

STATE OF WISCONSIN

PERSONNEL COMMISSION

LYNN SIEWERT,
Complainant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION,**
Respondent.

**RULING ON PETITION
FOR REHEARING**

Case No. 98-0220-PC-ER

This matter is before the Commission following the entry of an order of dismissal on February 10, 1999, and the filing by complainant of a letter on February 17, 1999, which the Commission has construed as a petition for rehearing pursuant to §227.49, Stats.

By way of background, this complaint was originally filed with the EEOC (United States Equal Employment Opportunities Commission), and cross-filed with this Commission. On December 7, 1998, this Commission received a copy of an EEOC order dismissing complainant's charge. By a letter dated December 14, 1998, this Commission advised complainant that if she now desired to pursue this charge before the Commission, she had to sign her charge (a copy of which was enclosed) before a notary public and return the notarized charge by December 30, 1998. Complainant did not do this, and in a January 11, 1999, letter, the Commission advised her that if she did not do so by January 22, 1999, it would be assumed that she did not wish to pursue this matter and it would be dismissed. Complainant still did not return the notarized charge or otherwise contact this Commission, and on February 10, 1999, the Commission dismissed this case for the following reason: "Based on complainant's failure to respond to the Commission's January 11, 1999, she has indicated that she did not wish to cross-file her complaint with the Personnel Commission."

After the Commission construed her letter filed February 17, 1999, as a petition for rehearing and asked her to clarify on what basis she was requesting a rehearing, she filed the notarized charge on March 5, 1999, along with a letter which includes the following:

When the EEOC mailed me a paper to sign in order to cross-file with the PC, I had trouble dealing with the paper and getting it back to you. First, I signed it and later realized I had to get it notarized. So I let it sit and I was going to bring it to the bank to resign it in front of a notary and get it notarized, and I wanted a copy, and I never had a chance to do any of this.

I was having great difficulty in coping in December and in January. I kept on feeling that I was going to have another nervous breakdown. I went to see the doctor about it a number of times. I was so scared that another nervous breakdown was around the corner and I didn't know how to stop its progression. When I saw the doctor, we questioned if it was perhaps a sugar problem or an estrogen problem. We checked out both the sugar and the estrogen, and it was neither.

I have fears from the nervous breakdown. My body is not the same. Between the crushing anti-Semitism [sic] and the harassing me at the prison and the taunting me with "Granny" and then the nervous breakdown following shortly thereafter at the DOT, I've reached my limits and something has happened in my head. I start to tremble, and cry, and fear, and helplessly sob, not knowing which way to turn. I was fired a year ago and can't get a job anyplace. I have zero income. There are weeks I find it hard to cope with the rejections, with the hunger, with the being fired for having a nervous breakdown on the job. There are times I can't cope with it all anymore [ellipses in original] and so it is in my struggling to navigate with the EEOC, the PC, the DVR, and the whole business. What good does it do me to try to deal when I get turned down all the time anyway, and I can't afford another lawyer to help me deal with the legalese. When I have trouble dealing with all the papers and the notarizing and the whole bit, please forgive me—I am doing the best I can. I have no one to help me and at times the whole thing is overwhelming. Please understand I try to cooperate with everyone all the time, and when I fall short, it's not intentional.

The particular deadlines the Commission established for complainant to file a notarized charge of discrimination were not based on any specific statutory requirements. The Commission has taken the approach that a party's failure to comply with similar deadlines can be excused under certain circumstances:

[T]he Commission will accept a late filing if the complainant shows good cause as to why the [document] was filed late.

Good cause, generally speaking, is established when the complaint shows that the filing was late for a reason beyond complainant's control Illness is a reason which could result in a finding that an

appeal was filed late for good cause . . . [if complainant] establishe[s] that his illnesses were the reason why his [or her document] was filed late. *Allen v. DOC*, 95-0034-PC-ER, 11/7/97, pp. 4-5.

Liberal interpretation of complainant's letter quoted above, it appears complainant contends that she was unable to proceed to have her charge notarized and to return it to the Commission due at least in part to her psychiatric situation during that period of time. If complainant could establish that this indeed was the case (presumably through a doctor's opinion), this arguably would provide a basis for a different decision than the order the Commission entered on February 10, 1999. That is, the Commission interpreted complainant's failure to have submitted her notarized charge of discrimination as indicating that she did not wish to proceed with her charge before the Commission. Based on her most recent letter, she in effect appears to be asserting that her failure to act was not based on a decision to drop her case, but rather to circumstances beyond her control. If she could establish this, it arguably would provide a basis for a conclusion that the Commission's February 10, 1999, order was premised on a "material error of fact," §227.49(3)(b), Stats. Therefore, the Commission will grant the petition to the extent of temporarily withdrawing its February 10, 1999, order, to allow evidentiary proceedings on complainant's allegations.

ORDER

The order entered February 10, 1999, is withdrawn, and a conference with the parties will be scheduled to arrange for evidentiary proceedings consistent with this decision.

Dated: March 12, 1999.

AJT:980220Cdec2

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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