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BARBARA J. MILLER,

Complainant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION,

Respondent.

Case Nos. 91-0117-PC-ER
 91-0142-PC-ER

* * * * *

RULING
ON
MOTION
FOR
SUMMARY
JUDGMENT

On January 15, 1993, complainant filed a Notice of Motion and Motion for Summary Judgment on the Issue of Liability. A briefing schedule was established and the final brief was filed on February 12, 1993.

The following findings of fact are based on the filings of the parties and appear to be undisputed:

1. On September 3, 1991, the complainant filed a charge of discrimination with the Commission alleging that respondent had discriminated against her on the basis of her sex. On September 19, 1991, the complainant filed a charge of discrimination with the Commission alleging that respondent had retaliated against her based on her fair employment activities. This charge was amended to include an allegation of sex discrimination on September 2, 1992.

2. Respondent conducted an internal investigation of complainant's allegations of discrimination and, on September 9, 1991, issued a report signed by Deputy Secretary Donald Jorgenson finding probable cause to believe that complainant had been discriminated/retaliated against as alleged.

3. At a prehearing conference convened by the Commission on August 25, 1992, the parties agreed to the following issues:

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Whether respondent discriminated against complainant on the basis of sex as alleged in the complaint filed on September 3, 1991.

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Whether respondent retaliated against complainant for filing a complaint under the Fair Employment Act in regard to the following incidences:

- a) April 28, 1991, denial of a request for reclassification by complainant's supervisor.
- b) June 26, 1991, unfavorable performance evaluation, and
- c) August 20, 1991, request from complainant's supervisor to assume additional responsibility as a Program and Planning Analyst.

Complainant's argument in support of her Motion is that no genuine issue as to liability exists in this case since the report issued by respondent referenced in finding 2, above, constitutes an admission of liability by respondent.

However, although the content and conclusions of this report have obvious evidentiary value, the Commission does not share complainant's opinion that respondent's issuance of the report constitutes an admission of liability in the instant case. Complainant is essentially arguing that the Commission should invoke the doctrine of *res judicata* or the doctrine of collateral estoppel to prevent the respondent from defending the matter which was the subject of the respondent's internal investigation. However, the required elements of neither doctrine are present here. Although there is an identity of parties, there is not an identity of issues or an identity or comparability of process. The issue before the Commission relates to the merits of the discrimination/retaliation allegations presented in the charges the complainant has filed with the Commission whereas the findings and conclusions of the subject report dealt exclusively with the issue of probable cause. In addition, the investigation of this matter carried out by respondent apparently had few of the attributes of a due process administrative hearing which the Commission, in absence of a stipulation by the parties, would

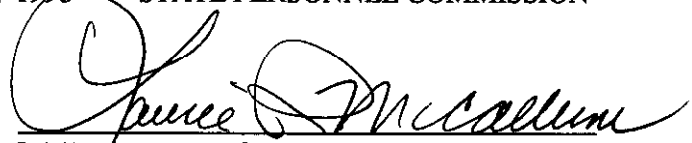
conduct to create a record upon which its decision of the merits of this matter would be based.

Respondent has also argued in its response to the instant Motion that the Commission does not have the authority to entertain or decide a Motion for Summary Judgment. In view of the conclusions reached above, it is not necessary for the Commission to reach this argument.

ORDER

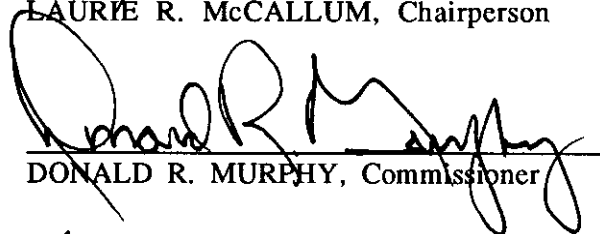
The Motion for Summary Judgment on the Issue of Liability is denied.

Dated: March 10, 1993 STATE PERSONNEL COMMISSION



LAURIE R. McCALLUM, Chairperson

LRM:rcr



DONALD R. MURPHY, Commissioner



GERALD F. HODDINOTT, Commissioner