

## STATE OF WISCONSIN

## PERSONNEL COMMISSION

\* \* \* \* \*

MARY KAYE STYGAR,

Complainant,

v.

Secretary, DEPARTMENT OF  
HEALTH AND SOCIAL SERVICES

Respondent.

Case Nos. 89-0033-PC-ER  
90-0040-PC-ER  
91-0165-PC-ER  
93-0208-PC-ER  
94-0016-PC-ER

\* \* \* \* \*

RULING ON REQUEST  
TO WITHDRAW

This matter is before the Commission pursuant to the request by complainant filed February 8, 1995, that the complaints in the above-referenced cases be withdrawn.

On November 18, 1994, the hearing examiner issued a Proposed Decision and Order after hearing the above-referenced cases in April of 1994 and permitting the parties to file post-hearing briefs. Some time after April of 1994 but before September 27, 1994, complainant filed an action in federal district court which she has now represented covers much if not all of the same ground as the above-referenced cases before the Commission. On January 26, 1995, complainant filed a Motion for Stay of the Commission proceedings which the Commission denied in a ruling dated February 8, 1995.

The Commission has discretion, pursuant to §1.11, Wis. Adm. Code, to grant or deny a request for withdrawal such as the instant one. A similar fact situation was considered by the Commission in Klein v. UW and DER, Case No. 91-0208-PC (2/8/93), in which the Commission ruled as follows, in pertinent part:

This matter is before the Commission following the promulgation of a hearing examiner's proposed decision. . . . [T]he Commission will not permit the withdrawal of the appeal short of a decision on the merits under these circumstances. To do so would encourage the use of the appeal and hearing process as a kind of "test run," with the option of withdrawing the appeal prior to a

decision on the merits if the appeal appears to be heading towards a negative conclusion.

The Commission is of the opinion that the instant situation is even more compelling than that in Klein since it is apparent here that the complainant is forum-shopping. As the Commission stated in its ruling on the Motion for Stay:

From the standpoint of good public policy and judicial economy, the interests of the public would not be served by permitting a party who has received an adverse proposed decision from a hearing examiner after five days of hearing encompassing 37 hours of testimony, more than 200 exhibits, and 30 witnesses, to re-litigate substantially identical claims in another forum.

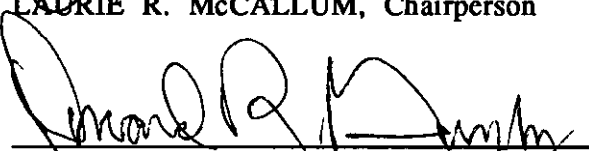
Order

Complainant's Request to Withdraw is denied.

Dated: February 21, 1995      STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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