

**SARA LEE JOHANN,**  
*Complainant,*

v.

**District Attorney, OFFICE OF THE  
MILWAUKEE COUNTY DISTRICT  
ATTORNEY**  
*Respondent.*

DECISION  
AND  
ORDER

Case No. 97-0045-PC-ER

Complainant alleges various categories of Fair Employment Act discrimination and retaliation for engaging in whistleblower activities.

In a letter dated July 8, 1997, a member of the Commission's staff responded to various questions raised by complainant and made the following request:

3. You state that you are interested in having your complaint relate back to *some* of the employment rejections you have received from the respondent and that you will provide, in a future letter, details of those rejections. I understand you to contend that you applied for employment with respondent as reflected in correspondence dated December 3, 1996, December 12, 1994, July 18, 1994, December 6, 1993, September 23, 1993, November 8, 1992, June 22, 1992, February 23, 1992, an undated cover letter which bears an Office Of District Attorney date stamp of January 15, 1992, May 10, 1988, December 5, 1985, and November 5, 1982. **Please specify those applications which you are asking to have included in your claim on a relation back theory and provide any additional information you wish to submit regarding these rejections by July 28, 1997. By the same date, submit any additional information you wish to provide regarding your claims of discrimination based upon age, creed and marital status. (emphasis in original)**

Complainant did not provide the requested clarification, so she was sent a second letter, dated August 18, 1997, which asked that she submit the information no later than September 2<sup>nd</sup>. Again, there was no response.

By a letter dated September 11, 1997, complainant was again asked to provide the information:

The Personnel Commission previously wrote to you on August 18, 1997 and asked you to provide information regarding the above discrimination/retaliation complaint. To date, we have received no response.

If you wish to proceed with your complaint, you must submit the information as described in the enclosed correspondence. Your response must be received by the Commission within 20 calendar days of the date of this certified letter. If you fail to respond within the 20 day time period, I will recommend that your case be dismissed for lack of prosecution.

Pursuant to §111.39(3), Stats., which relates to claims filed under the Fair Employment Act:

The (commission) shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the (commission) concerning the complaint and if the correspondence is sent by certified mail to the last known address of the person.

Complainant telephoned the Commission on September 12, 1997, and said she would be responding to the September 11<sup>th</sup> letter and requested a copy of the Commission's administrative rules. On September 17<sup>th</sup>, the Commission received a copy of a discovery request, dated September 16<sup>th</sup>, which complainant directed to the respondent. A member of the Commission's staff convened a conference with the parties on September 22<sup>nd</sup> because respondent had indicated it objected to portions of the discovery request. A schedule was established for respondent to respond to the complainant's discovery request and to file a preliminary motion. In addition, complainant "indicated she would respond to [the] September 11<sup>th</sup> letter."

Complainant has not filed a response to the September 11<sup>th</sup> letter.

Complainant has been sent three letters by the Commission, over the course of a three month period, requesting certain information relating to her complaint. She has failed to request additional time or to provide the requested information even though she has twice indicated, verbally, that she would respond. Given complainant's

conduct, the language of §111.39(3), Stats.,<sup>1</sup> and the lack of any reason for failing to respond, dismissal is appropriate.

ORDER

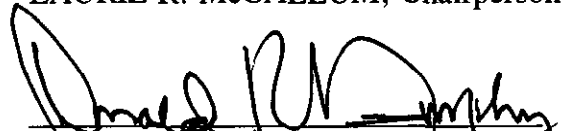
Complainant's charge of discrimination/retaliation is dismissed for lack of prosecution.

Dated: October 9, 1997

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

Sara Lee Johann  
W63N728 Sheboygan Road  
Cedarburg WI 53012

E. Michael McCann  
District Attorney  
Milwaukee County  
821 West State Street  
Milwaukee WI 53233-1485

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.

<sup>1</sup> This provision is applicable to complainant's Fair Employment Act claims.

**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