

STATE OF WISCONSIN

PERSONNEL COMMISSION

MARTHA STONE,
Complainant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM (Extension),**

Respondent.

**RULING ON MOTION
FOR SUMMARY
JUDGMENT**

Case No. 00-0173-PC-ER

This is a complaint of disability discrimination. In a prehearing conference conducted on July 9, 2001, the parties agreed to the following statement of the issue for hearing:

Whether respondent discriminated against complainant because of her disability or failed to accommodate her disability with regard to the following allegations:

- a. In June 2000, respondent changed her job from providing fill-in reception duties to spending 50% of her time performing reception duties, and
- b. Respondent's decision to terminate complainant's employment effective December 29, 2000.

On October 26, 2001, respondent filed a motion for summary judgment. The parties were permitted to brief this motion and the schedule for doing so was completed on December 19, 2001. The following findings of fact are derived from information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion. Complainant is represented by counsel in this matter.

FINDINGS OF FACT

1. It is stipulated for purposes of this motion that complainant, at all times relevant to this matter, was disabled due to Adult Attention Deficit Disorder.

2. At all times relevant to this matter, complainant was employed as a Program Assistant 1 (PA 1) in the University of Wisconsin-Extension's Milwaukee County Office in the Southeast District, and Bonita Herrmann, Assistant Office Director, was one of her supervisors.

3. The PA 1 position description signed by complainant on August 8, 1996, remained in effect through the date of complainant's termination. This position description lists the following worker activities under Goal A, General Office Support:

- Answer telephone, relay messages or refer callers to appropriate faculty or other agencies.
- Process and screen incoming and outgoing mail. Distribute mail appropriately, as well as maintain current information on a variety of mailing procedures.
- Computerize and maintain weekly office program schedule.
- Computerize and maintain weekly facilities schedule.
- Manage the front desk and reception area.

This position description indicates that Goal A consumes 50% of complainant's PA 1 position's time, but does not detail the percentage of time attributable to each worker activity listed under Goal A.

4. There were three other PA positions in the Milwaukee County Office during the relevant time period. The position descriptions for two of these other PA positions (Muriel Davis, PA 2; Deborah Krivitz, PA 1) do not set forth responsibility for management of the front desk and reception area, for answering the office telephone, or for processing and screening office mail. The position description for the third PA position (Lisa Lake, PA 3), includes as a worker activity for less than 2% of the position's time, responsibility for acting as the office receptionist "when necessary "

5. Respondent, relying upon an affidavit signed by Herrmann on October 25, 2001, contends that complainant, throughout her employment in the PA 1 position, had primary responsibility for managing the front desk and reception area, for answering the office telephone, and for processing and screening office mail (hereafter,

“front desk responsibility”), although other staff performed these worker activities as back-ups to complainant.

6. Complainant contends, relying upon an affidavit she signed on December 4, 2001; an affidavit signed on December 3, 2001, by Suzanne Orth, a horticulturist in the Milwaukee County Office during at least part of the relevant time period; an affidavit signed on November 30, 2001, by Debra McRae, who was employed in the Milwaukee County Office during at least part of the relevant time period; and an affidavit signed on December 5, 2001, by Lisa Lake, that complainant never had primary responsibility for the front desk but performed this responsibility on an occasional basis only, and that this front desk responsibility rotated through certain office staff members, including complainant.

7 In September of 2000, complainant submitted a disability accommodation request to respondent in which she indicated that her psychotherapist and her physician had concluded that she was not able “to perform the duties required of managing the front desk on a long term basis” but could only fill in at the front desk “for an hour or two occasionally.”

8. In a letter dated September 27, 2000, complainant’s psychotherapist indicated that there was no accommodation that would enable complainant to staff the front desk, and that this restriction was permanent.

9. In a letter dated November 21, 2000, respondent notified complainant that, consistent with her position description, the front desk responsibility was an essential function of her position and, since, according to her psychotherapist and physician, she could no longer perform this function, she was medically terminated effective December 29, 2000.

OPINION

The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Balele v. Wis. Pers. Comm.*, 223 Wis.2d 739, 745-748, 589 N.W.2d 418 (Ct. App.

1998). Generally speaking, the following guidelines apply. The moving party has the burden to establish the absence of any material disputed facts based on the following principles: a) disputed facts, which would not affect the final determination, are immaterial and insufficient to defeat the motion; b) inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion; and c) doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. See *Grams v. Boss*, 97 Wis.2d 332, 338-9, 294 N.W.2d 473 (1980); *Balele v. DOT*, 00-0044-PC-ER, 10/23/01. The non-moving party may not rest upon mere allegations, mere denials or speculation to dispute a fact properly supported by the moving party's submissions. *Balele, Id.*, citing *Moulas v. PBC Prod.*, 213 Wis.2d 406, 410-11, 570 N.W.2d 739 (Ct. App. 1997). If the non-moving party has the ultimate burden of proof on the claim in question, that ultimate burden remains with that party in the context of the summary judgment motion. *Balele, Id.*, citing *Transportation Ins. Co. v. Huntziger Const. Co.*, 179 Wis.2d 281, 290-92, 507 N.W.2d 136 (Ct. App. 1993)

The complainant in a disability discrimination case must show that: (1) he or she is an individual with a disability, within the meaning of §111.32(8), Stats., and (2) the employer took one of the actions enumerated in §111.322(1), Stats. on the basis of complainant's disability. Once the employee has met the first two showings, the employer must show either that a reasonable accommodation would impose a "hardship" within the meaning of §111.34(1)(b), Stats., or that, even with a reasonable accommodation, the employee cannot "adequately undertake the job-related responsibilities" within the meaning of §111.34(2)(a), Stats. *Target Stores v. LIRC*, 217 Wis. 2d 1, 9-10, 576 N.W.2d 545 (Ct. App. 1998)

Respondent contends that the front desk responsibility was an essential function of complainant's PA 1 position; that complainant's disability rendered her unable to perform this function; that respondent was not required to remove this function from complainant's position as an accommodation; and that, as a result, respondent did not

discriminate against complainant and, as a matter of law, is entitled to judgment in this matter.

Complainant contends that the front desk responsibility was not an essential function of complainant's PA position, i.e., that, even though it was included as an assigned responsibility on complainant's position description, she actually performed this function, with management's knowledge and approval, on only an occasional, rotating basis. Complainant claims, as a result, that removing or modifying this responsibility would have been a reasonable accommodation for her disability and respondent discriminated against her for failing to effect such an accommodation.

It is obvious that, central to this dispute, is the question of whether the front desk responsibility was an essential function of complainant's PA 1 position. The affidavits provided by the parties paint two very different pictures of complainant's responsibility for the front desk. This presents a genuine issue of material fact sufficient to defeat this motion for summary judgment.

Respondent argues, however, that the language of the position description should control, and that this language establishes that the front desk assignment was an essential function of complainant's PA 1 position. However, the question of whether the essential functions of a position are determined by the language of a position description or by the duties and responsibilities actually performed by an incumbent has not been determined here and is not susceptible to determination at this stage of these proceedings based on the information available to the Commission. As a result, respondent's argument in this regard fails.

In view of the conclusion reached above, it is not necessary to address the remainder of the parties' arguments.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

2. Respondent has the burden to demonstrate it is entitled to summary judgment.
3. Respondent has failed to sustain this burden.

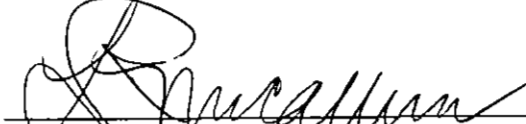
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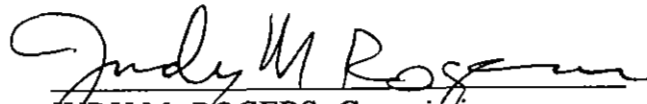
Respondent's motion for summary judgment is denied.

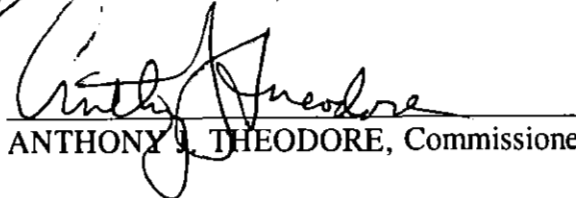
Dated: January 25, 2002

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STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


JUDY M. ROGERS, Commissioner


ANTHONY J. THEODORE, Commissioner