

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 KATHLEEN SCHMIDT, \*  
 \*  
                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 88-0131-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND ORDER  
 ON  
 MOTION TO  
 AMEND  
 COMPLAINT

This matter is before the Commission on appellant's motion to amend complaint filed March 16, 1989. Both parties have filed briefs.

The original appeal was filed November 8, 1988. It stated, in part, as follows:

"On the 18th of October, I had an interview for the Laundry Worker II position and on the 25th of October, I received a letter stating they had chosen another candidate ... I am requesting an appeal in reference to the Laundry Worker II position at the WMHI...."

The proposed amended complaint consists of nineteen numbered paragraphs. Paragraphs one through eleven concern appellant's non-selection for the Laundry Worker II position which occurred in October 1988. Paragraphs twelve through fifteen concern respondent's failure to appoint appellant following a second posting for a Laundry Worker II position. Appellant alleges she was informed she would not be considered for the position on or about December 8, 1988, and that respondent's decision was intended to be in retaliation for her having filed her original appeal concerning the October transaction. Paragraphs sixteen through seventeen allege that sometime in January or February, 1989, there was a third posting for Laundry Worker II, and that appellant was notified on or after

February 15, 1989, that she would not be allowed to interview for that vacancy, and that this rejection was in retaliation for appellant having filed an earlier complaint with this Commission. Paragraph eighteen alleges certain legal theories with respect to the original October hiring transaction. Paragraph nineteen alleges certain legal theories with regard to the two later hiring transactions.

The Commission's rules provide at §PC 3.02(2), Wis. Admin. Code:

"An appeal may be amended, subject to approval by the commission, to clarify or amplify allegations or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendment shall relate back to the original filing date of the appeal."

In the instant case, the additional facts alleged with regard to the second and third nonselections are not related to the subject matter of the original appeal. Appellant argues in her reply brief:

"...These subsequent incidents relate back to the original denial of appointment, in that the reason for the subsequent denials rests on the facts alleged in the original claim. In order to demonstrate appellant's claim of retaliation, she must first demonstrate the basis for the retaliation. In that the original claim became the underlying motive for the subsequent adverse actions raised in the motion to amend, the original claims and the two subsequent claims have a common set of facts...." (emphasis added)

The premise for the underscored contention is erroneous, because the subject matter of the "original claim" or appeal concerned the first nonselection. The facts set forth in the amended appeal concerning the second and third transactions relate to the act of filing the original appeal -- i.e., it is alleged retaliation occurred because the original appeal was filed. Thus, these facts do not relate to the subject matter of the original appeal, but rather to the filing of the original appeal. Nor is this a case of a continuing violation, if for no other reason than the alleged reason for the first denial is different from the alleged reason

for the second and third denials. Cf. Vander Zanden v. DILHR, Wis. Pers. Commn. No. 87-0063-PC-ER (2/28/89).


Inasmuch as the motion to amend and proposed amended complaint were filed within 30 days of the alleged date of notification of the third transaction and therefore apparently would be timely if construed as an original appeal under §230.44(1)(d), Stats., of the third transaction, the Commission will treat that matter as a separate appeal, open a new file for it, and consolidate it with this appeal for hearing purposes.

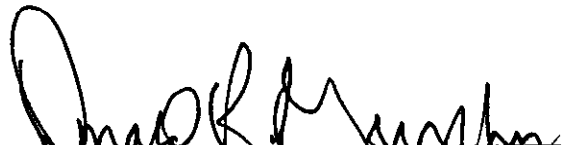
So much of the proposed amended appeal which relates to the original appeal will be permitted.

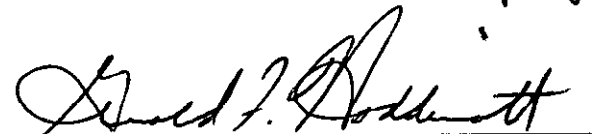
ORDER

Appellant's motion to amend filed March 16, 1989, is granted in part and denied in part, and the original appeal will be deemed amended by paragraphs one through eleven and eighteen of the proposed amended appeal. Paragraphs sixteen, seventeen and nineteen (as relevant to paragraphs sixteen and seventeen) of the proposed amended appeal are construed as a separate original appeal, will be given a separate case number, and will be consolidated for hearing with this case.

Dated: June 14, 1989 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

AJT:rcr  
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