

STATE OF WISCONSIN

PERSONNEL COMMISSION

CURTIS ALLISON,

Complainant,

v.

Exec. Director, WISCONSIN
LOTTERY,

Respondent.

Case No.90-0158-PC-ER

DECISION
AND
ORDER

This matter is before the Commission pursuant to §111.39(3), Stats.,
which provides:

The [commission] shall dismiss a complaint if the person filing
the complaint fails to respond within 20 days to any correspondence
from the [commission] concerning the complaint if the correspondence
is sent by certified mail to the last known address of the person.

By certified letter dated and mailed May 13, 1991, the Commission advised
complainant as follows:

The Commission had previously written to you on April 10, 1991, re-
questing information and documents to clarify the charge of discrimi-
nation that you had filed. To date, I have not received a response from
you.

Do you wish to proceed with the complaint? If you do, please simply
send the Commission a letter explaining that you wish to pursue the
matter and enclose the information requested in the April 10, 1991 letter
(copy attached). However, your response must be received by the
Commission within 20 calendar days of the date of this certified letter.
If you fail to respond within the 20 day time period, I will recommend
that the case be dismissed for lack of prosecution. Pursuant to
§111.39(3), Stats., which relates to claims filed under the Fair
Employment Act:

The (commission) shall dismiss a complaint if the person filing
the complaint fails to respond within 20 days to any correspon-
dence from the (commission) concerning the complaint and if
the correspondence is sent by certified mail to the last known ad-
dress of the person.

This letter was received by complainant on May 14, 1991. His response to this letter was dated and postmarked June 5, 1991, and received by the Commission on June 6, 1991.

The Commission acknowledged receipt of complainant's response, advised him that the response appeared to be untimely, and provided him an opportunity to submit arguments as to why his complaint should not be dismissed. Complainant then wrote:

The fear of losing my job made me hesitate to pursue my complaint. The idea that more pressure would be received from JoAnne when she heard of the grievance I was filing against her gave me a headache and I would put off my response to your letter until tomorrow.

The idea of another "see me note" makes me hate going to work every day, but I need this job to support my family.

The need for this job and the fear of losing it made me put off until tomorrow what I should have been doing today.

My lack of a prompt response does not diminish the value of my complaint.

I must apologize for the delay of my response and hope you can understand the pressure I have been under.

Section 111.39(3), Stats., is explicit in requiring dismissal of a charge if the complainant fails to respond to certified mail within the specified 20 day time period. See King v. DHSS, 88-0007-PC-ER (5/29/91); Jackson v. DHSS, 87-0149-PC-ER (3/10/85); Block v. UW-Madison (Extension), 88-0052-PC-ER (7/27/89).

The Commission interprets the complainant's letter to mean that he feared he would be retaliated against by his supervisor, JoAnne Ramharter, if he were to pursue his previously filed charge of age, sex and race discrimination. The Fair Employment Act specifically prohibits retaliation because someone has "made a complaint, testified or assisted in any proceeding" under the FEA. §111.322(3), Stats. Even if the Commission were to conclude that complainant's fear of retaliation by Ms. Ramharter was reasonable,¹ such a fear

¹If Ms. Ramharter were inclined to retaliate against the complainant, it is unlikely that she would be any *more* inclined to do so after complainant filed the materials with the Commission on June 6th, where, in his two paragraph

does not supersede the requirements of §111.39(3), Stats., given that the statute explicitly prohibits retaliation of the type complainant apparently feared. The complainant's right to file a claim of FEA retaliation precludes any tolling of the 20 day period for responding to a certified letter due to a fear of retaliation. This result is supported by Crandall v. Prudential Ins. Co., 691 F.Supp. 814, 48 FEP 1400, (D.C. N.J., 1988). In that case, filed under the Age Discrimination in Employment Act and Title VII of the Civil Rights Act of 1964, the court considered plaintiff's claim that she delayed filing charges against Prudential out of fear of retaliation against her husband who was still employed there:

In the case at bar Crandall's fear of retaliation against her husband is not sufficient to toll the filing limitations. As the [Platt v. Burroughs Corp., 424 F.Supp. 1329, 14 FEP 1057 (E.D. Pa. 1976)] court reasoned, to allow fear of retaliation to toll the filing limitations would be to ignore the express language of the statute which established the filing limitations. If a plaintiff were permitted to toll the filing limitations out of fear of retaliation, the filing limitations would effectively be tolled for so long as the plaintiff, or a third party with a relationship to the plaintiff, was working for the employer. The limitations would then have practically no effect.

Because the complainant in the instant matter failed to file a response within 20 days to the Commission's certified letter of May 13, 1991, the complaint must be dismissed.

initial complaint filed on October 3, 1990, complainant named Ms. Ramharter twice and specifically alleged she was "committing harassment."

ORDER

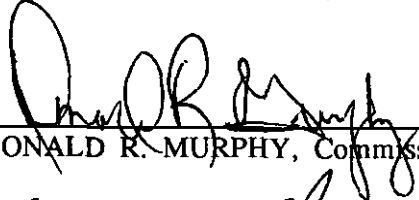
This complaint is dismissed pursuant to §111.39(3), Stats.

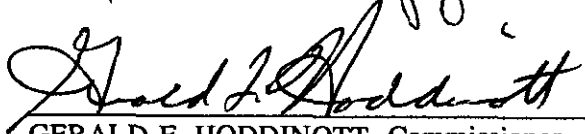
Dated: July 11, 1991

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS/kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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