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LYNN PIOTROWSKI,

Appellant,

v.

Secretary, DEPARTMENT OF
INDUSTRY, LABOR AND HUMAN
RELATIONS, and Secretary,
DEPARTMENT OF EMPLOYMENT
RELATIONS,

Respondents.

Case No. 90-0396-PC

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RULING ON
TIMELINESS
OBJECTION

This appeal is before the Commission on respondents' timeliness objection. Both parties have filed briefs. For purposes of deciding this motion, the Commission will assume those facts alleged by appellant.

This appeal was filed on November 6, 1990. The subject matter of the appeal is the reclassification of appellant's position from ERO 1 (Equal Rights Officer 1) to ERO 2,¹ with an effective date and date of notice of June 18, 1989. While the appeal does not allege race discrimination *per se*, it is clear from attachments to the appeal that appellant contends that she was the subject of unequal treatment in that respondent in her case applied its policy of requiring that employes be employed for approximately one year before they become eligible for reclassification to ERO 2, but that it subsequently allowed certain other employes to reclassify to ERO 2 after less than a year on the job.² Appellant was aware of her own reclassification on June 18, 1989. She did not become aware of the reclassification of the non-white employes, which occurred July 1, 1990, until sometime after that.

Pursuant to §230.44(3), stats., complaints of discrimination under the Fair Employment Act must be filed within "300 days after the alleged

¹ ERO 1 and 2 constitute a progression series as defined by §ER 1.02(32), Wis. Adm. Code.

² In her brief on timeliness, appellant alleges that these other employes are non-white, and that race was a factor in how the various reclassifications were handled.

discrimination." This complaint was filed more than 300 days after June 18, 1989, which was the date of the reclassification of complainant's position. However, the complaint was filed within 300 days of July 1, 1990, when certain other employees in a different protected group were reclassified in contravention of the policy that had been applied in complainant's case.

In Sprengr v. UWGB, 85-0089-PC-ER (1/24/86), the Commission held that the time period for filing a charge of discrimination begins to run when the facts that would support a charge of discrimination are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights similarly situated to the complainant. See also Reeb v. Economic Opportunity Atlanta, 516 F. 2d 924, 11 FEP Cases 235, 241 (5th Cir. 1975); Chappell v. EMCO Machine Works Co., 601 F. 2d 1295, 20 FEP Cases 1059, 1065 (5th Cir. 1979).

In this case, there is no reason for "a person with a reasonably prudent regard for his or her rights similarly situated to complainant" to have suspected discrimination when complainant's position was reclassified to ERO 2 on June 18, 1989, in accordance with respondent's policy requiring a year of employment before reclassification. The earliest possible time that complainant, as a person with a reasonably prudent regard for her rights, would have been aware of the facts that would give rise to a complaint of discrimination was certainly no earlier than July 1, 1990, when the other employees were reclassified, allegedly in contravention of the policy that had been applied to complainant, and therefore her complaint must be considered timely.

While this matter must be considered timely filed as a complaint of discrimination under the Fair Employment Act, it was not timely filed as a civil service appeal of appellant's reclassification, under §230.44(1)(b), stats., — i.e., as an appeal of the reclassification transaction without regard to the allegation of discrimination under the Fair Employment Act — because such an appeal had to have been filed within 30 days of June 18, 1989, pursuant to §230.44(3), stats., "Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action or within 30 days after the appellant is notified of the action, whichever is later." Therefore, so much of this matter as may constitute a §230.44(1)(b), stats., appeal, must be dismissed.

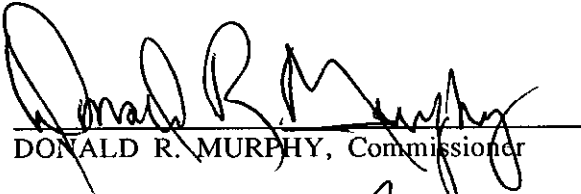
ORDER


Respondent's motion to dismiss as untimely is granted in part and denied in part. So much of this matter as constitutes an appeal under §230.44(1)(b), stats., is dismissed as untimely filed. So much of this matter as constitutes a charge of discrimination under the Fair Employment Act shall continue to be processed and shall be scheduled for a conference to discuss formal amendment of the appeal into a complaint of discrimination and further proceedings.

Dated: May 1, 1991 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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