

STATE OF WISCONSIN

PERSONNEL COMMISSION

DOROTHY TYUS,
Appellant,

v.

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondent.

Case No. 97-0078-PC

DOROTHY TYUS,
Complainant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION, and
Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondents.

Case Nos. 97-0146-PC-ER, 98-0062-PC-ER

**RULING ON
REQUEST FOR
STAY**

These cases are before the Commission on petitioner's request to stay proceedings while two of the cases are processed by the Equal Employment Opportunity Commission (EEOC).

The Personnel Commission issued an initial determination in Case No. 97-0146-PC-ER on September 4, 1998, finding both "probable cause" and "no probable cause" to believe that discrimination and/or FEA retaliation occurred as to various personnel actions. Among those actions were alleged reclassification denials by the Department of Transportation (DOT) by letter dated December 26, 1996, and by the Department of Employment Relations (DER) by letter dated July 15, 1997. Also on September 4, 1998, an initial determination of "no probable cause" was issued in Case No. 98-0062-

PC-ER. In that case, petitioner had alleged that DER retaliated against her based on her previous complaint when DER allegedly threatened a lay off and created a hostile work environment. Petitioner appealed the "no probable cause" findings as to both complaints. A prehearing conference was held on November 11th. Efforts to settle the complaints were unsuccessful.

Respondents have also filed a motion to dismiss both complaints. The motion contends that petitioner's allegations of discrimination were untimely filed, are moot, and fail to state a claim upon which relief can be granted. Complainant has not had an opportunity to respond to the motion to dismiss. Therefore, the motion to dismiss is not before the Commission at this time.

By letter dated December 28, 1998, petitioner requested that cases 97-0146-PC-ER and 98-0062-PC-ER be transferred to the Equal Employment Opportunity Commission and that the Personnel Commission stay the above cases pending resolution of the matters by the EEOC. A member of the Commission's staff asked respondents to indicate their position regarding this request, to specifically address how case 97-0078-PC should be handled, and gave petitioner an opportunity to respond.

Respondents opposed petitioner's request, described the procedural history of the matters and noted that petitioner had failed to supply any reason for the request. Counsel for respondent DOT also wrote:

You specifically requested advice on how to proceed with case number 97-0078-PC, the reclassification appeal. Since that case is being handled by the Department of Employment Relations, I defer to DER's preference. Nevertheless, I spoke with [DER counsel] this morning, and it is my understanding that we both prefer to go forward with the reclassification appeal without further delay. I suggest that you schedule a short prehearing conference to establish a hearing date for the reclassification appeal.

Petitioner did not respond to respondents' submission.

Petitioner's request reflects a decision to pursue her discrimination and retaliation claims in the federal forum. The Commission's usual practice is to hold the Commission's equal rights cases in abeyance if related federal proceedings involve claims under Title VII of the Civil Rights Act.¹ In *Stoner v. DATCP*, 92-0041-PC, 1/27/93, the Commission made the following observations regarding a request for a stay in order to pursue claims in another forum:

It is not uncommon for the Commission to hold in abeyance a case that has been filed here while the employee proceeds through a trial in another forum (usually judicial) of a claim involving the same subject matter. Frequently the results in the other forum will either moot or preclude further proceedings before the Commission. Thus, staying proceedings before the Commission can in many cases effect judicial/administrative economy by avoiding a multiplicity of proceedings. (Citations omitted)..

These observations are applicable here and cases 97-0146-PC-ER and 98-0062-PC-ER will be held in abeyance. However, in order to insure that petitioner is actively pursuing his claim, she is directed to inform the Commission, in writing, of the status of her Title VII claims no later than June 1, 1999. A member of the Commission's staff may then decide whether to extend the stay.

However, the reclassification appeal, Case No. 97-0078-PC, is in a different posture than the petitioner's two discrimination/retaliation complaints. A prehearing conference was held regarding Case No. 97-0078-PC on September 12, 1997. The

¹ Compare *Hodorowicz v. Wis. Racing Bd.*, 91-0078-PC, 91-0177-PC-ER, 4/23/93, where the Commission denied the petitioner's request for an *indefinite* stay of proceedings. In *Hodorowicz*, the petitioner had appealed from a suspension decision and also had filed a claim of discrimination relating to both the suspension and a subsequent discharge. The cases were consolidated for hearing purposes. A hearing date was set and then rescheduled twice, once over the respondent's objection. The Commission rejected petitioner's claim for an indefinite stay, but modified the proposal and stayed the proceedings for approximately 4 months. The Commission noted that petitioner had not yet filed a federal proceeding and that it was respondent who had the burden of proof in the pending appeal of the suspension. The Commission also noted. "Once the federal proceeding is filed, an indefinite stay may be justified."

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conference report reflects that the parties to that case agreed to the following statement of issues for hearing:

1. Whether respondent's decision to deny appellant's request to reclassify her position from Administrative Assistant 3 (AA3) to AA4 was correct.
2. Whether respondent's decision to reallocate appellant's position to Financial Specialist 2 (FS2) was correct.

The parties agreed the effective date of the reclassification/reallocation transaction is February 19, 1995.

It is already nearly 4 years after the effective date claimed by petitioner in Case No. 97-0078-PC. If the reclassification/reallocation appeal was held in abeyance while petitioner pursued her discrimination/retaliation claims in federal court, the federal proceedings would probably not dispose of the claims underlying the appeal and there could be a delay of several years before the appeal would be reactivated. Given the age of the case already, the Commission is of the opinion that no further delay is warranted or appropriate as to Case No. 97-0078-PC. The Commission will contact the parties to schedule a date for hearing in that matter.

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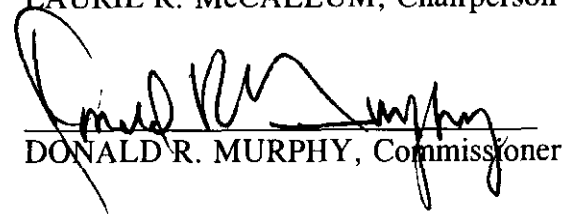
ORDER

Petitioner's request to hold Case Nos. 97-0146-PC-ER and 98-0062-PC-ER in abeyance while her claims are processed by the EEOC is granted until June 1, 1999, as noted above. As a consequence, the Personnel Commission does not address respondents' motion to dismiss those matters. Petitioner is directed to inform the Commission, in writing, of the status of her Title VII claims no later than June 1, 1999. The Commission will contact the parties for the purpose of scheduling a hearing in Case No. 97-0078-PC.

Dated: Jan. 27, 1999. STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner