

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LAURA FISCHER-GUEX,

Complainant,

v.

Chancellor, UNIVERSITY OF
WISCONSIN-MADISON,

Respondent.

Case No. 92-0205-PC-ER

* * * * *

DECISION
AND
ORDER

On September 30, 1992, the complainant filed a complaint of handicap and sex discrimination with the Commission. Complaint identified the respondent as the School of Veterinary Medicine and summarized her allegations as follows:

The discrimination is on the basis of sex and handicap. The initial event was done by an instructor of the school where I was made a freak show in front of the class and then in the fall of 1990 through Spring of 1992 I was being harassed by fellow students for my problem and students would interfere in me trying to enter the classroom and usage of classroom material. The Dane County Mental Health for demanding me to be a 3rd party witness on March 6, 1992. Also I was verbally harassed and threatened by this instructor in his office of June 13, 1990.

Fall of 1991 to May of 1992 I experienced verbal harassment in the hallway by past students making it unbearable to attend class or any other part of the school. Verbal abuse by the Assistant Dean Dr Susan Hyland this past school year. No attempt was made to stop this verbal harassment because of my disability.

A 3rd party witness to have my roommate institutionalized.

Pursuant to §111.375(2), Stats., the Personnel Commission's authority under the Wisconsin Fair Employment Act extends to "complaints of discrimination or unfair honesty testing against the [state] agency as an employer." The complainant's allegations relate to her status as a student rather than as an employee. The complainant offered no information which suggested that she was in an employment relationship with the respondent.

The complainant has also indicated that she wishes to pursue a claim under §101.223, which prohibits postsecondary educational institutions from discriminating on the basis of physical condition or developmental disability. Pursuant to §101.223(4):

(a) The department shall receive and investigate complaints charging discrimination or discriminatory practices in particular cases, and publicize its findings with respect thereto. The department has all powers provided under s. 111.39 with respect to the disposition of such complaints. The findings and orders of examiners may be reviewed as provided under s. 101.22(4p).

(b) Findings and orders of the commission under this section are subject to review under ch. 227. Upon such review, the department of justice shall represent the commission.


The terms "commission" and "department" used in this section are defined in §101.01(1)(a) and (c) as the Labor and Industry Review Commission and the Department of Industry, Labor and Human Relations, respectively. Based upon these definitions, the Personnel Commission concludes that it lacks any jurisdiction over complaints filed under §101.223. This result is supported by the fact that there is no reference to §101.223 in §230.45(1), which lists statutes over which the Commission does have jurisdiction. In addition, even if one could conclude that the legislature intended to incorporate the language of §111.375(2) when, in §101.223(4)(a), it granted to DILHR "all powers provided under s. 111.39 with respect to the disposition of... complaints" relating to postsecondary educational institutions, the Personnel Commission's authority under §111.375(2) would still be limited to complaints against a state agency "as an *employer*."

The Commission notes that a member of its staff has previously suggested complainant contact DILHR for the purpose of filing a complaint with that agency.

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: December 17, 1992 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

Laura Fischer-Guex
117 Plummer Court
Neenah, WI 54956

Donna Shalala
Chancellor, UW-Madison
158 Bascom Hall
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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.