

CHARLES VERVOORT,

Complainant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN - MADISON,**

Respondent.

Case Nos. 93-0059-PC-ER and
93-0132-PC-ER

**RULING ON
RESPONDENT'S
MOTION TO DISMISS
and
INITIAL
DETERMINATION**

Information in the Personnel Commission's (PC) files for the above-noted cases indicates that complainant was injured on October 2, 1992, when he rode a bicycle to work and was hit by a truck resulting in a broken leg and knee injuries. He suffered permanent medical restrictions and requested accommodation from respondent. The employment relationship ended on July 23, 1993, when respondent determined complainant could no longer perform his laborer position with or without accommodation.

Complainant filed a discrimination complaint with the PC on April 21, 1993, which was assigned case number 93-0059-PC-ER, alleging:

According to (respondent's) policies they say they are only obligated to reasonable accommodation policies of the ADA for 60 days (and) if no accommodation is found then they can terminate me.

After his termination, complainant filed a second complaint with the PC on August 3, 1993, which was assigned case number 93-0132-PC-ER, alleging handicap discrimination and FEA retaliation in regard to his termination and in regard to accommodation issues.

The cases were combined for a status conference on October 29, 1993, at which time complainant requested that the PC defer jurisdiction of his cases to the Equal Employment Opportunity Commission (EEOC). He confirmed his request by letter dated November 11, 1993. The cases were transferred as requested. The PC sent a confirmation letter to complainant, with a copy to respondent, dated November 18, 1993, which contained the following information in relevant part:

. . . On November 18, 1993, I forwarded the appropriate 212 form to the EEOC requesting that they take jurisdiction of the case(s).

The (PC's) usual practice in such situations is to defer to the EEOC investigation and adopt the EEOC determination on probable cause, with the complainant having the right to appeal and request a hearing on a no probable cause determination in accordance with Section PC 2.07(3) Wis. Adm. Code.

The PC did not hear from either party or from the EEOC. On April 11, 1996, the PC sent a letter to the EEOC requesting a status update. The EEOC later informed the PC that the EEOC had closed its case files on September 13, 1994. The PC, accordingly, contacted the parties by letter dated October 2, 1996, requesting an update as well as the filing of any appropriate motions.

Respondent filed a motion to dismiss with prejudice by letter dated October 8, 1996, based on the EEOC's finding of September 13, 1994, that insufficient evidence existed to support Mr. Vervoort's allegations. Respondent's motion provided a copy of EEOC's determination of September 13, 1994, which is the first time the PC had received the same. The text of EEOC's determination only references EEOC charge number "26H930067" and PC case number "930059", but the PC has no reason to doubt that both cases were resolved by the EEOC in the same manner.

Under the authority vested in me by the (EEOC), I issue the following determination as to the merits of the subject charge filed under the Americans with Disabilities Act of 1990 (ADA).

All requirements for coverage have been met. Charging Party alleged that he was discriminated against based on his disability in violation of the ADA in that the Respondent did not accomodate (sic) him.

During the investigation, all relevant, available witnesses were interviewed, and all relevant documents were reviewed. I have considered all the evidence disclosed during the investigation and have determined that there is insufficient evidence to support the allegations.

This determination and dismissal concludes the processing of this charge. This letter will be the only notice of dismissal and the only notice of the Charging Party's right to sue sent by the (EEOC). Following this dismissal, the Charging Party may only pursue this matter by filing suit against the Respondent(s) named in the charge within ninety (90) days of receipt of this letter. Otherwise, Charging Party's right to sue will be lost.

Complainant filed a reply by letter dated October 22, 1996, which stated in pertinent part as shown below:

First of all, I am not submitting any more arguments, because it is of my opinion that you have enough (sic) prima facie evidence to give an opinion about this case and discussing it any more is a waste of time for all the partys (sic) involved. . . .

The respondent filed a reply by letter dated November 1, 1996, which stated in pertinent part as follows:

. . . The University respectfully requests the (PC) dismiss Mr. Vervoort's claims, with prejudice, without an investigation.

. . . As explained in the letter, at the time of transfer, the EEOC would assume responsibility for the investigation and the (PC) would adopt the EEOC's findings. On September 13, 1994, the EEOC found insufficient evidence to support Mr. Vervoort's allegations. As such, the (PC) should adopt that finding and dismiss the complaint.

If Mr. Vervoort wants to appeal the no probable cause determination, his request is untimely. In order to make a timely appeal, Mr. Vervoort must submit his request within 30 days of the no probable cause decision. Because the (PC) adopts the EEOC finding, the no probable cause decision was rendered on September 13, 1994. An appeal two years after that date, without question, is untimely.

Should the (PC) determine that it will consider Mr. Vervoort's request, the University requests an opportunity to respond, in writing, to that decision. In any event, the University requests the (PC) deny Mr. Vervoort's request and dismiss, with prejudice, the above-cited cases.

OPINION

The PC sees no reason to deviate from its usual practice to adopt the EEOC determination for PC investigative purposes. The parties were advised in the PC's letter of November 18, 1993, that such was the PC's usual practice. The parties cannot now claim surprise based on the PC following the practice as stated in that letter almost 3 years ago.

Accordingly, the PC adopts the EEOC dismissal at the PC investigative level and issues an Initial Determination that no probable cause exists to believe that discrimination occurred as alleged in the complaints. Complainant may pursue the matter to formal hearing at the PC by filing a written appeal which the PC must receive within 30 days of the mailing date shown on the affidavit of mailing attached to this ruling and order. (See, §§ PC 2.07(3), PC 1.01(10) and PC 1.05(2), Wis. Adm. Code.)

Two matters remains for discussion. First, respondent requested in its letter of November 1, 1996, further opportunity to submit written arguments if the PC ruled in complainant's favor. The parties already had the opportunity to submit the requested written arguments and, accordingly, respondent's request for further opportunity is denied. Second, respondent's written arguments appear to suggest that when EEOC makes a determination on the federal charge numbers, that such determination also starts the appeal

clock running on any related PC complaints. The Commission knows of no supporting authority for such a contention. The EEOC determinations on their face only disposed of the EEOC cases and, since the EEOC has no jurisdiction to resolve the related PC claims under the Wisconsin Fair Employment Act, the EEOC's determination could not have also disposed of the related cases filed with the PC.

ORDER

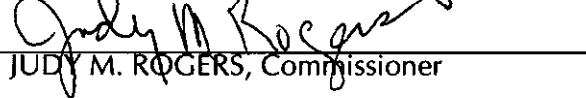
Respondent's motion to dismiss is denied. The PC hereby issues an initial determination finding no probable cause to believe that discrimination occurred as alleged in case numbers 93-0059-PC-ER and 93-0132-PC-ER. Complainant may appeal the initial determination by filing a written appeal which must be received by the Commission within 30 days of the mailing date shown on the affidavit of mailing attached to this ruling.

Dated November 22, 1996.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

JMR
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