

MARY ANNE HEDRICH,

Petitioner,

v.

PERSONNEL COMMISSION OF
THE STATE OF WISCONSIN,

Respondent.

FILED
IN CIRCUIT COURT
 DEC 15 1999
 WAUKESHA COUNTY
 CIVIL DIVISION

Decision
Case No. 99 CV 500

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PERSONNEL COMMISSION

Petitioner, Mary Ann Hedrich, seeks judicial review of the Personnel Commission's decision, pursuant to Wis Stat § 227. The Commission concluded that, pursuant to § 230.44(3) and § 111.39(1), Hedrich's time limit for filing a complaint of discrimination with the Commission under the Wisconsin Fair Employment Act (WFEA) was 300 days from the date the alleged discrimination occurred. The Commission concluded the occurrence was the date that her employment was being terminated. Hedrich filed her complaint with the Commission on September 1, 1998, more than 300 days after she was notified. Thus, the Petitioner's claim was dismissed. This Court affirms the decision of the Commission.

FACTS

Mary Ann Hedrich joined the Department of Health, Physical Education, Recreation, and Coaching (HPRC) at the University of Wisconsin Whitewater (UWW) as an instructor in 1990. In accordance with her appointment, she was considered for tenure in the 1995-96 academic year. On December 18, 1995, the tenured faculty of the HPRC voted to deny Hedrich's application for tenure. The result was communicated to UWW Chancellor Gaylon Greenhill and to Hedrich on

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January 16, 1996.

On January 25, 1996, UWW Provost Kay Schallenkamp informed Hedrich of her denial for tenure and informed her that the 1996-97 academic year would be her final year of appointment at UWW. Hedrich then began the process of appealing her denial for tenure. She requested a reconsideration of the HPERC tenure denial. Meetings held by the HPERC on February 16 and 21, 1996, did not change the result of Hedrich's denial of tenure. Hedrich then appealed to the UWW Grievance and Hearing Committee. The Committee formed the Mary Ann Hedrich Tenure Appeals Panel.

On June 14, 1996, the panel concluded that the HPRC Department's evaluation was inconsistent with the criteria adopted by the Department. However, on June 28, 1996, Chancellor Greenhill reaffirmed Hedrich's termination. Hedrich then requested a "Notestein Review" of Greenhill's decision pursuant to Wis Stat § 36.13(2)(b), of Greenhill's decision. This request was denied by Greenhill on or around July 10, 1996.

On September 23, 1996, Hedrich requested that the Tenure Appeals Panel allow a Notestein Review. This request was granted. Hedrich brought the matter to the Executive Committee of the UWW Faculty Senate. On November 22, 1996, Chancellor Greenhill stated in a letter to Hedrich that the Panel was without jurisdiction after his final decision of June 28, 1996 because the matter had been concluded.

Hedrich's employment with UWW ended on May 24, 1997. That was her last day of compensation. On November 20, 1997, the Senate found that Hedrich's qualifications were inadequate for tenure. Chancellor Greenhill indicated to a representative of the Senate that he had considered the matter closed since June of 1996, but that he was happy the Senate had reached

the same conclusion he had. Hedrich filed her complaint with the Personnel Commission on September 1, 1998.

STANDARD OF REVIEW

The findings of fact by the Commission are undisputed. This Court, as a reviewing court, must give great weight to the Commission's legal conclusions. The Supreme Court of Wisconsin, in *Jich v. DILHR*, 169 Wis. 2d 284, 290-91 (1992), summarized the appropriate standards of review of an agency's legal conclusions and statutory interpretation.

This court has generally applied three levels of deference to conclusions of law and statutory interpretation in agency decisions. First, if the administrative agency's experience, technical competence, and specialized knowledge aid the agency in its interpretation and application of the statute, the agency determination is entitled to "great weight." The second level of review provides that if the agency decision is "very nearly" one of first impression it is entitled to "due weight" or "great bearing." The lowest level of review, the *de novo* standard, is applied where it is clear from the lack of agency precedent that the case is one of first impression for the agency and the agency lacks special expertise or experience in determining the question presented.

The Commission has, in the past, considered statute of limitations issues. The Commission, in other proceedings, held that the period of limitations does not begin to run until the facts would support the complaint were apparent or should have been apparent to a person with a reasonably prudent regard for his or her rights similarly situated. Alleged discrimination in a tenure denial decision occurs when the candidate for tenure is notified of the final institutional decision. See *Hilmes v. DILHR*, 147 Wis. 2d 48, 53 (Ct. App. 1988).

Because the Commission has expertise in interpreting the statutes that it administers, this reviewing court give's great weight to the Commission's interpretation and application of the

statute of limitations This court hesitates to upset departmental judgments concerning questions of law if there exists a rational basis for the departments conclusions

DISCUSSION

This case involves application of the 300-day statute of limitations contained in Wis. Stat. §§ 111.39 and 230.44. Hedrich's complaint was filed on September 1, 1998. Her final day of employment at UWW was May 24, 1997. September 1, 1998 is more than 300 days after May 24, 1997. Hedrich argues that her complaint is timely because the November 20, 1997 decision of the UWW Faculty Senate was the first instance she could have possibly known that she had been subjected to unlawful discrimination. As a result of the facts presented before it, the Personnel Commission dismissed Hedrich's complaint alleging discrimination or retaliation in the terms and conditions of her employment.

In addition to dismissing Hedrich's allegations, the Commission determined that in this Title VII proceeding, the "alleged unlawful employment practice occurred" upon Hedrich's receipt of Chancellor Greenhill's memo, informing Hedrich that she had been denied tenure. The period of limitations began to run at that moment. Providing Hedrich with the benefit of the doubt, the Commission determined that she had presented no rational basis for her argument that the terms or conditions of her employment extended beyond her last day of employment. In reaching its conclusion, the Commission placed substantial emphasis on *Delaware State College v. Ricks*, 449 U S 250 (1980). In *Ricks*, the Supreme Court noted that discrimination cases must be decided on a case by case basis to determine at what point the limitations period should commence. The court determined that limitations periods normally commence when the employer's decision is made and communicated to the employee. Mere requests to reconsider the

decision cannot extend the limitations period.

The Commission also relied upon *Hilmes v. DILHR*, 147 Wis. 2d 48 (Ct. App. 1988) where the Court of Appeals considered the issue of when an allegedly discriminatory act "occurred" within the meaning of Wis Stat. § 111.39(1). The court concluded that "... it is when the employer makes known its decision to discriminate . . . that an unlawful employment practice occurs." *Id.* at 52.

Applying the relevant law to the present case, it is clear that the Commission correctly determined that a reasonable person similarly situated to Hedrich would have concluded upon receipt of Chancellor Greenhill's memo of June 28, 1996, that an official and final decision on her application for tenure had been made. Hedrich's requests for reconsideration or for collateral review do not justify the tolling of the statute of limitations. *See Ricks*. Hedrich's appeal to the Tenure Appeals Panel and to the UWW Faculty Senate have no bearing on the date the alleged discrimination occurred or the running of the statute. Hedrich took the appeals route as a direct result of her denial for tenure. It is clear she had knowledge of the alleged discrimination as far back as early 1996.

The evidence in the record also reveals that Hedrich did not file her charges within 300 days of her last day of employment. Hedrich states that even though May 24, 1997 was her last day of compensation for employment at UWW, she failed to realize that she would not be teaching a class during the beginning of the next school term. No reasonable person would continue to believe that a final decision on her employment status was pending. Even if the alleged discrimination occurred at the beginning of the 1997-98 school year, as Hedrich argues, September 1, 1998, the day the complaint was filed, is still more than 300 days beyond the alleged

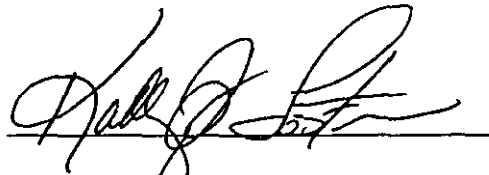
occurrence of discrimination.

The relevant case law is clear that the statute of limitations is not tolled simply because one appeals the adverse decision. Hedrich mistakenly relied upon the final decision of the UWW Faculty Senate in determining the moment the statute began to run. Hedrich had knowledge of her claim upon receipt of Chancellor Greenhill's letter dated November 22, 1996.

The Commission's findings are supported by substantial evidence. There is a rational basis for the department's conclusions to dismiss Hedrich's complaint. Therefore, the decision of the Commission to deny the claim by the Petitioner is affirmed.

DATED THIS 15 day of December, 1999

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'Kathryn W. Foster', is written over a horizontal line.

Kathryn W. Foster