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BARBARA J. MILLER,

Complainant,

v

Secretary, DEPARTMENT OF  
TRANSPORTATION,

Respondent

Case No. 91-0117-PC-ER

\* \* \* \* \*

RULING  
ON  
MOTION  
TO DISMISS

On November 5, 1992, respondent filed a Motion to Dismiss. The parties filed briefs in relation to such Motion and the briefing schedule was completed on December 14, 1992. The following findings are based on facts which appear to be undisputed and are made solely for the purpose of deciding the instant Motion:

1 On September 3, 1991, complainant filed a charge of discrimination with the Commission alleging that she had been discriminated against by respondent on the basis of her sex and requesting the following relief:

The relief I seek is: 1) removal and discipline of the source of my discrimination, 2) reclassification with commensurate back-pay as of April 25, 1991 and, 3) compensation for these episodes of discrimination that have caused me excessive stress and turmoil in both my professional and personal life.

The actions cited by complainant as the basis for her charge of discrimination include complainant's supervisor's recommendation to change complainant's 60% appointment to a full-time appointment (this recommendation was not effected); complainant's supervisor's denial of complainant's requests to attend a national conference and to participate on a task force; the length of time it took complainant's supervisor to respond to her request for accommodation; complainant's supervisor's failure to respond to her request for the reclassification of her position; certain of the contents of a performance

evaluation; and the assignment to complainant of the duties of an analyst position in addition to complainant's assigned duties as a Program Manager.

2. Complainant was not represented by counsel at the time she filed this charge of discrimination.

3. Some time on or before July 10, 1992, complainant retained Attorney Richard Graylow to represent her in this matter.

In its Motion, respondent contends that the first two items of relief requested by complainant in her charge of discrimination have been provided to her by respondent. Specifically, respondent states, and complainant does not dispute, that the supervisor mentioned in complainant's charge of discrimination is no longer employed by respondent; and that complainant was granted the requested reclassification as well as the requested level of back pay

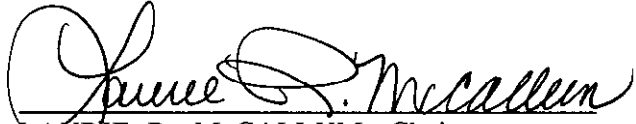
In addition, respondent argues that the third item of relief requested by complainant in her charge of discrimination, i.e., compensatory damages, is not within the Commission's authority to award. Complainant does not dispute this argument and the Commission is not aware of any authority for the award of compensatory damages, e.g., damages for pain and suffering, by an administrative agency under the Wisconsin Fair Employment Act. See Bachand v. Connecticut Gen. Life Co., 101 Wis. 2d 617, 305 N.W. 2d 149 (Ct App. 1980).

If complainant were restricted to her request for relief as stated in her charge of discrimination, the Commission would agree with respondent that the request for the first two items of relief has been rendered moot and the third is not within the Commission's authority to award. However, in view of the fact that complainant was not represented by counsel at the time she completed and filed her charge of discrimination, the Commission will look beyond complainant's statements in her charge of discrimination.

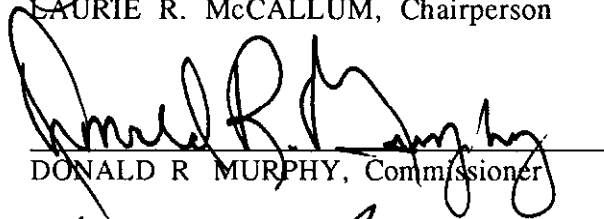
In the Commission's opinion, given the nature of the allegedly discriminatory actions outlined by the complainant in her charge of discrimination and the representations of her counsel in his brief in response to the instant Motion, the remaining remedies available to the complainant include an order from the Commission, if the complainant prevails on the merits of her charge, that respondent undo those actions which are susceptible to being undone, such as those relating to the content of a

performance evaluation or the assignment of duties and responsibilities to complainant's position; that respondent cease and desist from engaging in the future in those actions which the Commission has found to be discriminatory; and that complainant be reimbursed the attorney's fees and costs she has incurred in prosecuting this action. This is the scope of remaining remedies available to complainant in this case. Although they are obviously limited, remedies do remain, and, as a consequence, the Commission denies respondent's Motion to Dismiss.

Dated: January 8, 1993 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:rcr

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner