

STATE OF WISCONSIN

PERSONNEL COMMISSION

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MICAH A. ORIEDO,
 Complainant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS, and
 Secretary, DEPARTMENT OF
 TRANSPORTATION,
 Respondents.

Case No. 90-0067-PC-ER

* * * * *

FINAL
 DECISION
 AND
 ORDER

This matter is before the Commission on respondents' motion to dismiss on res judicata grounds filed August 15, 1991. Both parties have filed briefs. The material facts underlying this motion do not appear to be in dispute.

On April 26, 1990, complainant filed a charge of race and color discrimination with this Commission. It states:

On 3/14/90 I requested from Katherine J. Knudson of the Dept. of Employment Relations (DER) application materials for the position of Administrative Officer 4 - Director, Office of Environmental Analysis at the Dept. of Transportation. On 3/26/90 I received a letter from Ms. Knudson informing me that I was not eligible to apply for the position. I am the most qualified person for the position.* By denying me the opportunity to compete in the selection process, Katherine Knudson and the DER discriminated against me because of race and color

* See attachments.

Complainant also filed suit regarding this matter in the United States District Court for the Western District of Wisconsin, case number 90C0799C. Complainant's "Second Amended Complaint" filed in that Court on January 4, 1991, contains the following "Allegations of Fact":

3.1. The defendant, the Department of Employment Relations/Division of Merit Recruitment have delegated to make decisions and the Department of Transportation have used restrictive recruitment methods to deny Blacks and other minorities equal access as whites to high paying positions.

3.2. On about March 14, 1990, I got a message from a friend that the Department of Transportation had a vacancy of Administrative Officer 4 - Director, Office of Environmental Analysis. After reviewing the requirements, I knew I was qualified for the position.

3.3. I called the Department of Employment Relations/Division of Merit Recruitment for the necessary application materials for the position. I was told that applicants had to submit a resume for the position. I did. (exhibit 1).

3.4. On March 26, 1990, I received a letter from Ms. Katherine Knudson (white female), the DER coordinator for recruitment of the position, informing me that I was not eligible to apply for the position because the position was restricted to career executive or people of pay range 1-18 and above. (exhibit 2).

3.5. I asked Ms. Knudson why the position was restricted to career executives and not open for competition for all others. The defendant told me that the Department of Transportation (Ronald Fie[dl]er or the administrator who are white) can make such recommendations and decisions to restrict competition.

3.6. As this position was underutilized for minorities (exhibit 3), the Department of Transportation under the direction of Mr. Fiedler or his assistant, all whites, and the Department of Employment Relations/Division of Merit Recruitment jointly or separately decided to restrict competition so that minorities could not have equal opportunity as whites to apply, compete and be selected for the position.

3.7. By restricting competition to career executives who were predominantly white, I am alleging that the defendants['] actions were deliberate, malicious and discriminatory to continue to keep Blacks, and particularly me, who was qualified for the position, off the position and other high paying positions in state service.

On January 31, 1991, the defendants in the federal suit (DER, DOT, Katherine Knudson and Ronald Fiedler) filed a motion for summary judgment, to which complainant/plaintiff responded on May 14, 1991, and to which respondents/defendants submitted rebuttal material on May 29, 1991. On July 16, 1991, the Court entered its opinion and order with respect to the motion.

The Court first concluded that plaintiff's claim under Title VII was barred by failure to have exhausted his administrative remedies, because he had not filed a complaint with the EEOC. Next, the Court analyzed plaintiff's claim under 42 U.S.C. §1981, and concluded that he had failed to establish a prima facie case because he had made no showing that he met the qualifications for the position even if career executive status had not been

required. Third, the Court analyzed plaintiff's claim under 42 U.S.C. 1985(3) and concluded that he had failed to "satisfy the conspiracy requirement" of that statute. The Court did not address plaintiff's claim under state law because of its disposition of the claim under federal law. The Court entered an order granting defendant's motion to dismiss plaintiff's Title VII claim for lack of jurisdiction, and granting defendants' motion for summary judgment on the remaining issues. On July 19, 1991, the Court entered a judgment in favor of defendants.

The relevant basic principles of res judicata were set forth in Schaeffer v. State Personnel Comm., 150 Wis. 2d 132, 138-139, 441 N.W. 2d 292 (Ct. App. 1989), as follows:

Application of the doctrine of res judicata renders a final judgment "conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings." "A summary judgment is sufficient to meet the requirement of a conclusive and final judgment." The purpose of the rule is to prevent multiple litigation of the same claim, and it is based on the assumption that fairness to the defendant requires that at some point litigation involving the particular controversy must come to an end.

For the earlier action to bar the later, there must be an identity of parties (or their privies) and an identity of claims or causes of action in the two cases. (citations omitted)

In this case, the same parties are involved in both proceedings. With respect to the question of the identity of claims, Wisconsin follows the "transactional rule" of res judicata whereby "a basic factual situation generally gives rise to only one cause of action, no matter how many different theories of relief apply." Schaeffer, 150 Wis. 2d at 140-141 (citation omitted). Inasmuch as complainant asserts the same basic facts here as he did in his federal complaint, there is an identity of claims. The U.S. District Court ruled against complainant on the merits of his race discrimination claim on the ground that he did not make out a prima facie case. Therefore, res judicata should bar complainant from proceeding with his charge of discrimination before this agency.

In his brief in opposition to respondents' motion, complainant argues that because the Court lacked jurisdiction,¹ "its judgment was void," and "it should not have dismissed the case; rather it should have just remanded claims under title 42 2000C [sic] and State claims." (citations omitted) This argument runs to the merits of what the Court did, which complainant can not reach on this motion for the application of res judicata. In any event, there is no reason why the absence of subject matter jurisdiction over a claim under one statute should nullify the Court's ruling on the merits pursuant to a statute under which it does have subject matter jurisdiction.

ORDER

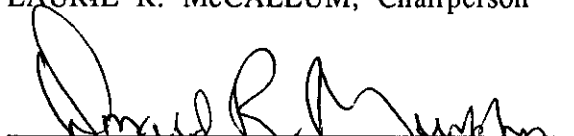
Respondents' motion to dismiss on res judicata grounds is granted and this charge of discrimination is dismissed.

Dated: September 5, 1991

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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¹ Presumably complainant is referring to the Court's lack of jurisdiction under Title VII.