

**KRISTIN KOWING,**  
*Complainant,*

v.

**Chairperson, UNIVERSITY OF  
WISCONSIN HOSPITALS AND CLINICS  
BOARD,**  
*Respondent.*

**RULING  
ON  
MOTION**

Case No. 99-0102-PC-ER

This matter is before the Commission on respondent's motion to dismiss complainant's claim under the whistleblower law (subch. III, ch. 230, Stats.) for failure to state a claim. Complainant was provided an opportunity to file written argument. The following findings appear to be undisputed.

#### FINDINGS OF FACT

1. On June 14, 1999, complainant filed a complaint with the Personnel Commission relating to respondent's decision to terminate her probationary employment. The complaint included a claim of whistleblower retaliation.

2. In a letter dated June 25, 1999, a member of the Commission's staff asked the complainant a series of questions relating to her complaint. The following question related to complainant's whistleblower claim:

- 1) Regarding your claim of Whistleblower retaliation, provide the following information:
  - a) What did you do that you feel is protected against retaliation under §§230.81 to 230.85, Stats? (If you made a disclosure, when and to whom did you make your disclosure?)
  - b) Was your disclosure in written form? If so, provide a copy of the disclosure.
  - c) What information did you disclose?

- d) Identify each retaliatory action, the date of occurrence, and who committed the alleged retaliatory action.

Complainant responded by letter dated July 18, 1999. Her response to question 10 reads:

10.) I spoke to Mr. Johnson in Human Resources on a Tuesday or Wednesday (approx. 1 week before I was terminated) about my situation with Mr. [H] as well as what had happened regarding my coworkers [E] and [B]. I told him that I was a witness to what occurred as far as the harassment towards [E] and [B] by [S], [J] and Mr. [H]. My disclosure was not in written form. The retaliatory action was the result of myself being terminated by Melissa Welicky on May 5, 1999.

#### CONCLUSION OF LAW

Complainant has failed to state a whistleblower claim.

#### OPINION

This case is before the Commission pursuant to respondent's motion to dismiss for failure to state a claim. The Commission analyzes such a motion according to the procedure set forth in *Morgan v. Pennsylvania General Ins. Co.*, 87 Wis.2d 723, 731-32, 275 N.W. 2d 660 (1979):

For the purpose of testing whether a claim has been stated pursuant to a motion to dismiss under sec. 802.06(2)(f), Stats., the facts pleaded must be taken as admitted. The purpose of the complaint is to give notice of the nature of the claim; and, therefore, it is not necessary for the plaintiff to set out in the complaint all the facts which must eventually be proved to recover. The purpose of a motion to dismiss for failure to state a claim is the same as the purpose of the old demurrer - to test the legal sufficiency of the claim. Because the pleadings are to be liberally construed, a claim should be dismissed as legally insufficient only if "it is quite clear that under no conditions can the plaintiff recover." The facts pleaded and all reasonable inferences from the pleadings must be taken as true, but legal conclusions and unreasonable inferences need not be accepted.

The whistleblower law prohibits retaliation against state employees who have engaged in an activity protected under that law. Pursuant to §230.81, Stats.:

(1) An employe with knowledge of information the disclosure of which is not expressly prohibited by state or federal law, rule or regulation may disclose that information to any other person. However, to obtain protection under s. 230.83, before disclosing that information to any person other than his or her attorney, collective bargaining representative or legislator, the employe shall do either of the following:

(a) Disclose the information in writing to the employe's supervisor.

(b) After asking the commission which governmental unit is appropriate to receive the information, disclose the information in writing only to the governmental unit the commission determines is appropriate. The commission may not designate the department of justice, the courts, the legislature or a service agency under subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each appropriate governmental unit shall designate an employe to receive information under this section.

(2) Nothing in this section prohibits an employe from disclosing information to an appropriate law enforcement agency, a state or federal district attorney in whose jurisdiction the crime is alleged to have occurred, a state or federal grand jury or a judge in a proceeding commenced under s. 968.26, or disclosing information pursuant to any subpoena issued by any person authorized to issue subpoenas under s. 885.01. Any such disclosure of information is a lawful disclosure under this section and is protected under s. 230.83.

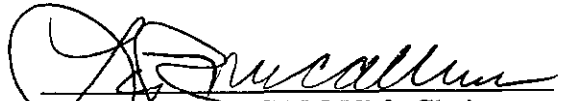
(3) Any disclosure of information by an employe to his or her attorney, collective bargaining representative or legislator or to a legislative committee or legislative service agency is a lawful disclosure under this section and is protected under s. 230.83.

The only protected activity identified by complainant is her conversation with a representative of respondent's human resources department. That activity does not fall within the scope of any portion of §230.81, Stats. Because complainant did not engage in a protected activity, she has failed to state a claim under the whistleblower law.

ORDER

Respondent's motion to dismiss for failure to state a claim is granted and complainant's whistleblower claim is dismissed. Complainant's claim of sex discrimination will be investigated according to the Commission's standard practice.

Dated: November 5, 1999 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner