

CHERYL L. PRENTICE,
Complainant,

v.

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

Respondent.

RULING ON MOTION

Case No. 99-0180-PC-ER

This is a complaint of sex and age discrimination. Respondent filed a motion to dismiss the first hearing issue for untimely filing. The parties were permitted to brief this motion, and the schedule for doing so was completed on November 8, 2001. The following findings of fact are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of resolving this motion.

FINDINGS OF FACT

1. This case was filed on November 4, 1999.
2. The actionable period for purposes of the Wisconsin Fair Employment Act (FEA) is January 8, 1999, through November 4, 1999.
3. The following is the statement of the hearing issue which has been established in this case (see report of September 24, 2001, prehearing conference):

Whether respondent discriminated against complainant because of her age or sex with regard to the following allegations:

1. On 12/29/98, complainant was removed from the Department of Student Support Services (DSSS) and reassigned to the Department of Language and Literature Services (DLL) and the Extended Degree Program (EDP).
2. From complainant's first day of work in DLL (on or about 1/12/99) to the date she filed her complaint (11/4/99), respondent changed her terms and conditions of employment as follows:

- a. As of 2/3/99, complainant was denied the assistance of tutors in her English 099 program and
 - b. Complainant was instructed by Dr. Schelin and Ms. Graham to move her office several times during the academic year, with the final move to a location that resulted in loss of "basic services" extended to other staff.
3. On or about 11/1/99, respondent notified complainant that her contract would not be renewed.

5. Beginning in 1988, complainant was employed as an academic staff instructor by respondent. Academic staff instructors are employed under contracts which are subject to renewal after the term of the contract expires. In the fall 1998 semester, complainant functioned as the Instructional Program Manager for English 099, the developmental English course, and as Director of the Writing Center. Her supervisor in this position was Reilly O'Halloran, Director of DSSS.

6. In November of 1998, O'Halloran recommended that complainant's contract not be renewed. Complainant protested this recommendation and, on December 9, 1999, she filed a grievance challenging it. On December 29, 1998, complainant and respondent entered into a settlement agreement which, among other things, resulted in the withdrawal of complainant's grievance and in the reassignment of complainant to DLL. (See ¶3, Issue 1, above)

7. Complainant learned on or around August 26, 1999, that respondent had hired Matthew Dietsche, a 26-year-old male, as Director of the Writing Center.

8. Complainant was advised on November 1, 1999, that her contract would not be renewed and that she would be terminated after the 2000-01 academic year.

OPINION

Section 111.39(1), Stats., requires that a charge of discrimination brought under the Wisconsin Fair Employment Act (FEA), such as this one, be filed no more than 300 days after the alleged discrimination occurred. This complaint was filed on November 4, 1999. As a result, the actionable period under the FEA is January 8, 1999, through November 4, 1999. Complainant has the burden to show that the allegations which

form the basis for Issue 1 were timely filed. *Nelson v. DILHR [DWD]*, 95-0165-PC-ER, 2/11/98.

Complainant alleges that she was discriminated against by respondent when she was removed from the DSSS and reassigned to the DLL (see ¶3, Issue 1, above). Both of these actions fall outside the actionable period. Complainant argues, however, that they should be viewed as timely filed through application of the continuing violation doctrine. Application of this doctrine is only appropriate, however, in linking actions which do not have a sufficient degree of permanence or impact to trigger an employee's awareness of and duty to assert her rights. See, *Tafelski v. UW (Superior)*, 95-0127-PC-ER, 3/22/96. The removal and reassignment actions at issue here are discrete personnel actions with a sufficient degree of permanence and impact to trigger this awareness and duty on the part of complainant, and it would not, as a result, be appropriate to apply the continuing violation doctrine to toll the statutory filing period as it relates to them. *Schultz v. DOC*, 96-0122-PC-ER, 4/1/97 (continuing violation doctrine not applicable to transfer decision); *McDonald v. UW-Madison*, 94-0159-PC-ER, 8/15/96 (continuing violation doctrine not applicable to promotion and termination decisions); *LaRose v. UW-Milwaukee*, 94-0125-PC-ER, 94-0125-PC-ER, 3/31/95 (continuing violation doctrine not applicable to reassignment/demotion decision). The simple existence of actions which occurred during the actionable period does not operate, as complainant argues here, to disturb this conclusion.

Complainant also appears to argue that the fact that she did not form a belief until the hiring of Dietsche that she had been the victim of sex and age discrimination operates to toll the filing period. However, complainant does not dispute that she had reason to believe in November and December of 1998, when she protested O'Halloran's non-renewal recommendation and when she filed a grievance relating to it, that the basis for this recommendation was suspect. Simply because she may not have concluded until August of 1999 that the actionable bases for her suspicion were age and sex discrimination does not operate to toll the limitations period. *Sprenger v. UW-Green Bay*, 85-0089-PC-ER, 1/24/86; *Vander Zanden v. DILHR*, 87-0063-PC-ER, 1/11/91, *Meyer v. UW-Madison*, 98-0103-PC-ER, 10/21/98.

Complainant also argues that respondent should be equitably estopped from asserting this timeliness objection. In order to establish that equitable estoppel should apply here, complainant would have to show that she failed to file this charge (as it relates to Issue 1) within the actionable period because she reasonably relied to her detriment on actions taken or representations made by respondent which amount to fraud or a manifest abuse of discretion. *Livingston v. DOT*, 98-0001-PC, 4/8/98; *Augustin v. DMRS & DOC*, 90-0254-PC, 10/3/91. Complainant argues in this regard that the settlement which resulted in her reassignment to DLL led her to believe that the “intolerable situation at DSSS” would be rectified and she would be given “the opportunity to re-establish English 099 successfully in DLL,” and that she had “no reason to believe that it would be simply one more step in an ongoing process of limiting her opportunities and responsibilities and ultimately ‘showing her the door.’” (complainant’s brief filed October 24, 2001, at pages 6 and 7) The action of respondent in entering into this settlement agreement to resolve a grievance does not rise to the level of fraud or manifest abuse of discretion in relation to complainant’s failure to file a timely charge relating to Issue 1. It is not alleged here that respondent did anything to mislead complainant as to the requirements or necessity for filing a complaint with the Commission. *See, Livingston v. DOT*, 98-0001-PC, 4/8/98; *Cada v. Baxter Healthcare Corp.* 920 F.2d 446 (7th Cir. 1990) (the doctrine of equitable estoppel should not be applied where the plaintiff’s theory attempts to merge the substantive wrong with the tolling doctrine, i.e., the plaintiff is required to establish efforts by the defendant, beyond the alleged wrongdoing upon which the charge is based, to prevent the plaintiff from suing in time).

It is concluded that complainant’s charge was not timely filed as to Issue 1, and only Issues 2 and 3 remain in the case.

Finally, it should be noted that, even though the subject removal/reassignment referenced in Issue 1 is not separately actionable, evidence as to these actions may be relevant to the remaining issues in this case.

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 the charge was timely filed as to Issue 1.
3. Complainant has failed to sustain this burden.

ORDER


Respondent's motion is granted. The remaining issues in this case are as follows:

Whether respondent discriminated against complainant because of her age or sex with regard to the following allegations:

1. From complainant's first day of work in DLL (on or about 1/12/99) to the date she filed her complaint (11/4/99), respondent changed her terms and conditions of employment as follows:
 - a. As of 2/3/99, complainant was denied the assistance of tutors in her English 099 program and
 - b. Complainant was instructed by Dr. Schelin and Ms. Graham to move her office several times during the academic year, with the final move to a location that resulted in loss of "basic services" extended to other staff.
2. On or about 11/1/99, respondent notified complainant that her contract would not be renewed.

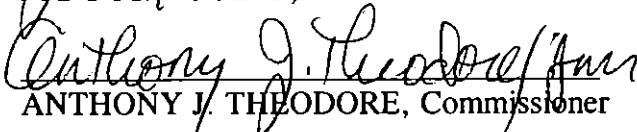
Dated: December 3, 2001

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:990180Cru1


JUDY M. ROGERS, Commissioner


ANTHONY J. THEODORE, Commissioner