

STATE OF WISCONSIN

PERSONNEL COMMISSION

HEIDI M. FERGUSON,
Complainant,

v.

**Secretary, DEPARTMENT OF
COMMERCE,**
Respondent.

**RULING ON MOTION
TO DISMISS**

Case No. 98-0099-PC-ER

This matter is before the Commission to resolve respondent's motion to dismiss filed by cover letter dated December 20, 1999. Both parties have been afforded the opportunity to file briefs, but the complainant's attorney has not submitted a brief in opposition to the motion. The following findings of fact are based on material in the file that appears to be undisputed, and are made solely for the purpose of resolving this motion.

FINDINGS OF FACT

1. In a ruling entered on December 16, 1999, the Commission granted, in part, respondent's motion to dismiss, entering an order that included the following: "The sole surviving claim is whether respondent failed to accommodate complainant's disability by not allowing her to work 40 hours a week over a seven day period."
2. By a letter dated November 17, 1999, respondent terminated complainant's employment based on the conclusion that she was medically unfit to continue in service, pursuant to §230.37(2), Stats., effective November 19, 1999.
3. Complainant has not informed the Commission that she has taken any steps to challenge legally her separation from service as set forth in Finding of Fact #2, and the Commission is unaware of any such challenge.

CONCLUSIONS OF LAW

1. An issue is moot when a determination is sought which can have no practical effect on a controversy. *See, e. g., State ex rel Ellenburg v. Gagnon*, 76 Wis. 2d 532, 536, 251 N. W. 2d 773 (1977).

2. Inasmuch as complainant is no longer employed by respondent, any decision the Commission might make on the question of whether respondent failed to provide complainant an accommodation could not have any practical effect on complainant's situation as long as complainant remains separated from respondent's employment.

3. This case is moot.

OPINION

At this point, complainant has not indicated, and the Commission is not aware, that she has legally challenged her separation. In the absence of a challenge to her separation from employment, there is no reason to think there is any likelihood that she would return to that employment. So long as she remains outside respondent's employment, any order the Commission could make with regard to the matter of respondent's alleged failure to have accommodated her disability during her tenure as an employe cannot possibly have a practical legal effect on an existing controversy, and this would normally lead to a determination that the case is moot.

There are cases on mootness which have considered the significance of the interest of the party opposing dismissal in finding out if he or she has been discriminated against by the employer. *See Watkins v. DILHR*, 69 Wis. 2d 782, 233 N. W. 2d 360 (1977). However, due to the fact that complainant has not set forth her position on the instant motion, she has failed to indicate whether she wants to assert any such interest, and to proceed with this case notwithstanding the inability of the Commission to enter an order that would have any tangible effect on an existing controversy. Therefore, the Commission will not address the question of whether the assertion of an interest in a determination of the question of whether respondent discriminated against complainant by denying her an accommodation which she requested in May 1998, would, standing alone, provide a basis to proceed to hearing, as against a

contention that this matter has been rendered moot by the termination of complainant's employment effective November 19, 1999.


ORDER


This complaint is dismissed as moot.

Dated: March 22, 2000.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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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 per-

sonally, 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.)

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