

HAI-SHEN (JIMMY) CHOU,
Complainant,

v.

**Secretary, DEPARTMENT OF NATURAL
RESOURCES,**
Respondent.

**RULING
ON
ISSUE FOR
HEARING**

Case No. 01-0147-PC-ER

This matter is before the Commission on disputes relating to the timeliness of the complaint.

Complainant is employed by respondent. The complaint relates to respondent's decision not to hire the complainant for the Environmental Engineer Supervisor position as air team supervisor at the Sturtevant Service Center.

Complainant filed a complaint of discrimination based on age and race that bears a Personnel Commission "Received" stamp of August 13, 2001. According to the complaint:

The announcement was made on e-mail on 10/23/00 by Lakshmi Sridharan that Tom Roose was selected for the position. I was informed of the decision a few days before the official announcement by telephone by Lakshmi Sridharan.

On September 23, 2001, respondent filed a motion to dismiss the complaint as untimely filed. Respondent contended the complainant's failure to specify the date he was informed of the hiring decision was "fatal" to complainant's claim.

By letter dated September 25, 2001, the Commission asked complainant to specify when he first learned of his non-selection:

You filed your complaint with the Personnel Commission on August 13, 2001, a Monday. I note that §990.001(4)(c), Stats.,¹ presumably applies

¹ This paragraph reads:

When the last day within which a proceeding is to be had or taken or an act done, which consists of the service upon or the filing with any

to your complaint. The effect of that provision would be to treat a filing on August 13th as if it had been filed on August 11th in terms of calculating the 300 [day] actionable period. Therefore, the earliest day of the actionable period for a complaint filed on August 13, 2001, would appear to be October 15, 2000.

It would help clarify this matter if you would specifically indicate whether you first learned that you had not been selected for the Sturtevant Service Center air team supervisor position a) on or after October 15, 2000, or (b) before October 15, 2000.

By letter dated September 28, 2001, to the Commission, complainant stated, in part: "From my personal record, the date that Lakshmi Sridharan informed me of that decision was October 19, 2000."

On October 12, 2001, respondent filed a written request that the Commission "dismiss Mr. Chou's complaint because he failed to prove that he filed within the actionable 300 day period and as a sanction for his bad faith in providing a bogus date of notification." In support of its submission, respondent supplied an affidavit from Ms. Sridharan. According to the affidavit, Ms. Sridharan's duties as regional Air and Waste Leader for respondent's Southeast Region include "the supervision and administration of the Southeast Region Air and Waste Program, including the recommendation and approval of the hiring of Region employees." Ms. Sridharan also averred that she was attending a workshop in St. Louis, Missouri on October 19, 2000, and did not telephone anyone in connection with the Air Team Supervisor position *on that date*. According to respondent, complainant "was intentionally misrepresenting the date that he was notified by Ms. Sridharan of his non-selection."

The Commission scheduled a telephone conference with the parties to discuss respondent's October 12, 2001, submission. Prior to the conference, complainant submitted a letter stating that October 19th "was the date I strongly believe I was

agency of the state falls on a Saturday and the duly established official office hours of such agency do not include any office hours thereof on such Saturday, said proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.

informed by phone by Lakshmi Sridharan.” He also contended that he took sick leave for the afternoon of the day he spoke with Ms. Sridharan, and supplied documentation indicating he was on sick leave for the afternoon of October 19, 2000.

Complainant has not wavered from the position he initially expressed in his September 28th letter to the Commission that he first learned of the non-selection decision from Ms. Sridharan via a telephone conversation on October 19th. Respondent denies that Ms. Sridharan called complainant on October 19th but does not deny that she informed complainant of the non-selection decision on some other day.

The conference report for the conference held with the parties on November 12, 2001, reflects the following:

The undersigned proposed the following statement of issues for hearing, and the complainant concurred:

- a. Whether complainant’s complaint was timely filed.
- b. If complainant failed to establish he was notified of the selection decision by phone on October 19, 2001, what if any sanctions should be imposed.

Respondent proposed the following issues for hearing:

- a. Whether complainant was advised of his non-selection on October 19, 2000, by Lakshmi Sridharan, via telephone.
- b. If complainant failed to establish he was notified of the selection decision by phone on October 19, 2001, what if any sanctions should be imposed.

The Commission notes that the complainant appears *pro se* in this matter and that complainant has the burden of establishing the timeliness of his complaint of discrimination. *Nelson v. DILHR, 95-0165-PC-ER, 2/11/98*

There is clearly a dispute of fact as to whether Ms. Sridharan told complainant on October 19th, by phone, of the non-selection decision. Complainant contends Ms. Sridharan called him on that date and respondent contends there was no phone call on October 19th. If, based on the evidence produced at hearing, complainant is able to show that this conversation occurred as he alleges, he will establish the timeliness of his appeal. However, there is another possibility that might occur at hearing. The

evidence might show that Ms. Sridharan first advised complainant of the non-selection decision on a day other than October 19th, but a day that is still within the 300 day filing period. For example, if the hearing established that Ms. Sridharan informed complainant of the hiring decision on October 18th or on October 21st, the August 13, 2001, complaint would still be timely.

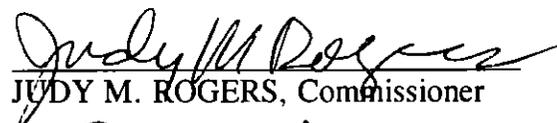
Because complainant appears *pro se* and because the respondent has not expressly denied that Ms. Sridharan notified complainant of the hiring decision on some date (other than October 19, 2001) that would still make the complaint timely, the Commission concludes that the issue for hearing should be broad enough to allow for such a finding. Respondent has not identified a reason sufficient to foreclose the possibility that the evidence at hearing will establish a timely notification date, other than October 19th. If a timely date other than October 19th is established, the Commission will still address respondent's request for sanctions as outlined in hearing issue b.

ORDER

The issues for hearing in this matter are as follows:

- a. Whether complainant's complaint was timely filed.
- b. If complainant failed to establish he was notified of the selection decision by phone on October 19, 2001, what if any sanctions should be imposed.

Dated: November 29, 2001 STATE PERSONNEL COMMISSION


JUDY M. ROGERS, Commissioner

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ANTHONY J. THEODORE, Commissioner

Chairperson Laurie R. McCallum did not participate in the consideration of this matter.