnel Bureau and they responded with the attached memo.

Based on their interpretation and conclusion, it would appear as though the answer to both of your questions are negative ...

Based on these documents submitted by the complainant, it appears clear that he separated from state service with DILHR on March 19, 1979; that he reinstated with DHSS in a different classification on November 30, 1981; that he was then informed that because of his separation he could not have his

prior seniority and classification restored; and that in 1985 he was unsuccessful in seeking the restoration of that seniority and classification.

The statutory time limit on filing complaints of discrimination with the Commission is: "... 300 days after the alleged discrimination occurred." §230.44(3), Stats. In this case, it seems probable that the alleged discrimination about which Mr. Biddle is complaining was the state's failure to have restored his seniority and classification upon reinstatement in 1981. This was well over 300 days before he filed his charge of discrimination. He cannot avoid the time limit by now requesting of DHSS that which was denied him in 1981, and appealing that agency's reaffirmation of their 1981 decision. It is the 1981 decision which constitutes the act of alleged discrimination, not the 1985 reaffirmation of that act.

In his letter to the Commission in response to DILHR's motion to dismiss, Mr. Biddle asks that §230.44(3), Stats., be "set aside" due to the following circumstances:

"1. There was no knowledge of my right to claim reinstatement of seniority status. 2. It did not become an apparent need until recently to become concerned about classification. 3. My intense concern regarding the prognosis of my health, precluded dwelling on the matter at the time."

The Commission is unaware of any authority or precedent that reasons of this nature would toll the 300 day period of limitations, and the Commission declines to so hold.¹

In the event that Mr. Biddle may be attacking the decision made by DILHR in 1979 to deny him a leave of absence, his complaint is also untimely with respect to that transaction.

Finally, because of the role of DHSS in this matter in refusing to restore Mr. Biddle's prior seniority and classification, that agency should be considered a party-respondent.

¹ Even if this case were properly before the Commission, it is difficult to see how there could possibly have been any handicap discrimination in 1981 when Mr. Biddle was reinstated, since it appears that in denying him his prior classification and seniority the agency was only applying rules or contractual provisions applicable to all employees who have separated from service, regardless of the reason.

ORDER

DHSS is added as a party-respondent. This complaint of discrimination
is hereby dismissed as untimely filed.

Dated: August 28, 1985

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

AJT:jgf
JGF002/2

Attachments

Parties

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