

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

EVELYN TEIKARI, \*

Complainant, \*

v. \*

President, UNIVERSITY OF \*

WISCONSIN SYSTEM (Green Bay), \*

Respondent. \*

Case No. 87-0001-PC-ER \*

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

This matter is before the Commission on respondent's motion to dismiss the complaint "on the grounds that it fails to state a claim upon which relief can be granted."

The complainant's charge of discrimination, filed on January 2, 1987, alleges discrimination based on sex in reference to promotion, threatened discharge and conditions of employment. The charge read, in part:

I would like my job back, even though I left voluntarily, it was because I felt I was harassed....

Complainant specifically identified Professor Jerry Dell as the person who allegedly discriminated against her.

Respondent's motion to dismiss is based upon three arguments. These arguments are discussed separately below.

1. Absence of allegation of discrimination based on complainant's status as a woman.

Respondent contends that the complaint merely alleges the existence of personal hostility between the complainant and Mr. Dell, rather than alleging discrimination based on complainant's sex. This argument fails to

acknowledge that the complaint form category for sex discrimination has been checked off by the complainant. By checking the box for sex discrimination, the complainant has alleged that promotion, threatened discharge and conditions of employment were all premised upon complainant's sex rather than on a personal hostility not covered by the Fair Employment Act.<sup>1</sup> Respondent correctly points out that complainant does not allege "sexual harassment" as that term is defined in §111.32(11), Stats. The failure to allege "sexual harassment" is not inconsistent with an allegation of discrimination based upon sex, however.

2. Complainant voluntarily resigned.

Respondent argues that the complaint should be dismissed because the complainant voluntarily resigned from her position on April 3, 1986. Complainant has stated both that she "left voluntarily" and that her departure was "because [she] felt [she] was harassed." The issue of whether the complainant resigned voluntarily or was constructively discharged is an issue that can only be determined based on findings of fact. Even if the complainant's departure is found to have been voluntary,

---

<sup>1</sup> Complainant's contention is repeated in her brief dated March 9, 1987:

What prompted me to finally recognize that I had truly been involved in an abusive situation was the request from the campus group of women investigating the possibility of gender harassment on the campus of UW-Green Bay that I provide them with a written explanation of my own situation. Up until that time, and, in fact, until after my decision to resign, I had been busy trying to correct the problems while trying to maintain my own responsibility to the students and the lab over which I had jurisdiction. I did not fully realize that I was being verbally abused both publicly and privately by Jerry Dell. I believe, as did those women on the campus of UW-Green Bay, that the problem was one of gender bias, and one that had and continues to affect the women working as faculty on that campus.

dismissal would still be inappropriate given the complainant's allegation that sex discrimination affected the conditions of her employment prior to her departure.

3. Failure to exhaust internal review procedure.

Respondent's final argument is that the complaint should be dismissed "because Ms. Teikari failed to exhaust the internal complaint procedures available under UW-Green Bay Faculty Rules and Regulations." Respondent goes on to state:

It is our position that this matter should not be addressed by the Personnel Commission until Ms. Teikari has availed herself of the above complaint procedure.

In King v. DHSS, 86-0085-PC-ER (8/6/86), the Commission held that the 300 day time limit for filing a complaint is not tolled by the filing of a grievance of the same transaction, citing Electrical Workers v. Robbins & Myers, Inc., 429 US 229 (1976). The King decision indicates that an informal or contractual review procedure need not be exhausted prior to filing a complaint with the Commission and, in fact, a delay in filing a complaint in order to exhaust such procedures may cause the FEA complaint to be untimely.<sup>2</sup> Nothing in §111.39, Stats., indicates that exhaustion of informal review is necessary before a complaint is filed with the Commission.

For the reasons set out above, the Commission issues the following

ORDER


Respondent's motion to dismiss is denied.

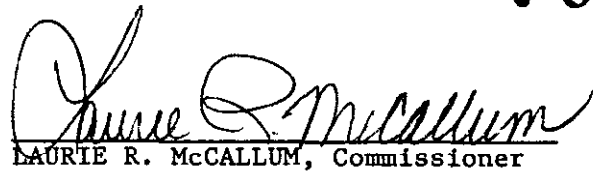
---

<sup>2</sup> Investigation of this matter could be held in abeyance pending completion of the faculty complaint procedure if both parties agree to such a delay.

Dated: April 29, 1987 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

  
LAURIE R. MCCALLUM, Commissioner

KMS:jmf  
ID5/2