

STATE OF WISCONSIN

PERSONNEL COMMISSION

SHAUN PAYNE,
Complainant,

v.

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

**RULING
ON MOTION
TO AMEND
COMPLAINT**

Case No. 95-0095-PC-ER

This matter is before the Commission on the complainant's request to amend his complaint. The parties have been provided an opportunity to submit arguments regarding the request.

The initial complaint in this matter was filed on July 14, 1995. Complainant claimed she was discriminated against, based on sex, with respect to her employment by respondent as a Program Assistant 1.

During my pregnancy, I had to be out due to Doctor's appointments, and being ill often. [My supervisor] has used these absences against me in my PPD - Performance Planning & Development evaluation form, along with an attached summary, which I totally disagree with. [My supervisor] said that according to the duties I was performing, in the PPD, and according to the summary, I was being terminated as of June 12, 1995.

An equal rights officer for the Commission issued an initial determination of "no probable cause" on June 10, 1997. The initial determination included the following language:

Complainant may have had a valid claim to sex discrimination if respondent had been treating her unfavorably as compared to members of the opposite sex. However, the co-workers that complainant refers to are female, as are the supervisors that made the decision to terminate complainant's employment.

In a letter dated July 10th and received by the Commission on July 11th, complainant requested a hearing on the “no probable cause” determination and also asked to amend her complaint:

I am requesting to submit an amended complaint based on the discrimination grounds of Race and Pregnancy rather than sex. I assumed sex because me and another co-worker were pregnant at the same time, but I received unfair treatment compared to my co-worker.

I was not represented at the time I started my complaint with the DOC.

Pursuant to §PC2.02(3), Wis. Adm. Code, the Personnel Commission has discretion in terms of requests for amendments to complaints:

A complaint may be amended by the complainant, *subject to the approval by the commission*, to cure technical defects or omissions, or to clarify or amplify allegations made in the complaint or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date. (emphasis added)

The Commission interprets complainant’s July 10th letter as raising a race discrimination claim relating to the termination of complainant’s employment. More specifically, complainant contends that a co-worker, who was also pregnant but is a different race than complainant, was treated more favorably.

It is inappropriate to permit complainant to amend her complaint of discrimination at this point in the proceedings, and the Commission rejects her request.

The amendment request was filed 24 months after the complainant filed her initial complaint. There is a 300 day time limit for filing claims of discrimination under the Fair Employment Act. Even though a proper amendment would relate back to the filing date for the initial complaint, the 300 day limit is still relevant, although not determinative, when considering the complainant’s request. Here, the allegation of race discrimination relies upon a comparison between respondent’s treatment of complainant and respondent’s treatment of another pregnant female. Nothing in complainant’s original complaint put respondent on notice that its treatment of the pregnant co-worker was critical to its defense against the complainant’s allegations. The first time respon-

dent would have become aware of the importance of such a comparison was 24 months after the original complaint had been filed. To permit an amendment now would be totally inconsistent with the 300 day filing period established in §111.39(1), Stats.

It is also important that the new claim was not raised until the investigation of the original complaint had been completed and an initial determination issued. *Ziegler v. LIRC*, 93-0031-PC-ER, 5/2/96. *Ferrill v. DHSS*, 87-0096-PC-ER, 8/24/89. If complainant's request for amendment was granted in this matter, the investigative procedure would have to start all over again.

The Commission recognizes that the complainant has not been represented by counsel in this matter. However, the original complaint filed by the complainant allowed her to simply place a check in a box for each of 19 different causes of discrimination/retaliation. One category was discrimination based on sex. Immediately above it was the category for discrimination based on race. Because of the timing of complainant's amendment request and its reliance on information relating to another employee, the Commission exercises its discretion and denies complainant's request to amend her complaint of discrimination.

ORDER

Complainant's request to amend her complaint is denied, and the Commission will schedule a prehearing conference relating to the remaining claim of sex discrimination.

Dated: July 31, 1997

KMS:950095Crul1.doc

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner