

STATE OF WISCONSIN

PERSONNEL COMMISSION

**PATRICIA D. PRISCHMAN**  
*Complainant,*

v.

**Chancellor, UNIVERSITY OF  
WISCONSIN-MILWAUKEE,**  
*Respondent.*

**RULING ON MOTION  
TO DISMISS**

Case No. 98-0108-PC-ER

This is a complaint of disability discrimination relating to a demotion. On November 14, 2000, respondent filed a motion to dismiss contending that the complainant failed to timely appeal from the EEOC's determination. The parties were permitted to brief this motion. 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.

#### FINDINGS OF FACT

1. On May 28, 1998, complainant filed a charge of discrimination with the federal Equal Employment Opportunities Commission (EEOC). Complainant requested that this charge be cross-filed with the Commission pursuant to the deferral arrangement between the two agencies. Complainant's cross-filed charge was received by the Commission on June 3, 1998.

2. The subject matter of complainant's charge is a demotion which was imposed on August 12, 1997

3. The EEOC dismissed complainant's charge on August 19, 1998. Complainant and respondent received notice of this dismissal. The Commission first received notice of this dismissal on April 10, 2000.

4. In a letter to complainant dated April 28, 2000, the Commission stated as follows, in pertinent part:

As you will recall, your case noted above was cross-filed with the Wisconsin Personnel Commission (WPC). Under the work-sharing arrangement between this agency and the Equal Employment Opportunity Commission (EEOC), this case was initially processed by the EEOC. Recently, the WPC became aware that the case had been dismissed by the EEOC on August 19, 1998. We do not know why the EEOC did not inform the WPC of the dismissal at the time it occurred. Our usual procedure is to adopt the EEOC's determination and give the complainant an opportunity to appeal any adverse determination through the WPC's procedures.

At the end of its investigation, the EEOC was unable to conclude that the information it had obtained established violations of the statutes. The Personnel Commission adopts EEOC's determination. If you wish to appeal the Personnel Commission's action, you must file a written appeal with the Commission within 30 days of the date of this letter. An appeal is considered filed with the Personnel Commission on the date it is received in this office.

Upon receipt of a timely filed appeal, your case will be scheduled for a prehearing. If an appeal is not received within the time period, I will recommend to the Commission that the case be dismissed.

5. Complainant filed an appeal of the EEOC's determination, as adopted by the Commission, on May 26, 2000.

6. No attorney filed a notice of appearance with the Commission on behalf of complainant until September of 2000.

#### OPINION

As outlined in the letter sent to complainant by the Commission (See Finding 4, above), and in the Commission's recent decision in *Lemmen v. UW (Green Bay)*, 99-0170-PC-ER, 4/4/01, the Commission's practice, upon notification from the EEOC that it has completed its investigation of a cross-filed charge and reached a determination that no discrimination/retaliation probably occurred, is to direct a letter to the complainant advising that the Commission had adopted the EEOC's determination and providing notice that an appeal of this determination must be filed within 30 days in order for the Commission to process the charge further. This practice does not

contemplate that either party is responsible for notifying the Commission of the EEOC's action. Respondent argues that this responsibility should be imputed to the complainant who has the responsibility to prosecute the charge. However, respondent has cited no authority for, nor persuasive argument supporting, the proposition that a complainant is required to undertake a watchdog role and to step in to the process when an administrative agency like the EEOC fails to carry out one of its ministerial responsibilities. The failure here resulted from agency inaction and should not be imputed to either party.

Respondent offers an equitable estoppel argument in this regard, i.e., complainant's failure to notify the Commission that the EEOC had dismissed her charge induced respondent to close its case file and not preserve evidence in anticipation of further litigation. First of all, as discussed above, complainant had no more of an obligation than respondent to provide this information to the Commission. Second, in order to sustain a finding of equitable estoppel, the reliance by respondent would have had to have been reasonable. Respondent was represented by counsel during the entire time period relevant here. Closing a case file without the receipt of an order of dismissal from the Commission cannot be considered a reasonable action under these circumstances.

The parties have also argued various other theories here. The concept of equitable tolling was argued by the parties but the circumstances here do not involve a statute of limitations or other specific time requirement which the complainant failed to satisfy. It is undisputed that her original charge was timely filed, that she filed a timely appeal of the EEOC determination as adopted by the Commission, and that no other specific time limits apply here. The concept of laches would also not be applicable since any failure here is not properly attributable to either party. Complainant raises an issue relating to *ex parte* contacts. However, the contact she references relates to a request by respondent that the Commission provide a copy of its file in this matter. The Commission appropriately made a copy available as it would have done had the request come from the complainant. Respondent cites *Anderson v. Board of Regents of*

*University of Wisconsin System*, 140 F. 3d 704 (7<sup>th</sup> Cir 1998) for the proposition that the Commission does not have a work-sharing agreement with the EEOC. However, the Commission has been a deferral agency for the EEOC since early in the Commission's history, and has processed numerous cases pursuant to this arrangement in which the UW-Milwaukee has been the respondent agency. In *Anderson*, it is apparent that the court is concluding that the Commission does not have a formal work-sharing agreement with the EEOC in the nature of the agreement between the Wisconsin Equal Rights Division (ERD) and the EEOC, and this is accurate. There is nothing inconsistent between the holding in *Anderson* and the ruling here. Finally, respondent cites various problems with complainant's credibility. However, none of these is relevant to the undisputed facts which form the basis for this ruling.

#### CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.45(1)(b), Stats.
2. Complainant has the burden to show that she filed a timely appeal of the EEOC's determination as adopted by the Commission.
3. Complainant has sustained this burden.

ORDER

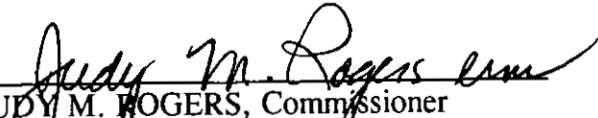
Respondent's motion to dismiss is denied.

Dated: May 9, 2001

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:980108Cru12

  
JUDY M. ROGERS, Commissioner