

RAYMOND FERRILL,  
 Complainant,  
 v.  
 Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES  
 Respondent.  
 Case No. 87-0096-PC-ER

INTERIM  
 DECISION  
 AND  
 ORDER

This matter is before the Commission on the complainant's request to amend his complaint.

On July 31, 1987, the complainant filed a complaint of discrimination with the Commission alleging that the respondent had discriminated against him based on a perceived handicap, by forcing the complainant to resign from his position at Taycheedah Correctional Institution in July of 1987. On December 11, 1987, the complainant filed an amended complaint adding an allegation of sex discrimination. On July 6, 1989, an equal rights officer on the Commission's staff issued an initial determination of "no probable cause" as to complainant's claims of handicap and sex discrimination. By letter dated July 8th, the complainant appealed the initial determination and also stated:

I would like to change the ensuing complaint of perceived handicap and sex to a charge of perceived handicap and race discrimination.

In a subsequent letter from a member of the Commission's staff, the complainant was informed of the procedure for filing an amendment to his complaint and on July 26th, he filed a proposed amendment which referenced discrimination based on handicap and race as well as retaliation based on fair employment activities. By letter dated July 27th, the complainant was asked to supply any explanation as to why his new claims of race discrimination and FEA retaliation were not included in his original complaint. Complainant was also asked to indicate if he wished to pursue his previous claim of sex discrimination.

In a letter dated July 29th, the complainant indicated that he wished to pursue the claim of sex discrimination. Complainant's sole response to the request for an explanation of why he had not raised his claims of race discrimination and FEA retaliation earlier reads as follows:

In retrospect, I believed a race discrimination is approiated [sic] at this time until important evident and statement is brought fourth.

As provided in § PC 2.02(3), Wis. Adm Code, the Commission may exercise its discretion and not approve the amendment of a complaint:

A complaint may be amended by the complainant, subject to approval by the commission, to cure technical defects or omissions, or to clarify or amplify allegations made in the complaint or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date. (emphasis added)


To the extent that the complainant is alleging that he was discriminated against based on race and retaliated against for fair employment activities when the respondent gave him an option of resigning or being fired, the proposed amendment relates to the subject matter of the original charge. However, the complainant has given no reason why he did not raise the new allegations earlier in the investigative process. To permit amendment now would require the Commission to conduct an investigation of all new allegations, unless the parties both agreed to waive that investigation. Adams v. DNR & DER, 80-PC-ER-22, 1/8/82. The potential for delay, the existence of a prior amendment and the extensive opportunity to amend before the issuance of the initial determination all militate against permitting a widening of the scope of this proceeding at this time.

ORDER

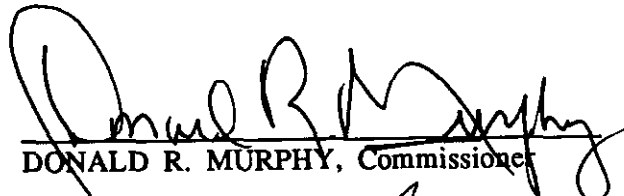
The complainant's request to amend his charge of discrimination is denied. This matter will proceed solely on the basis of the complainant's claims of handicap and sex discrimination.

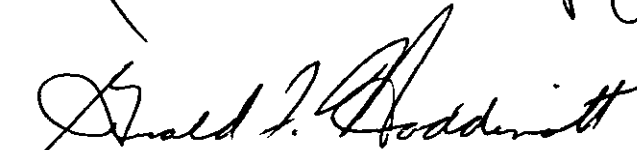
Dated: August 24, 1989

STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner