STATE OF WISCONSIN PERSONNEL COMMISSION

MARY JO ALDRICH,
Complainant,

v.

Secretary, DEPARTMENT OF HEALTH AND FAMILY SERVICES,
Respondent.

RULING ON RESPONDENT'S MOTION TO DISMISS

Case No. 01-0040-PC-ER

The above-noted case is before the Commission to resolve respondent's motion to dismiss for lack of subject matter jurisdiction. It is clear from the arguments raised, however, that this is a motion for summary judgment and the Commission treated it as such. Both parties filed arguments. Complainant's final argument was filed on June 4, 2001, apparently without sending a copy to the opposing party. The Commission faxed a copy to respondent on June 11, 2001, and respondent indicated on the same date that it would not file a responsive brief.

The facts recited below are made solely to resolve this motion. They are undisputed unless specifically noted to the contrary.

FINDINGS OF FACT

1. On March 23, 2001, the Commission received a discrimination complaint form from complainant, to which case number 01-0040-PC-ER was assigned. Complainant alleged that respondent violated the Family and Medical Leave Act (FMLA) by informing her that she was ineligible for FMLA leave to care for her sick daughter and by attempting to terminate her employment on March 26, 2001.

2. Complainant began working for respondent on December 4, 2000 in a Program Assistant 1 position. From March 13-19, 2001, she missed work due to her daughter's illness.

3. All work days missed by complainant were covered by a doctor's excuse. Complainant did not have sufficient leave time accumulated to cover the absences.

4. Complainant spoke with Ms. Sparks (her supervisor) on March 19th asking whether her employment was in jeopardy because of the leave without pay. Ms. Sparks responded that leave without pay situations were handled by the personnel office rather than by the supervisor. Complainant also requested information regarding FMLA leave. Ms. Sparks made an inquiry and reported to complainant that she was ineligible for FMLA leave.

5. On March 20, 2001, complainant received a letter at home from respondent regarding the potential of being terminated due to taking leave without pay (a copy of the letter was not provided by either party). Neither party has informed the Commission that termination occurred.

6. By letter dated April 13, 2000 (sic), respondent formally informed complainant that her request for FMLA leave was denied, stating as shown below in pertinent part:

> In order to be eligible for leave under the Wisconsin Family and Medical Leave Act, you must have worked more than 52 consecutive weeks for the State of Wisconsin and at least 1,000 hours during the preceding 52 week period prior to your leave request. Given that you have only worked for the State of Wisconsin for 34 consecutive weeks or 8 and a half months prior to your leave request, you are not eligible for leave and your request is therefore, denied.

7 Prior to working for respondent, complainant had worked for the Department of Natural Resources (DNR). She worked 34 weeks for the state (including her work for respondent and DNR) prior to her request for FMLA leave.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to §230.45(1)(k), Stats.

2. Respondent met its burden of showing entitlement to summary judgment.

3. Complainant did not work for the State of Wisconsin for more than 52 weeks prior to her request for leave under the FMLA and, accordingly, she was not entitled to leave under the FMLA.

OPINION

The Commission utilizes the following standard in reviewing a motion for summary judgment (*Grams v. Boss*, 97 Wis.2d 332, 338-339, 282 N.W.2d 637 (1980), citations omitted):

> On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgment the [Commission] does not decide the issue of fact; it decides whether there is a genuine issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy; some courts have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.
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> The papers filed by the moving party are carefully scrutinized. The 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. If the movant's papers before the [Commission] fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

Certain factors must be kept in mind in evaluating the present motion. First, complainant has the burden of proof. Second, she is unrepresented by counsel who presumably would be versed in the sometimes-intricate procedural or evidentiary matters that can arise on such a motion. Third, this type of administrative proceeding involves a less rigorous procedural framework than a judicial proceeding. Therefore particular care must be taken in evaluating each party's showing on the motion to ensure that the complainant's right to be heard is not unfairly eroded by engrafting a summary judgment process designed for a judicial proceeding.

The statute at issue is §103.10(2)(c), Stats., the text of which is shown below:

> This section only applies to an employee who has been employed by the same employer for more than 52 consecutive weeks and who worked for the employer for at least 1,000 hours during the preceding 52-week period.

Complainant's argument is shown below (letter dated 4/18/01) (emphasis in original):

> [The statute] states "an employee who has worked for the State of Wisconsin more than 52 consecutive weeks and who has worked (including paid leave) for at least 1,000 hours during that 52- week period." I believe that I have qualified for the Family Leave Act because I have accumulated 1,119 hours between the [DNR] and [DHFS] at the time that I filed my complaint with the Personnel Commission. I feel I have the right to receive Family Leave Act due to my child's severe illness.

It is apparent from her argument that complainant does not believe that §103.10(2)(c), Stats., requires an employee to work 52 consecutive weeks (or 52 weeks at all) to be eligible for leave under the FMLA as long as she accumulated 1,119 hours over a 52-week period prior to filing her complaint with the Commission. The Commission first notes that it is her status as of the date she requested leave which governs the application of §103.10(2)(c), Stats., not the later date when she filed a complaint with the Commission.

The Commission disagrees with complainant's reading of the statute. If complainant's interpretation were accepted, then the portion of the statutory text crossed out below would have no meaning:

> This section only applies to an employee ~~who has been employed by the same employer for more than 52 consecutive weeks and~~ who worked for the employer for at least 1,000 hours during the preceding 52-week period.

As such, the complainant's interpretation is contrary to basic principles of statutory interpretation:

> In the interpretation of a statute, the legislature will be presumed to have inserted every part thereof for a purpose. This is should not be presumed that any provision of a statute is redundant. A statute should not be construed in such manner as to render it partly ineffective or inefficient if another construction will make it effective. Indeed it is a cardinal rule of statutory construction that significance and effect should, if possible, without destroying the sense or effect of the law, be accorded every part of the act, including every section, paragraph, sentence or clause, phrase, and word.

73 Am Jur 2d *Statutes* §250. *See, Butzlaff v. Wis. Personnel Commission*, 166 Wis. 2d 1028,1036-1037, 480 N.W.2d 559 (Ct. App. 1992), wherein the court described the statute as containing two requirements (although the issue addressed in *Butzlaff* was not the same as here).

The FMLA is administered by the Commission and the Department of Workforce Development (DWD). Basically, the Commission has jurisdiction if the complainant is a State employee and DWD has jurisdiction for other complainants. See §103.10(12)(a), Stats. The DWD's administrative rules interpreting the FMLA, accordingly, are instructive if not controlling.

DWD's administrative rules contain the following two definitions, pertinent to §§103.10(2)(c), Stats., which is at issue in this case:

> §DWD 225.01(3), Wis. Adm. Code: A person shall be deemed to have "been employed by the same employer for more than 52 consecutive weeks" within the meaning of s. 103.10(2)(c), Stats., *if the person has actually been treated by the employer, according to the usual personnel recordkeeping practices of the employer* as required by ss. DWD 272.11 and 274.06, *as an employee during each of those 52 weeks*, irrespective of the number of hours worked in those weeks and notwithstanding that the employee may have, in that 52-week period, been off work for one or more weeks on vacation leave, sick leave or other leave, or on layoff, if such vacation leave, sick leave or other leave was granted to the employee by the employer according to a regular practice of granting such leaves, or the layoff was initiated by the employer, and if the employer allowed the employee to return to work at the end of the leave or layoff without having to reapply for employment. (Emphasis added.)
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> §DWD 225.01(4), Wis. Adm. Code: A person shall be deemed to have "worked for the employer for at least 1,000 hours during the preceding 52-week period" within the meaning of s. 103.10(2)(c), Stats., if the number of hours actually worked in that period plus the number of hours for which the employee was paid pursuant to a regular policy of paid vacation leave, sick leave or other paid leave equals at least 1,000 hours.

It is clear from the above rules that DWD also views §103.10(3)(c), Stats., as containing two separate and distinct requirements.

In summary, complainant did not work for the State for more than 52 consecutive weeks prior to her request for leave as required under the FMLA. Accordingly, she was not entitled to have leave under the FMLA.

ORDER

Respondent's motion is granted and this case is dismissed.

Dated: June 15, 2001.

STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

JMR:010040Crul1.doc

JUDY M. ROGERS, Commissioner

Parties:

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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.)

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