

SHAUN R. PAYNE,
Complainant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

**RULING
ON
MOTIONS**

Case No. 95-0095-PC-ER

This matter is before the Commission on complainant's motion for reconsideration of the Commission's ruling, dated July 31, 1997, denying her motion to amend her complaint. The parties were provided an opportunity to file briefs in reference to the motion. Respondent's response in opposition to the motion included a motion to dismiss. That motion is also to be considered by the Commission.

On July 14, 1995, complainant Shawn R. Payne filed a charge of discrimination with the Commission alleging the Department of Corrections (DOC) terminated her probationary employment because of her sex. The matter was investigated by an equal rights officer of the Commission and on June 10, 1997, she issued an initial determination of "no probable cause."

By letter dated July 10, 1997, complainant appealed the initial determination and requested to amend her complaint to include a charge of discrimination based on "race and pregnancy."

The Commission denied complainant's request in a ruling dated July 31, 1997. In that ruling the Commission said that it was inappropriate to permit complainant to amend her complaint at that point in the proceedings—24 months after the filing of her initial complaint. The Commission noted the importance that the new claim was not raised until after the investigation had been completed and the initial determination issued.¹

¹ Although it was not specifically mentioned in the July 31st ruling, pregnancy is an aspect of the definition of sex discrimination found in the Fair Employment Act and, clearly, complainant's sex discrimination claim was already before the Commission.

Complainant's letter of October 27, 1997, while providing reasons for her request for reconsideration, offers no new information that was not considered in the previous ruling. Because there is no basis on which to change the result reached in the Commission's July 31st ruling, complainant's motion for reconsideration must be denied.

Regarding its motion to dismiss, respondent argues that complainant admits her sex discrimination complaint is moot, therefore it should be dismissed. In support, respondent directs attention to paragraph two of complainant's October 27, 1997, letter to the Commission, where the complainant makes the following statement:

I was given the advise to submit a complaint 'against my supervisor', who is African American, such as myself. The grounds that are permissible [sic] to submit a complaint did not fit my reasons to me. I felt that the supervisor had personal differences with me. In any case, I knew I was treated unfairly and I wanted something done about it. . . . I chose sex, because I was pregnant at the time, and only women could have children, and my co-worker, who was treated favorably, was pregnant as well. Anything to get my case reviewed by someone other than the lower line management.

Respondent's motion to dismiss is viewed by the Commission as a request for summary judgment. The purpose of summary judgment is to determine whether a dispute can be resolved without trial. *In re Cherokee Park Platt*, 113 Wis. 2d 112, 334 N.W.2d. 580 (1983). The moving party has the burden of making a prima facie case. "To make a prima facie case for summary judgment, the moving defendant must show a defense which would defeat the claim." *Grams v. Boss*, 97 Wis. 2d 332, 294 N.W. 2d 473, 476-77 (1980). The next step requires the court (in this instance the Commission) to examine documents submitted by the opposing party for evidentiary facts and other proof to determine "whether a genuine issue exists as to any material fact, or reasonable conflicting inferences may be drawn from undisputed facts, and therefore a trial is unnecessary" *Id.* Here, respondent has established a prima facie case.

Complainant, in an unsigned response, submitted December 17, 1997, argues as follows:

In response to Mr. Smith's letter dated November 7, paragraph 7, it states no such thing as me stating my sex complaint having no merit. I merely stated that I would go as far as I needed to get my case reviewed by someone who would give me fair consideration.

I stated in the first sentence Mr. Smith quoted, the very reason I chose sex. Not solely to gain arbitrary review. Even though I may have used the sex grounds inappropriately, (as far as women only bearing children), once again, I learned from this process that by choosing sex, it meant female or male distinction of co-workers, not the capabilities of the genders.

Based on my explanation of my taken out of context, "alleged" admissions, I urge the Commission to disregard the respondents request to dismiss my sex complaint, due to the fact that sex is not the issue at hand that we are addressing. We are at this point addressing the request to amend my complaint to include race. The respondents request is premature and should not be allowed to be considered any further in this case.

While complainant argues that her statement as to why she charged respondent with sex discrimination has been misinterpreted, this argument is inconsistent with other information provided by her. In her complaint, filed July 14, 1995, complainant alleges she was discriminated against by her supervisor, Daphne Mason, a female. In her November 28, 1995, letter to Equal Rights Officer Wedel, complainant states that Mason treated her differently from other female co-workers—Gloria Collins and Leslie Lanersdorf. Later, in her October 27, 1997, letter, complainant states that her co-worker, who like her was pregnant, was (unlike her) treated favorably.

Through all parts of this proceeding, the Commission has been aware that complainant is unrepresented by counsel. In addition, for summary judgment, the Commission must resolve any doubt of a factual issue against the moving party. Still, after review of the documents provided by the parties, we conclude there is no dispute of material fact. Respondent's motion must be granted.

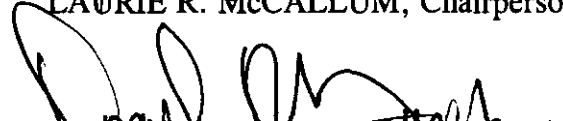
ORDER

Complainant's motion for reconsideration is denied. Respondent's motion to dismiss complainant's sex discrimination complaint is granted.

Dated: January 9, 1998. STATE PERSONNEL COMMISSION

DRM:rjb
950095Cru12.2


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:
Shaun R. Payne
6216 W Port Ave
Milwaukee WI 53223

Michael J. Sullivan
Secretary, DOC
PO Box 7925
Madison, WI 53707-7925

NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the

application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

2/3/95