

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LAURA RUTLAND,

Complainant,

v.

President, UNIVERSITY OF
WISCONSIN (Stout) ,

Respondent.

Case No. 92-0221-PC-ER

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RULING ON
COMPLAINANT'S
PETITION FOR REHEARING

A final decision and order in the above-noted matter was mailed to the parties on June 23, 1995. On July 13, 1995, the Commission received Complainant's petition for rehearing. Respondent filed a response which was received by the Commission on July 27, 1995. The Commission considered the arguments raised by the parties and concluded that the petition for rehearing should be denied, for reasons addressed below.

DISCUSSION

A petition for rehearing is governed by s. 227.49(3), Stats., the text of which is shown below.

- Rehearing will be granted only on the basis of:
- (a) Some material error of law.
 - (b) Some material error of fact.
 - (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

The complainant does not allege discovery of new evidence within the meaning of s. 227.49(3)(c), Stats. Accordingly, the focus of inquiry is whether complainant has alleged some material error of law or fact to justify rehearing under s. 227.49(3)(a) or (b), Stats.

Complainant contends the majority's opinion in the final decision is defective because she perceives that certain factual disputes were unresolved in paragraph 5 of the findings of fact. The text of paragraph 5 is shown below:

The incidents described in Finding of Fact 4 either did not occur as alleged or were not unwelcome.

The above text was intended to reflect that the majority remained unpersuaded that the allegations recited in Finding of Fact 4 were true, and even if they were true the majority did not feel such attentions were unwelcome by complainant. Contrary to complainant's assertions, the majority did not give more credence without reason to Mr. Hall. Rather, complainant had the burden of proof and failed to persuade the majority that such acts occurred and that such acts were unwelcome.

The text of paragraph 11 of the findings of facts is shown below:

The incidents described in Finding of Fact 10, above, either did not occur as alleged or were not unwelcome.

The majority's intended meaning here is the same as noted above in the discussion of paragraph 5 of the findings of fact.

Complainant disagrees with the majority's statement in paragraph 18 of the findings of fact to the effect that Mr. Hall's practice after 1987, was to request permission of a counselee before using the technique called therapeutic touch. All Commissioners reviewed the entire record prior to issuing the final decision. The majority was aware that SW and JT testified they were supervised by Mr. Hall after 1987, and that SW and JT alleged Mr. Hall touched them without first asking permission. Since SW and JT were not counselees of Professor Hall, their testimony did not refute his statement. KN was one of Professor Hall's counselees after 1987. KN testified as already stated in paragraph 17b. of the final decision. Testimony from one counselee who explained that she is a "very non-physical person" who does not like people touching her because (at least in part) even her own family was not "real huggy" (TR 230), was insufficient in the majority's opinion to refute Mr. Hall's testimony regarding his usual practice with counselees.

The Commission also disagrees with complainant's description of herself as being so young, unsophisticated and inexperienced that (apparently) the Commission should excuse her failure to utilize the university's internal procedures for reporting suspected sexual harassment. (See Petition, p. 3) The record shows (TR 193) that during the actionable period associated with her complaint (from January 10, 1992 to November 4, 1992) she was about 34 years old with one daughter (about age 12) and one son (about age 9). As noted in the final decision, complainant was not shy to complain about problems she experienced with Mr. McNaughton and with Mr. Deutcher. Further, complainant did not impress the Commission (including the hearing examiner) as being unable to report perceived problems to authority, whether such problems were based upon professional or personal concerns.

Complainant alleged that a factual error exists on p. 11 of the final decision, in the paragraph #1 at the bottom of the page. Specifically, complainant states it is incorrect that "several women" did not complain of touching or of comments of a sexual nature. (See Petition, p. 11) Complainant has mis-read the cited paragraph. The term "several" was intended to modify the subject of "these incidents" in the prefatory language of the same sentence. The term "several" was not intended to be a modifier to the word "women", which complainant has inserted into the text in her reading of the decision.

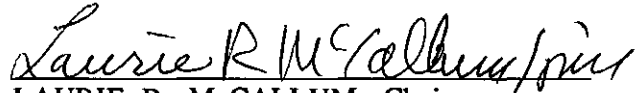
The majority explained in the final decision why it disagreed with certain credibility assessments made by the hearing examiner. The majority's assessment was based on the entire record, including some of the basic credibility assessments made by the examiner (for example, the examiner's conclusion that complainant did not complain to Virginia Wolfe in April 1992, about alleged sexual harassment by Professor Hall). The majority's explanation meets all legal standards required of the Commission.

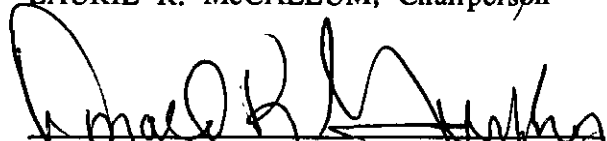
In summary, the complainant's disagreements with the Commission about this case do not constitute a material error of fact or law, within the meaning of s. 227.49(3)(a) or (b), Stats. Accordingly, her petition is denied.

ORDER

That complainant's petition for rehearing be denied.

Dated August 14, 1995.


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Laura Rutland
606 21st Avenue East, Apt. 45
Menomonie, WI 54751

Katharine Lyall
President, UW Systems
1700 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

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