



when she would return to work. Complainant alleges that Richard Cummings, respondent's personnel director, spoke to her soon after this call and told her that, "A prudent person would have told that they were pregnant."

Complainant further alleges that Mr. Charest told another Computer Center employee that complainant had made a fool of him because she did not tell them that she was pregnant when she was hired.

4. Complainant returned from maternity leave on October 17, 1991. Complainant alleges that, after her return, Mr. Charest on more than one occasion questioned her about her marital status; and made statements to her about her appearance and about sexual matters which she considered unwelcome.

In deciding a motion to dismiss of this nature, the Commission must construe the pleadings liberally, and assume all the facts pleaded and those that can be reasonably inferred, and the complaint should not be dismissed unless it appears certain that under no circumstances could complainant prevail, See Phillips v. DHSS & DETE, 87-0128-PC-ER (3/15/89), citing Morgan v. Pennsylvania General Insurance Co., 87 Wis. 2d 723, 731-32, 275 N.W. 2d 660 (1979).

Respondent does not argue here that complainant has not successfully alleged a continuing violation in regard to the charge of sexual harassment and complainant's focus on this argument in her brief is, therefore, misplaced and of little assistance to the Commission.

Complainant's charge, although very spare and difficult to decipher, appears to offer the statements allegedly made to complainant by Mr. Charest in the July 12, 1991, interview as all or part of the basis for her charges of sexual harassment; discrimination on the basis of pregnancy; and discrimination on the basis of marital status.

In regard to the charge of pregnancy discrimination, complainant appears to contend that the statement about pregnancy during her interview not only constituted discrimination per se, but also served as the first of a series of statements about pregnancy which created a hostile working environment for her. It is clear that the allegation of discrimination per se would be untimely since the interview occurred more than 300 days prior to the date that the subject charge was filed with the Commission. In regard to the question of whether complainant has successfully alleged a continuing

violation in this regard, it is apparent that she has offered only two statements directly relating to her pregnancy allegedly made by respondent, i.e., the statement during the interview and the statement made by respondent's personnel director that it would have been prudent to give her employer notice that she was pregnant. Even a liberal application of the continuing violation theory would not find a continuing violation here. The Commission concludes that complainant's charge of pregnancy discrimination as it relates to the statement allegedly made to her at the July 12, 1991, interview is untimely. Of course, complainant also appears to allege that she was terminated based at least in part on her pregnancy and evidence of Mr. Charest's pregnancy-related statements allegedly made to her during the subject interview could be relevant to this remaining issue.

The same analysis would apply to complainant's charge of marital status discrimination. Again, complainant's allegation that the statements allegedly made to her relating to her marital status at the July 12, 1991, interview constituted marital status discrimination per se would be untimely in the absence of a viable claim of a continuing violation. Complainant does allege, however, that Mr. Charest made several unwelcome inquiries about her marital status within the applicable 300-day period and, although these statements appear to relate more directly to complainant's theory of sexual harassment, at this stage of this proceeding, the Commission cannot reach the conclusion that it would be impossible for complainant to establish a continuing violation at hearing, and the motion to dismiss must be denied as to this aspect of the case. As discussed above, the statements allegedly made by Mr. Charest at the subject interview could also be relevant to complainant's charge that her termination was based on her marital status or, more precisely, her failure to disclose her marital status to Mr. Charest.

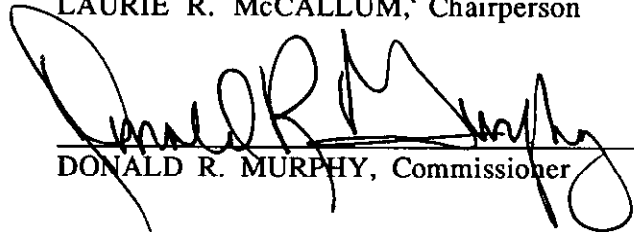
Order

Respondent's Motion to Dismiss is granted in part and denied in part as follows: those aspects of complainant's charge of discrimination alleging that the statements allegedly made to complainant during her July 12, 1991, interview relating to pregnancy and to her marital status were discriminatory per se and not as part of a continuing violation are dismissed as untimely filed; and that aspect of complainant's charge of discrimination alleging that the statement allegedly made to complainant about pregnancy during her July 12, 1991, interview was part of a continuing violation is dismissed as untimely filed.

Dated: December 28, 1993 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner