

**ABDELNASER J. AL-HASAN**  
*Complainant,*

v.

**President, UNIVERSITY OF WISCONSIN  
SYSTEM,**  
*Respondent.*

**DECISION  
AND  
ORDER**

Case No. 99-0110-PC-ER

This matter is before the Commission after the Commission issued a certified letter to complainant pursuant to §111.39(3), Stats. The following facts appear to be undisputed.

#### FINDINGS OF FACT

1. The complaint alleges a claim of discrimination based on national origin and ancestry relating to respondent's alleged failure to hire the complainant for two tenure-track positions in February and May of 1999.

2. The complaint, and a cover letter from Attorney Miszewski, was sent to the Equal Rights Division (ERD) of the Department of Workforce Development where it was received on June 24, 1999. The complaint was on an ERD form. The Equal Rights Division forwarded the complaint form to the Personnel Commission where it was received on June 25, 1999 and assigned Case No. 99-0110-PC-ER.

3. At the time of filing and all subsequent points in the proceeding, complainant has been represented by Attorney Miszewski.

4. By letter dated June 29, 1999, complainant's attorney was notified by the Commission as follows:

Your discrimination complaint filed on behalf of AbdelNaser Al-Hasan has been forwarded to the Personnel Commission by the Equal Rights Division. Under state law, most discrimination complaints filed against

the State of Wisconsin as an employer must be filed with the Personnel Commission.

You filed Mr. Al-Hasan's discrimination complaint on an Equal Rights Division (ERD) form. Before the complaint can be processed further, Personnel Commission administrative rules (§PC2.02(2), Wis. Adm. Code) require that you submit a signed, verified and notarized complaint. The ERD form does not meet these requirements. Enclosed are materials including a Personnel Commission complaint form that fulfills the aforementioned requirements. Please complete the form and submit it by *July 14, 1999*. If you wish, with respect to Item 6 ("Description of Discrimination/Retaliation"), you may reference your ERD complaint regarding the substance of the complaint rather than rewriting your complaint narrative.

For your information, Mr. Al-Hasan must sign the discrimination complaint form in front of a Notary Public. You cannot sign it on his behalf. (Emphasis in original.)

5. The Commission did not receive a response to the June 29<sup>th</sup> letter. By a letter dated July 21, 1999, a member of the Commission's staff wrote to the complainant as follows:

The Personnel Commission previously wrote to you on June 29, 1999, and asked you to perfect the above discrimination/retaliation complaint. To date, we have received no response.

If your client wishes to proceed with his complaint, you must perfect the complaint as described in the enclosed correspondence dated June 29, 1999. Your response must be received by the Commission within 20 calendar days of the date of this certified letter. If you do not file your response with the Commission within the 20 day time period (**by August 10, 1999**), I will recommend that your client's case be dismissed for lack of prosecution.

Pursuant to §111.39(3), Stats., which relates to claims filed under the Fair Employment Act:

The (commission) shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the (commission) concerning the complaint and if the correspondence is sent by certified mail to the last known address of the person.

If you have any questions, please feel free to call me.

The letter was sent via certified mail to the complainant's attorney. The return receipt shows it was delivered on July 22, 1999.

6. On August 11, 1999, Attorney Ricci contacted a Commission staff member by phone on behalf of Attorney Miszewski. Attorney Ricci requested an extension until August 20<sup>th</sup> to perfect the complaint. He memorialized the conversation in a letter also dated August 11<sup>th</sup>:

I write at your request to document the conversation we had this afternoon. At that time I informed you that Mr. Miszewski's wife had a baby (prematurely) last week and that he would be out of the office until Monday. As he was supposed to have filed a complaint which complied with commission requirements by August 10, I requested on his behalf that he be given an extension to file the complaint. As a result, you agreed to grant an extension until Friday, August 20 for filing of the complaint.

7. The Commission staff member followed up with a letter dated August 12<sup>th</sup>, withdrawing the prior approval of the extension:

I mistakenly granted an extension, not realizing that the nature of §111.39(3), Stats. does not appear to permit me to grant such an extension (only the Commission has that authority). Regrettably, I must withdraw my prior approval of an extension. Instead, you will need to follow the procedure the Commission ordinarily uses when we receive a late response from a complainant who has received a 20 day letter.

8. Complainant, through his attorney, subsequently asked to withdraw his complaint. Respondent did not object to the request so long as it resulted in a dismissal with prejudice. Complainant did not agree to this condition so his withdrawal request was effectively withdrawn. (Commission's letter dated September 13, 1999) The parties then filed arguments as to whether the matter should be dismissed as a consequence of the July 21<sup>st</sup> certified letter.

#### CONCLUSION OF LAW

Complainant failed to timely respond to the 20 day certified letter issued by the Commission pursuant to §111.39(3), Stats.

OPINION

Section 111.39(3), Stats., provides that the Commission "*shall dismiss* a complaint if the person filing the complaint fails to respond within 20 days" to correspondence sent by certified mail to the last known address of the person.

Complainant, through his attorney, offers the following argument in support of his request that he be allowed to withdraw the complaint without prejudice rather than to dismiss it with prejudice:

Upon notice of his claim, Mr. Al-Hasan's complaint was erroneously filed with the Equal Rights Division rather than the Personnel Commission. This mistake could have been easily remedied by re-filing. The only issue to be cleared up was whether or not Mr. Al-Hasan in fact desired to utilize the Personnel Commission or the EEOC as his forum of choice. Mr. Al-Hasan did have some concerns about his choice of venue. Unfortunately, we did not resolve this concern before the twenty days. At no time did Mr. Al-Hasan ever consciously file a complaint with the Personnel Commission.

In order to resolve the concern in a timely manner I had scheduled time to consult with my client and receive his signature. However, before that could happen, and unexpectedly, my wife gave birth to our child several weeks prematurely. Unfortunately, in my mind I had already scheduled the time to resolve the problem and it was not the first thing on my mind to have covered (I was admittedly pre-occupied with the well being of my family).

When the time line problem was discovered, Attorney Matt Ricci did make a phone call and memorialize the discussion in a letter to the Personnel Commission. After Atty. Ricci's discussion with Ms. Julie Eckenthaler he was told that an extension was indeed granted. Since then that extension has been rescinded.

Complainant sought to file a complaint under the Wisconsin Fair Employment Act (WFEA) against the University of Wisconsin (Whitewater). Pursuant to §111.375(2), complaints against state agencies, as employers, are to be filed with the Personnel Commission, while other WFEA complaints are processed by the Equal Rights Division of the Department of Workforce Development. Complainant mistakenly sent his complaint to ERD, which promptly forwarded it to the Personnel Com-

mission. Upon receipt, the Commission assigned it a case number and asked complainant to perfect the complaint by completing a more appropriate form. Complainant did not do so, despite having been sent a certified letter.

The Commission's rules regarding the content and form of complaints filed with the Commission are set forth in §PC 2.02, Wis. Adm. Code:

(1) Content. Complaints should identify the name, address and telephone number of the complainant, the name of the respondent agency, the facts which constitute the alleged unlawful conduct and the statutory basis of the allegation.

(2) Form. Complaints shall be written on a form available from the commission or on any other form that is acceptable to the commission. The complaint shall be signed, verified and notarized.

(3) Amendment. A complaint may be amended by the complainant, subject to approval by the commission, to cure technical defects or omissions . . . and those amendments shall relate back to the original filing date.

This rule is consistent with earlier decisions of the Commission holding that the absence of a notarized signature is merely a technical deficiency in a complaint that can be corrected by a subsequent filing that will relate back to the date of the initial complaint. *Fliehr v. DOA*, 85-0155-PC-ER, 12/17/85.

Here, the complainant's June 23<sup>rd</sup> materials, received by the Commission on June 25<sup>th</sup> were complete except for a notarized signature by complainant. The Commission issued a 20 day certified letter to complainant under §111.39(3), Stats., on July 21, 1999, to obtain the complainant's notarized signature on a copy of the Commission's complaint form. The Commission sent the certified letter to complainant's attorney. *Complainant did not respond to the letter until more than 20 days later.*<sup>1</sup>

While complainant may have had some concerns about his choice of venue, that concern did not relate to his responsibility, dictated by §111.39(3), to promptly respond to a certified letter issued by the Commission. The Commission has previously dis-

---

<sup>1</sup> Attorney Ricci did not contact the Commission until the 21<sup>st</sup> day, so any confusion arising from his telephone call to the Commission on that date is irrelevant.

missed complaints where information was filed on the 21<sup>st</sup> day after the mailing of a certified letter, *King v. DHSS*, 88-0007-PC-ER, 5/29/91, and the 22<sup>nd</sup> day, *Billingsley v. DOR*, 98-0132-PC-ER, 7/13/88. Other complaints have been dismissed where the response was 4 days late even though complainant had a death in the family and his father was suffering from cancer, *Powell v. DHFS*, 97-0147-PC-ER, 1/14/98, and 2 days late even though complainant argued that he needed the final weekend to complete his legal research, *Vest v. UW (Green Bay)*, 97-0042-PC-ER, 3/20/98.

Section 111.39(3), Stats. provides that the Commission "shall dismiss the complaint if no timely response is received." Complainant's concerns about venue and his attorney's understandable focus on his family do not satisfy the statutory requirement.

ORDER

This charge is dismissed for lack of prosecution pursuant to §111.39(3), Stats.

Dated: November 5, 1999

STATE PERSONNEL COMMISSION

KMS:990110Cdec1

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

AbdelNaser J. Al-Hasan  
c/o Matthew J. Miszewski  
Podell Ugent Haney & Miszewski  
611 North Broadway St., Ste 200  
Milwaukee, WI 53202-5114

Katharine Lyall  
President, UW System  
1720 Van Hise Hall  
1220 Linden Dr.  
Madison, WI 53706

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