STATE OF WISCONSIN PERSONNEL COMMISSION

BECKY LYNN HOLLIS,
Complainant,

v.

Secretary, DEPARTMENT OF TRANSPORTATION,
Respondent.

Case No. 97-0153-PC-ER

RULING ON MOTION FOR SUMMARY JUDGMENT

The underlying matter here is a complaint of disability discrimination. On June 4, 1999, respondent filed a motion for summary judgment. The parties were permitted to file written arguments and the schedule for doing so was completed on June 16, 1999. The following findings are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding the instant motion.

FINDINGS OF FACT

1. At a prehearing conference conducted on October 9, 1998, the parties agreed to the following statement of issues for hearing:

> 1. Whether the respondent engaged in harassment of complainant based upon disability when it failed to include her in a unit training meeting in October of 1996.
>
> 2. Whether complainant was discriminated against based upon disability when respondent terminated her in September of 1997.

2. Some time on or before November 12, 1999, respondent, by certified mail, sent to complainant its First Request for Admissions. On November 12, 1998, complainant signed a United States Postal Service form indicating that she had received this mailing on that date.

3. Respondent's First Request for Admissions stated as follows, in pertinent part:

> Pursuant to sec. 804.11, Stats., you are requested to admit the truth of the following statement of fact, or the application of law to fact, including genuineness of any documents described in the request within 30 days of the service of this request upon you.
>
> 1. Becky Lynn Hollis, hereinafter the Complainant, was employed in a position classified as a Motor Vehicle Representative 4 in the Division of Motor Vehicles of the Wisconsin Department of Transportation from August 23, 1983 through September 18, 1997.
>
> 2. On July 16, 1998, Complainant submitted an accommodation request to her supervisor, Bev Schwartz, identifying her medical conditions as depression and alcoholism.
>
> 3. Complainant requested that the Department of Transportation, Division of Motor Vehicles, hereinafter Respondent, recognize her medical conditions, reduce her work hours and allow her to make up time that she would miss for medical appointments. The accommodation request was granted.
>
> 4. On September 2, 1997, the Vehicle Records Certification Unit of the Respondent received a "Stop Title Transfer Notice" from the Dane County District Attorney's office which indicated that complainant had received an Operating While Intoxicated citation on August 11, 1997.
>
> 5. Respondent discovered that two vehicles belonging to Complainant, a 1969 Chevrolet Corvette and a 1987 Chevrolet Monte Carlo had been transferred from Complainant to Complainant's sister, Gail Nix, immediately following the OWI citation.
>
> 6. On August 12, 1997, Complainant called upon coworker Priscilla Tupper to begin processing two title transfers for the two Chevrolets.
>
> 7. On that same day, Ms. Tupper partially completed the transfers and placed the hard copies in Complainant's work bucket.
>
> 8. Complainant completed the transfers herself on August 13, 1997 using a different staff member's log-on ID number.

9. Complainant signed Ms. Nix's name to the documents and paid the $12.50 title transfer fee but not the fast service fee of $4.00 for each vehicle.

10. Complainant transferred the vehicles to her sister as collateral for a loan that her sister was to make to Complainant.

11. At the time of transfers, Complainant cleared the liens on the title to Commonwealth Credit Union which were security for a $10,801.40 loan that Complainant received from the credit union and which had a balance of approximately $8,000 without a lien release or notification to Commonwealth Credit Union.

12. Complainant signed the Good Faith Statement for Gail Nix on the 1969 Corvette. A good faith statement is used when an individual purchases a vehicle whose registration is at the time suspended as a result of the unpaid citation. The law states that no owner may sell a vehicle whose registration is suspended unless it is done in good faith and not to defeat the purpose of the suspension. A good faith transfer is one in which the seller would not have the possession, use of or receive any benefit from the operation of the vehicle after the transfer of ownership.

13. On August 13, 1997, Complainant processed renewal registration transaction on one of the vehicles she transferred to her sister without paying the $40.00 renewal fee.

14. On August 20, 1997, Complainant processed a third title transaction in which she issued a replacement title and obtained a new license plate for one of the vehicles that she had transferred to her sister.

15. It is against Respondent's written policy to allow staff to process their own title application or applications of family members, neighbors or friends.

16. The policy is in the Employee Handbook, which Complainant acknowledged that she had received and read on February 26, 1997.

17. The policy was emphasized in a September 16, 1997 memo to all DMV employees that stated in part:

> Employees may not process their own applications for title or registration, including personalized plate transactions.
>
> 18. Complainant has not been diagnosed as suffering from Battered Women's syndrome.
>
> 19. Complainant violated the written rules and standards of behavior that the Respondent expected of its employees. She did this for her personal benefit to the substantial disregard of the Department's interest and those of her co-employee and lender.
>
> 20. Respondent terminated Complainant's employment with the Respondent for just cause on September 18, 1997.
>
> 21. The Department of Workforce Development Unemployment Insurance Tribunal found that Complainant was discharged for misconduct and denied benefits under decision dated November 21, 1997.
>
> 22. Respondent did not subject Complainant to a hostile work environment.
>
> 23. Respondent did not engage in disability discrimination against the Complainant.
>
> 24. A genuine copy of: [list of attached documents omitted here].

4. At a prehearing conference conducted on October 5, 1998, the parties agreed to hearing dates of December 14 and 15, 1998.

5. On November 10, 1998, complainant contacted the Commission and requested a postponement of the hearing dates. The parties were contacted and the postponement request was granted on that date and the hearing was rescheduled for February 22 and 23, 1999.

6. On January 11, 1999, the Commission received a written request from complainant that the hearing dates be postponed again. This request was granted and the hearing was rescheduled for June 28 and 29, 1999.

7. Complainant did not respond to respondent's First Request for Admissions.

8. Complainant's response to the motion for summary judgment stated as follows, in relevant part:

> I didn't respond to the request for admission because I again assumed that because of me postponing the court date was all I needed to do. I have no clue what to do here. I did change the court date within the 30 day period. I thought I was doing it right. So I did answer.

OPINION

Section PC 4.03, Wis. Adm. Code, provides that, "All parties to a case before the commission may obtain discovery and preserve testimony as provided by ch. 804, Stats."

Section 804.11, Stats., governs requests for admission. Section 804.11(1)(b), Stats., states as follows, in relevant part:

> Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requsting the admission a written answer or object . . .

Section 804.11(2), Stats., provides as follows, as relevant here:

> Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtains the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. . . .

By operation of §804.11(1)(b), Stats., the matters stated in respondent's First Request for Admissions are deemed admitted by complainant. These admissions appear to resolve every issue of material fact present in this case, including the ultimate factual issues underlying the two issues established for hearing, i.e, complainant has admitted that she was not subjected to a hostile work environment (the basis for her claim of harassment on the basis of disability) or discriminated against on the basis of disability

when she was terminated. It is concluded as a result that summary judgment is appropriate in view of the fact that there is no remaining genuine issue of material fact, and that respondent is entitled to judgment as a matter of law. This result is consistent with that in *Bank of Two Rivers v. Zimmer*, 112 Wis. 2d 624 (1983), in which the court stated:

> It should first be noted that summary judgment can be based upon a party's failure to respond to a request for admission. As we held in the recent case of *Schmid v. Olson*, 111 Wis. 2d 228, 236, 330 N.W. 2d 547 (1983), a request can seek an admission which would be dispositive of the entire case. The Judicial Committee's Note, 1974, explains that sec. 804.11, the current statute, unlike the former 889.22, provides that "the request need not be limited to 'fact or facts,' but may seek, when appropriate, opinions of facts or of the application of law to fact." . . . Federal courts have considered the question of the proper interplay between the summary judgment statute and the request for admission statute and have held that summary judgment based upon a party's untimely or incomplete response to a request for admission can be appropriate, since the party is deemed to have in effect admitted all material facts contained therein, even though he may have denied them in his pleadings. *Shapiro, Bernstein & Co., Inc. v. "Log Cabin Club Ass'n,"* 365 F.Supp. 325, 327 (N.D. W.Va.1973); *Chess Music, Inc. v. Tadych,* 467 F.Supp 819 (E.D. Wis. 1979). We agree with the courts below that although summary judgment is a drastic remedy, the mandatory language of sec 804.11(2) can foreclose all pertinent issues of fact on a motion for summary judgment.

See, Garner v. SPD, 88-0015-PC, 88-0183-PC-ER, 8/11/93.

The only remaining issue is whether complainant's justification for failing to respond to respondent's request for admissions would support a conclusion pursuant to §804.11(2), Stats., that withdrawal of the admission would be appropriate. Complainant apparently is arguing that, once she requested and was granted a postponement of the hearing date, she was under the impression that all of her obligations to participate in the litigation of her case ceased or were at least held in abeyance. Complainant has cited no basis for this impression and none is apparent. Moreover, complainant was aware that respondent's discovery request was served after her initial request for postponement on November 10, 1998, which should have put her

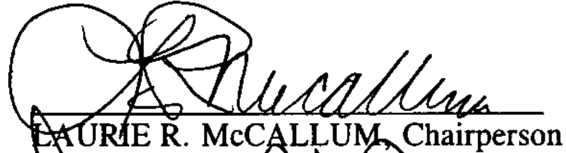
on notice that the postponement did not have an effect on a party's ongoing ability to, and obligation to, engage in discovery. In addition, complainant's second postponement request occurred after the 30-day time period for responding to the discovery request had already expired, so this second request for postponement could have had no effect on complainant's timely response to respondent's discovery request. Complainant had ample opportunity to contact the Commission to inquire as to her obligation to respond to discovery requests, but she failed to do so. Although the Commission is aware that *pro se* litigants, such as complainant, could be confused by the technical requirements of the statutory discovery process, the failure to respond here does not result from such a circumstance. Complainant has offered insufficient justification for her failure to respond to respondent's request for admissions.

ORDER

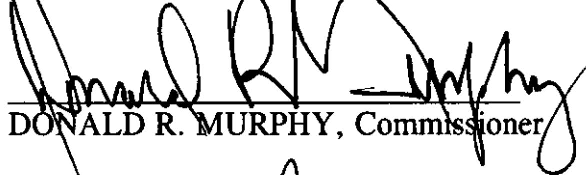
Respondent's motion for summary judgment is granted and this case is dismissed.

Dated: June 23, 1999

STATE PERSONNEL COMMISSION



LAURIE R. McCALLUM, Chairperson



DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

LRM
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Parties:

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Madison WI 53704

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Secretary, DOT
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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