

STATE OF WISCONSIN

PERSONNEL COMMISSION

S██████ K. D██████
Complainant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN-MADISON**
Respondent.

**RULING ON MOTION
TO DISMISS**

Case No. 99-0018-PC-ER

This is a complaint of age discrimination and retaliation for engaging in protected whistleblower and fair employment activities. On May 24, 1999, respondent filed a motion to dismiss part of the complaint for untimely filing. The parties were permitted to brief the motion and the schedule for doing so was completed on July 7, 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 this motion.

FINDINGS OF FACT

1. This complaint was filed on January 25, 1999.
2. In her initial filing, complainant alleged that respondent discriminated and retaliated against her on December 1, 1998, by relocating her office and by restricting her access to her former work site; and that respondent retaliated against her during the last week of November of 1998 when her supervisors solicited negative comments about complainant from certain of her co-workers.
3. Also in her initial filing, complainant identified 18 additional incidents which she later clarified constituted allegations of retaliation. The incidents underlying 17 of these 18 allegations date from January of 1996 through April of 1997. The 18th allegation is that a supervisor interrupted a September 1998 meeting to ask complainant, who was then engaged in a conversation with another employee, if she had anything to add.

4. The 17 allegedly retaliatory incidents which occurred between January of 1996 and April of 1997 may be summarized as follows:

1. On January 9, 1996, complainant overheard Chuck Krueger state on the telephone that "D. [REDACTED] came into my office and said how things had changed since she returned."

2. During a meeting held January 12, 1996, Chuck Krueger requested input only from the complainant and acted in a threatening manner toward her.

3. During the afternoon of January 12, 1996, Chuck Krueger acted in a threatening manner toward the complainant when discussing her position description and her need for student and LTE support.

4. On or around March 11, 1996, Chuck Krueger directed Eli Soto to single out the complainant by meeting with her to discuss a memo drafted by a co-worker of complainant's in which the co-worker stated that she had been told that the complainant had expressed displeasure about the co-worker's absences due to bronchial asthma.

5. Chuck Krueger harassed and singled out the complainant by sending a March 25, 1996, memorandum to Eli Soto in which he asked Mr. Soto to give the complainant a chance to respond to several comments he had been told were made by the complainant.

6. Chuck Krueger's March 29, 1997 memorandum to Eli Soto regarding an incident with a student employee was "directed to slander" the complainant further.

7. Complainant understood that Chuck Krueger "had written several memos to the Executive Committee, with copies to the Dean slandering me..." and that she requested these memoranda in an April 22, 1996 memorandum to Chuck Krueger.

8. Chuck Krueger's April 29, 1996 memorandum to complainant was incorrect in its statement that he was unaware of any other memoranda written by him addressing additional issues of complainant's conduct, because she "saw and read a four-page memo dated February 12 that greatly slandered me that was addressed to the Executive Committee, Eli Soto and R. D. Nair."

9. Complainant's job description was changed July 9, 1996 so that 50% of her position would involve working with John Keenan's area.

10. Complainant's job description was changed on July 11, 1996, again, to 50% transportation and logistics support, 30% procurement support and 20% distance education and alternative delivery support.

11. Chuck Krueger changed complainant's job description again on February 25, 1997 to 50% transportation and logistics, 30% procurement and 20% support to other program coordinators.

12. Chuck Krueger had Sandy Hunter (former program coordinator) ask the complainant to do a task normally done by Sandy's student for the purpose of embarrassing the complainant.

13. During a February 28, 1997 meeting with Eli Soto about her position, Eli stated that he had never seen a February 25 memorandum from Chuck Krueger which stated that "Eli and I agree that we will take the general approach as follows ..."

14. In March of 1997, Chuck Krueger deliberately tried to rush changes in complainant's position responsibilities, as well as other staff members' responsibilities, in an attempt to harm the complainant's work performance.

15. Eli Soto did not stop the "rush that Chuck was putting on" the changes in staff responsibilities despite complainant's March 13, 1997 email requesting Eli's assistance.

16. On March 23, 1997 Chuck Krueger approached her at the front desk, pointed his finger at her and said that she was to be the spokesperson for the program coordinators, and then shouted at her in a violent tone of voice.

17. Chuck Krueger "was behind" Eli Soto's decision to deny complainant's April 23, 1997 request for flex-time during the summer.

5. The motion to dismiss under consideration here relates to these 17 allegations of whistleblower/fair employment retaliation.

In regard to the allegations of whistleblower retaliation, §230.85(1), Stats., provides that, "an employee who believes that a supervisor or appointing authority has initiated or administered, or threatened to initiate or administer, a retaliatory action against the employee in violation of sec. 230.83 may file a written complaint with the commission, specifying the nature of the retaliatory action or threat thereof and requesting relief, within 60 days after the retaliatory action occurred or was threatened or after the employee learned of the retaliatory action or threat thereof, whichever occurs last." In regard to the allegations of fair employment retaliation, §111.39, Stats., requires that complaints of discrimination or retaliation be filed "no more than 300 days after the alleged discrimination occurred."

The actionable period for the allegations of whistleblower retaliation began on November 26, 1998; and the actionable period for the allegations of fair employment retaliation began on March 31, 1998. None of the subject 17 allegations occurred during either of these actionable periods. A continuing violation theory is not applicable here because a period of 17 months passed between the last incident alleged in the list of 17 under consideration here, i.e., April of 1997, and the next incident of alleged retaliation, i.e., September of 1998. This is a significant enough period of time to "break the chain" of events necessary to sustain a continuing violation. See, *Kortman v. UW-Madison*, 94-0038-PC-ER; *Chelcun v. UW-Stevens Point*, 91-0159-PC-ER, 3/9/94. It should also be noted that several of the 17 allegations involve discrete personnel actions, such as the removal of duties from complainant's position, which would not have withstood a timeliness challenge even if a continuing violation would have been found. See, *MacDonald v. UW-Madison*, 94-0159-PC-ER, 8/5/96.

It should also be noted that this ruling does not address the questions of whether the remaining actions are sufficient to constitute adverse employment actions within the meaning of the Fair Employment Act or disciplinary actions within the meaning of the whistleblower law since the motion under consideration here dealt only with the question of timely filing.

CONCLUSIONS OF LAW

1. Complainant has the burden to show that the subject 17 allegations were timely filed.
2. Complainant has not sustained this burden.

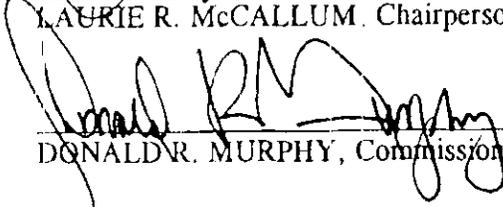
ORDER

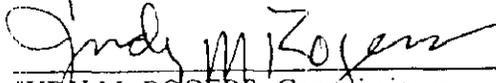
So much of this complaint as relates to the subject 17 allegations of retaliation (listed in Finding #4, above) is dismissed.

Dated: July 28 ^[1999], 1998

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

LRM: 990018Cru11