

STATE OF WISCONSIN

PERSONNEL COMMISSION

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WENDY BRUNS,

Complainant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION,

Respondent.

Case Nos. 89-0058-PC-ER

* * * * *

DECISION
AND
ORDER

On May 22, 1989, the subject charge of discrimination was filed alleging discrimination on the basis of sex and Fair Employment Act (FEA) retaliation and describing the underlying fact situation as follows:

Captain Schumacher of the DOT State Patrol informed the Green Bay Police Department on 8/28/87 that I had filed a Notice of Claim for discrimination against the State. As a result of this disclosure the job offer made to me by the Green Bay Police Department was withdrawn. I only recently became aware of this through discovery in a civil action.

At a status conference convened by the Commission on July 25, 1989, complainant indicated that a charge parallel to the one described above had been filed with the Equal Rights Division (ERD) of the Wisconsin Department of Industry, Labor and Human Relations (DILHR) naming the City of Green Bay as the party respondent, and suggested that the Commission hold its investigation in abeyance pending the outcome of the ERD investigation. Respondent DOT had no objection to this suggestion and, as a result, the Commission did not initiate an investigation at that time. In a letter to the Commission dated November 3, 1989, complainant indicated that ERD had issued an initial determination in regard to the parallel charge referenced above

finding probable cause to believe that discrimination had occurred as alleged, and requested that, if the Commission did not adopt ERD's initial determination as all or part of the Commission's initial determination in the instant matter, the Commission initiate its investigation of the subject charge. It should be noted that The City of Green Bay, the respondent in the charge filed by complainant with the ERD, alleged that complainant had failed to file such charge within the statutory 300-day time period for filing actions under the Wisconsin Fair Employment Act. In its initial determination, ERD determined that "This instant complaint, filed on May 22, 1989 and amended on August 3, 1989, was filed within 300 days of the Complainant and her attorney becoming aware of a possible discriminatory reason for the Respondent not hiring the Complainant." In a letter dated November 10, 1989, the Commission's chairperson indicated that the Commission did not intend to adopt ERD's initial determination in whole or in part and that, prior to commencing an investigation, the Commission would need to decide an issue raised by the facts of the case as stated by complainant in her charge. This letter stated as follows in this regard:

. . . it appears that an issue exists as to the timeliness of the filing of the charge of discrimination in this case, i.e., on its face, the charge of discrimination states that the subject personnel action, the alleged disclosure of information by respondent to the Green Bay Police Department, occurred on October 28, 1987, yet complainant did not file her charge of discrimination with the Commission until May 22, 1989, more than 300 days later.

The parties were requested to file briefs in regard to this issue and the final brief was filed on January 19, 1990.

The following facts appear to be undisputed and are made solely for the purpose of deciding the timeliness issue:

1. From July 7, 1986, to November 10, 1986, complainant was employed as a State Patrol Officer Cadet by respondent DOT's Division of State Patrol.

2. Effective November 10, 1986, complainant was terminated by respondent from this cadet position.

3. On February 24, 1987, complainant filed a charge of discrimination with the Commission (Case No. 87-0022-PC-ER) alleging discrimination on the basis of handicap in regard to her termination.

4. On March 17, 1987, the City of Green Bay, Wisconsin, received an application for employment from complainant.

5. On July 16, 1987, complainant was interviewed for a Community Service Officer position with the City of Green Bay by a three-member panel.

6. By letter dated July 24, 1987, complainant was offered the position for which she had interviewed. By letter dated July 29, 1987, complainant accepted such offer.

7. On July 28, 1987, Captain Wayne Baetsen of the Green Bay Police Department contacted Captain Schumacher of the Wisconsin State Patrol, who had been listed as an employment reference by complainant, and was advised by Captain Schumacher of the circumstances surrounding complainant's termination from the State Patrol. Captain Baetsen's memo of this conversation includes the statement, attributed to Captain Schumacher, that complainant had filed a charge of discrimination against respondent DOT in March of 1987. Captain Schumacher denies having known about this charge of discrimination at the time of this conversation.

8. In a letter dated August 10, 1987, the City of Green Bay withdrew its employment offer to complainant.

9. On October 8, 1987, complainant filed a Notice of Claim with the Attorney General of Wisconsin charging respondent DOT and Captain Schumacher with defamation, interference with employment opportunity, and interference with contract as a result of the above-described communication between Captain Schumacher and Captain Baetsen.

10. On July 21, 1988, complainant filed a complaint in the Circuit Court of Brown County (Case No. 88-CV-1821) against the State of Wisconsin; the City of Green Bay; Captain Schumacher; Howard Erickson, Chief of Police for the City of Green Bay; and Peter Beth, Acting Personnel Manager, City of Green Bay, alleging, inter alia, that Captain Schumacher gave false information regarding complainant's discharge from the State Patrol to certain employees of the City of Green Bay; that in so doing he acted willfully and intentionally to defame the complainant's good name, with malice and without privilege; that he deliberately interfered with complainant's contract of employment with the City of Green Bay with the express purpose and intent of terminating that employment contract; and that he conspired with certain employees of the City of Green Bay to injure complainant in her reputation, business and profession.

Pursuant to §§230.44(3) and 111.39(1), Stats., discrimination complaints filed with the Commission under the Fair Employment Act must be filed within 300 days of the date of the discrimination. In Sprenger v. UW-Green Bay, [Case No. 85-0089-PC-ER (1/24/86)], the Commission held that this 300-day time limit begins to run when the facts that would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights similarly situated to the complainant.

It is apparent from the facts of this case that, at least as early as October 8, 1987, (See Finding 9, above) complainant was aware that Captain

Schumacher of the Wisconsin State Patrol and Captain Baetsen of the City of Green Bay Police Department had conversed regarding her employment with the State Patrol and her offer of employment from the City of Green Bay, and complainant had formed a belief that information exchanged in this conversation had resulted, in whole or in part, in the withdrawal of the employment offer by the City of Green Bay. It is irrelevant that complainant didn't form a belief that the role played by respondent DOT in such adverse action violated the FEA until April 13, 1989, as a result of deposing Captain Baetsen on that date. The integrity of the FEA's administrative process would be eroded if the process were held hostage to complainants' discovery whims, i.e., if the operative date for determining the commencement of the 300-day time limit depended upon when a complainant got around to commencing his or her discovery or got around to asking the right question during discovery or came up with a theory of recovery under the FEA.

Clearly, the operative "date of discrimination" in this case is a date on or before October 8, 1987. Since the date on which complainant filed the instant complaint is more than 300 days hence, the Commission concludes that this complaint was not filed on a timely basis.

Complainant has not alleged or argued that the 300-day filing requirement was waived by respondent DOT or that there exists a basis in equity for tolling the filing deadline and the Commission finds no independent basis for so concluding.

In its brief, respondent DOT for the first time argued that this case should be dismissed for failure to state a claim upon which relief could be granted. In view of the Commission's decision on the issue of the timeliness of

the filing of the complaint, it is not necessary for the Commission to address this additional issue here.

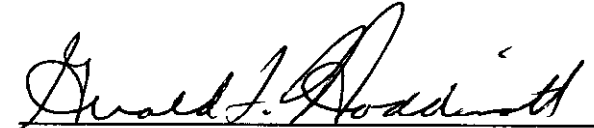
Order

This complaint is dismissed.

Dated: February 7, 1990

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


GERALD F. HODDINOTT, Commissioner

LRM/lrm:gdt

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