

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 TZU-YUEH (CONNIE) BOYLE, *
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 Complainant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 84-0090-PC-ER *
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INTERIM
 DECISION
 AND
 ORDER

NATURE OF THE CASE

On October 21, 1987, the Commission adopted an order which made several revisions in the proposed decision and order on probable cause and a subsequent order dated September 22, 1987 adopting the proposed decision and order. At a prehearing conference held on November 17, 1987, before Dennis P. McGilligan, Chairperson, respondent indicated that it would file a motion objecting to Commission jurisdiction in the matter. On December 16, 1987, respondent filed a motion to dismiss on timeliness grounds "the charge of discrimination which alleges that the respondent discriminated against the complainant, on the basis of national origin and sex, in regard to the denial of the complainant's request to work two 50% positions." Respondent went on to indicate that this was "the only remaining allegation that has not been dismissed from complainant's first complaint, labeled case number 84-0090-PC-ER." On December 29, 1987, complainant filed a reply to respondent's motion to dismiss on grounds of timeliness.

The following Findings of Fact are based on the record to date (including the parties' briefs on the motion).

FINDINGS OF FACT

1. The complainant began working at Central Wisconsin Center (CWC) in March, 1981.

2. In January, 1983, Joe Hrenek, who was then employed as a Food Service Laborer (FSL) in a 50% (half-time) position, signed a posting requesting to work a second 50% FSL position in addition to his first job.

3. Hrenek's request was granted on February 1, 1983, to be effective on March 6, 1983.

4. Also early in 1983, complainant signed a posting for a second 50% FSL position. Although complainant was the only applicant to sign, she was not awarded the position. One of the reasons given complainant as a basis for denying her the additional position was that it would cause problems associated with working every weekend.

5. Hrenek subsequently requested an 80% position because he wanted more days off. This request was denied because there were no such positions, but he was given and accepted the option of reducing his hours from 40 to 32 per week in 1984. This eliminated the requirement that Hrenek work every weekend in his two 50% FSL positions.

6. The complaint was filed on July 30, 1984. The last two paragraphs of the complaint relate to the issue of working two 50% positions. They state the following (the emphasis is provided):

"I also feel I have been discriminated against because of my sex. When I began my employment, I was certified for both FSW and Food Service Laborer (FSL). Shortly after my employment began, there was a position available which would have been 50% FSL. I inquired about filling the 50% FSL as well as my 50% FSW and was told by Ms. Farrell that she did not want to do that because it would cause too much trouble and because it would result in my working every weekend. Approximately 1-1/2 years ago, another 50% FSW position was posted and I was the only person who signed up for this position. I was again denied the position and told that, since this would have meant that I would be working two 50% positions, again I would be working every weekend and a split shift. However, since I have been employed, a

male, Joe Hrenek, was employed to fill two 50% FSL positions. Also, approximately two months ago, a male, Jeff Williams, was hired for one 50% position and about a month after he began his employment, he started working an additional 50% position. He is scheduled for straight 8 hour days. The second 50% position was not posted. I believe this is proof of a discriminatory attitude toward me because of my sex, since two men have been allowed to fill two 50% positions. I believe it is also further proof of harassment toward me because of my national origin.

I am asking that his discrimination because of my sex cease and desist."

CONCLUSION OF LAW

The charge of discrimination in case number 84-0090-PC-ER pertaining to the appointment of Joe Hrenek to a second 50% FSL position in February, 1983 is dismissed as untimely.

DECISION

Respondent argues in its brief that respondent's granting of Joe Hrenek's request to fill two 50% positions in February of 1983 occurred outside of 300 days of the complaint filing on July 30, 1984; and that complainant's claim regarding same should be dismissed as untimely. Complainant argues that disparate treatment began when Hrenek's aforesaid request was granted and continued until about December 21, 1983 when Hrenek was given a reduction in hours that eliminated the requirement to work every weekend. (Complainant was denied a second 50% position in early 1983 because "the double positions would require her to work every weekend, and it would not work out.") It is the continuing nature of this violation which complainant apparently believes falls within the 300-day time period for filing discrimination complaints.

The Commission does not agree. There are two separate transactions or potential acts of discrimination here. One occurred in February of 1983 when Hrenek (a similarly situated employe to complainant) was granted a second 50% position; the other occurred in December 1983 when Hrenek was

given a reduction in hours as noted above. Complainant essentially admits this in her brief. However, complainant argues that the preferential treatment afforded Hrenek in the latter instance was denied complainant from the start and constitutes the basis for the violation of a continuing nature. In her brief the complainant puts her argument this way:

On or about December 21, 1983 Hrenek was given a reduction in hours that eliminated the requirement to work every weekend. So not only was Hrenek, who had less seniority than Boyle, initially granted a second 50% position after Boyle was denied same, he was later afforded preferential treatment that was, in essence denied to Boyle from the start, because it was the lack thereof that operated to deny her the position. There are two clear acts of discrimination inherent in this claim: the initial granting of the position to Hrenek in February of 1983, and the preferential treatment afforded him in December of 1983. The discrimination was therefore an unlawful employment practice of a continuing nature, which only began in February of 1983.

Presumably the preferential treatment complained of involves the requirement to work weekends. However, that is the only link between the two transactions. They are not even the same weekend work hours. In the earlier instance Hrenek was granted a second 50% position with the requirement he work every weekend (and complainant was not given the same opportunity) while in the later incident Hrenek was granted in essence an 80% position (which complainant did not complain of in her complaint) when his weekend hours were reduced. Contrary to complainant's assertions, this is too remote a link to make a continuing discrimination theory available to the complainant. The complained of different treatment does not affect complainant "continually," but only with respect to certain specific, distinct employment transactions which, as noted above, occurred in February and December of 1983.

Pursuant to §§230.44(3) and 111.39(1), Stats., discrimination complaints must be filed within 300 days of the date of the discrimination. Hrenek was granted the disputed 50% position in February of 1983 and

complainant filed her complaint over same on July 30, 1984, more than 300 days after the transaction occurred. A continuing discrimination theory is unavailable to complainant to link the granting of a second 50% position in February, 1983 with his award of an 80% position in December of that same year. Complainant did not complain about the latter transaction in her complaint. Therefore, based on the above, respondent's motion to dismiss the charge in case number 84-0090-PC-ER in regard to the denial of the complainant's request to work two 50% positions, as it pertains to Joe Hrenek, is granted.

ORDER

Respondent's motion to dismiss is granted in case number 84-0090-PC-ER in regard to the charge of discrimination over the denial of the complainant's request to work two 50% positions. The Commission will contact the parties shortly to schedule a prehearing conference in the remaining matter (Case No. 84-0195-PC-ER).

Dated: February 11, 1988 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

DPM:rcr
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