

STATE OF WISCONSIN

PERSONNEL COMMISSION

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CHERYL DUGAS,
Complainant,
v.
Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,
Respondent.
Case Nos. 86-0073-PC-ER
87-0143-PC-ER
* * * * *

RULING ON
PETITION
FOR
REHEARING

This matter is before the Commission on complainant's petition for rehearing.

A review of the Commission's file shows that on May 12, 1988, an initial determination of no probable cause was issued. In a cover letter to the initial determination, complainant was advised that she had 30 days in which to file a request for hearing on the issue of probable cause. When no response was received from the complainant, the Commission issued a dismissal order dated June 15, 1988.

Then, on June 22, 1988, the Commission received a letter signed by complainant which stated in part:

It is my belief that probable cause exists in view of the omission of factual data I request an appeal. Please find reasons enclosed to more specifically state my basis.

On the following day, the complainant's union representative filed a letter with the Commission which provided:

During the wk of June 5, Miss Dugas sent me her response to a no probable cause to evaluate and send to you. The early part of the week there was death in my family and I was not available for that wk. On June 12, 1988 Ms. Dugas mother passed and I was in Minn. for that wk. I realized upon my return that due to the lack of beyond 30 days

her rights to appeal was denied. It was my lack of timeliness that caused time to elapse and I apologize for it.

I hope and request you allow Ms. Dugas to submit her appeal and it be considered by the Commission.

The Commission advised the parties that it construed the June 22 and 23 correspondence as a petition for rehearing and provided the parties an opportunity to file arguments relating to the petition. The respondent did not file any arguments.

The time period for filing an appeal of a no probable cause determination is established by s. PC 2.07(3), Wis. Adm. Code:

(3) NO PROBABLE CAUSE DETERMINATIONS. Within 30 days after the service of an initial determination of no probable cause as to any claim raised in a complaint, a complainant may file, with the commission, a written request for hearing on the issue of probable cause as to that claim. If, after a hearing, the commission finds probable cause as to the claim and reverses the initial determination, the complaint shall be processed under sub. (2).

This 30 day time limit is in the nature of a statute of limitations and, as such, is subject to equitable tolling.

In Sprenger v. UW-Green Bay, 85-0089-PC-ER, 1/24/86, the Commission ruled that the statute setting forth the 300 day time limit for filing complaints under the Fair Employment Act is a statute of limitations and subject to equitable tolling. The Commission recited as authority:

Thus, statutes of limitation rest upon reasons of sound public policy in that they tend to promote the peace and welfare of society, safeguard against fraud and oppression, and compel the settlement of claims within a reasonable period after their origin and while the evidence remains fresh in the memory of the witnesses.

On the other hand, they merely represent a public policy as to the privilege to litigate, and their shelter has never been regarded as what now is called a "fundamental" right, or what used to be called a "natural" right of the individual. Thus, the policy of repose expressed in statutes of limitation is frequently outweighed where the interests of justice require vindication of the plaintiff's rights, as where a plaintiff has not slept on his rights, but rather has been prevented from asserting them. 51 Am. Jur. 2d 18 (citations omitted).

Thus, it is the established rule that exceptions to a statute of limitations will not be implied, and where the legislature has not seen fit to except a class of persons from the operation of the statute, the courts will not assume the right to do so. Nevertheless, most courts recognize a limited class of exceptions arising from necessity, as in the case of inability to bring suit or to exercise one's remedy, or the defendant's fraudulent concealment of a cause of action against him. In such instances of necessity, the running of the statute of limitations may be suspended even though no exceptions or causes of suspension are mentioned in the statute itself. 51 Am. Jur. 2d 139 (citations omitted).

In comparison to the 300 day time period at issue in Sprenger, the instant time period runs only 30 days and is embodied in a procedural rule of the Commission. The respondent agency is already aware of the existence of the complaint. The 30 day limit simply serves as a limit in moving the case on to another step in the proceeding.

In addition, in Stein v. DHSS, 85-0152-PC-ER, 8/20/86, the Commission held that the 30 day period in s. PC 4.03(3), Wis. Adm. Code (1986) which was the predecessor rule to s. PC 2.07(3), Wis. Adm. Code, was directory rather than mandatory. In Stein, the Commission relied on the use of "may" in the phrase: "within 30 calendar days after the date of such service, the complainant may petition the Commission for a hearing on the issue of probable cause." The Commission went on to find good cause for complainant's failure to meet the 30 day time limit. The analysis in Stein also applies to the current language in s. PC 2.07(3), Wis. Adm. Code.

The 30th day after the initial determination was issued in the instant matter was Saturday, June 11, 1988. Because the 30th day fell on a Saturday, the complainant had until Monday, June 13th to file her appeal. Stein v. DHSS, 85-0152-PC-ER, 8/20/86. The letter from complainant's union representative indicates that on June 12th, complainant's mother died. This event and the absence of complainant's union representative from the

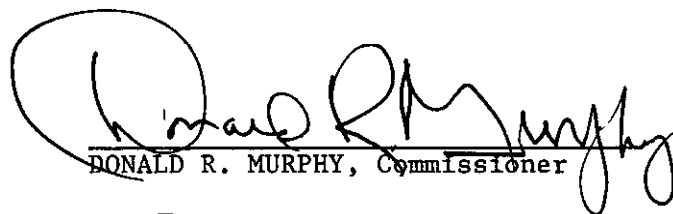
state provide an adequate basis for finding good cause for complainant's failure to file her petition within the 30 day period.

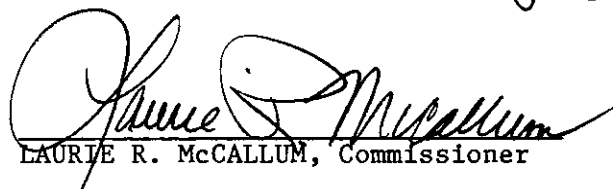
ORDER

The complainant's petition for rehearing is granted and the parties will be contacted for the purpose of scheduling a prehearing conference.

Dated: July 14, 1988 STATE PERSONNEL COMMISSION

KMS:rcr
DPM/2


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner