

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KATRINA MOSLEY,

Appellant/  
Complainant,

v.

Secretary, DEPARTMENT OF  
INDUSTRY, LABOR AND HUMAN  
RELATIONS,

Respondent.

Case Nos. 93-0035, 0050-PC,  
93-0053, 0062, 0063-PC-ER

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RULING  
ON  
MOTION  
TO COMPEL

These matters are before the Commission on the respondent's motion to compel discovery.

The cases arise from various personnel actions taken with respect to the appellant/complainant's employment in respondent's Unemployment Compensation Division. Cases 93-0035 and 0050-PC are appeals from suspensions. Cases 93-0053, 0062 and 0063-PC-ER all include allegations of discrimination based on handicap. In interrogatories dated August 30, 1993, respondent sought the following information from appellant/complainant:

1. Identify all physical or mental impairments which constitute your handicap(s).
2. Identify all physicians who have treated you for the physical or mental impairments identified in question 1 during the past 3 years, indicating the name of the physician; the current address of the physician, if known; the clinic or hospital with whom the physician is affiliated, if known; the physician's speciality, if any; the specific condition(s) treated by each physician; and the dates of treatment.
3. Produce for respondent's inspection and copying all medical records reflecting treatment and diagnosis for the conditions identified in question 1 during the prior January 1, 1990 through the date of response to these interrogatories.

Appellant/complainant responded to the interrogatories by stating that "[a]ccording to guidelines set forth by the Social Security Administration, I am legally disabled." She also attached copies of correspondence from the Social

Security Administration confirming that she had been granted disability benefits. Respondent filed a motion to compel discovery dated September 29, 1993. The Commission convened a conference with the parties on October 19, 1993. During the conference, the appellant/complainant agreed to provide answers to the interrogatories within 60 days and respondent agreed to hold its motion to compel in abeyance. In a letter dated December 6, 1993, appellant/complainant objected to providing respondent with detailed medical information. Appellant/complainant contended that the information request violated her "right to retain medical confidentiality."

The information sought by the respondent in its discovery request is specifically tied to those handicapping conditions which serve as the basis of appellant/complainant's claims of handicap discrimination. The Commission has previously held that an agency is entitled to obtain discovery of information relating to an employe's medical condition at the time of, and subsequent to, her termination, where the appellant had alleged that her medical condition prevented her from performing the duties of the position that she held at that time, but did not prevent her from performing the duties of other positions within the respondent agency. Smith v. DHSS, 88-0063-PC, 5/1/91.

The scope of discovery extends to "any matter, *not privileged*, which is relevant to the subject matter involved in the pending action." §804.01(2)(a), Stats. One area of privilege, recognized in §905.04(2), Stats., includes "confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of of the patient's physical, mental or emotional condition." However, no such privilege exists "in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense." §905.04(4)(c), Stats. Because the appellant/complainant is alleging handicap discrimination, respondent is clearly entitled to obtain information relating to the medical conditions which serve as the basis for such claims.

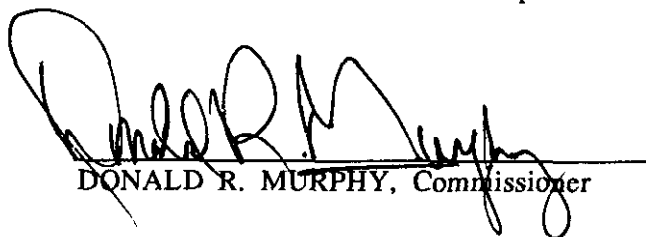
ORDER

Respondent's motion to compel is granted and the appellant/complainant is ordered to provide the information sought in the respondent's discovery request no later than 30 days from the date this order is signed. The failure to comply with this order may result in sanctions up to and including dismissal.

Dated: January 25, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:temp-1/94 Mosley

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner