

JAMES WOODS,
Complainant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN – Madison,**
Respondent.

**RULING ON
RESPONDENT'S
MOTION TO DISMISS**

Case No. 98-0224-PC-ER

This case is before the Commission to resolve respondent's motion to dismiss due to untimely filing. The facts recited below appear to be undisputed by the parties unless specifically noted to the contrary.

FINDINGS OF FACT

1. Mr. Woods filed a "Discrimination Complaint Fair Employment" with the Department of Workforce Development (DWD) on December 16, 1998. DWD wrote to him by letter dated December 17, 1998, stating as shown below (in relevant part):

Your complaint of discrimination . . . was received in our office on December 16, 1998. However, this office does not have jurisdiction to investigate employment discrimination complaints filed by state employes.

Your complaint is being forwarded to the State Personnel Commission . . .

2. On December 18, 1998, the State Personnel Commission (hereafter, the "Commission") received the complaint Mr. Woods filed with DWD. The Commission provided him with an opportunity to "perfect" the filing (resubmitting same using Commission forms and procedures). The perfected complaint was received by the Commission on December 23, 1998.

3. Mr. Woods alleged in the perfected complaint that respondent discriminated against him because of his disability in regard to harassment, a failure to accommodate his disability and the termination of his employment.

4. Respondent hired Mr. Woods on March 16, 1997, with the requirement that he serve an original probationary period. Terry Snowden was his supervisor. The probationary period was extended twice because (according to Mr. Woods) he had pending requests for accommodation of his disability.

5. Mr. Snowden informed complainant on February 19, 1998, that he was terminated effective immediately. Mr. Woods still was serving his probationary period on the day he was terminated.

CONCLUSIONS OF LAW

1. It is complainant's burden to establish that his complaint was filed timely.
2. Complainant failed to meet his burden.

OPINION

Mr. Woods alleges that he was subjected to discrimination many times during his employment with respondent and was treated unfairly in other ways (such as no union representative present when he was terminated on February 19, 1999). The Commission may consider his allegations only if he timely filed his complaint.

Discrimination complaints must be filed "no more than 300 days after the alleged discrimination . . . occurred," pursuant to §111.39(1), Stats. The most recent action of which Mr. Woods complains is his termination, which occurred on February 19, 1998. The 300-day period began on February 20, 1998, and ended on December 16, 1998.

Mr. Woods filed a discrimination complaint on December 16, 1998, but he filed it with DWD rather than with the Commission. Mr. Woods asks the Commission to find that his complaint was timely based upon his filing with DWD. The Commission's administrative rules, however, define "filing" as the "physical receipt of a document" at the Commission's office. See §PC 1.02(10), Wis. Adm. Code. Also see *Radtke v. DHFS*, 97-0068-PC-ER, 6/19/97; *Schultz v. DOC*, 96-0122-PC-ER, 4/2/97; and *Ziegler v. LIRC*, 93-0031-PC-ER, 5/2/96.

Mr. Woods claims he was "completely unaware" that he needed to file his discrimination complaint with the Commission instead of with DWD. The Commission first

notes that his statement is suspect. Attached to his complaint is a letter from respondent dated March 3, 1998, which specifically informed him that "complaints of harassment" would need to be filed "with the appropriate external resources, i.e. EEOC, Personnel Commission, etc." Of further note, the Commission consistently has held that ignorance of the law does not operate to extend the 300-day filing period. See, for example, *Gillett v. DHSS*, 89-0070-PC-ER, 8/24/89; *Masko v. DHSS*, 95-0070-PC-ER, 8/24/89; and *Holmes v. UW-Madison*, 97-0037-PC-ER, 4/24/97.

ORDER

This case is dismissed.

Dated: May 5, 1999.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

JMR:980224Cru11.doc

Parties:

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Chancellor
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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.)

2/3/95