

STATE OF WISCONSIN

PERSONNEL COMMISSION

PAMELA A. TAFELSKI,
Complainant,

v.

**President, UNIVERSITY OF WISCONSIN
SYSTEM (Superior),**
Respondent.

**RULING ON
RESPONDENT'S
SECOND MOTION TO
DISMISS**

Case No. 95-0127-PC-ER

BACKGROUND

This case is pending investigation of discrimination claims, pursuant to §PC 2.05, Wis. Adm. Code. On March 22, 1996, the Commission issued a ruling on respondent's motion to dismiss which granted the motion as to all claims but one and which reserved jurisdiction on the surviving claim to proceed with investigation (hereafter, "Prior Ruling"). Respondent filed a second motion to dismiss the surviving claim, by letter dated June 10, 1996. Both parties filed written arguments.

The one allegation which survived the Prior Ruling was described in the initial complaint as sex discrimination in regard to Mr. Hensrud checking up on complainant's whereabouts on unspecified dates in 1994. Specifically, complainant alleged that Mr. Hensrud asked program assistants to record where complainant was going and he would then contact the place of her destination to confirm that she went where she said she would be going. By amendment, complainant clarified that such action continued up through her last day of work. (Prior Ruling, p. 8, items "1f" and "1g" and pp. 16-17 discussion entitled: "Requested Amendment - Clarifying time period in regard to Hensrud checking on whereabouts".)

The actionable period was stated in the Prior Ruling (p. 9) as follows:

The actionable period is the 300-day period prior to the date the charge of discrimination was filed. §111.39(1), Stats. Ms. Tafelski filed her Initial Complaint on August 30, 1995, resulting in an actionable period starting on November 3, 1994.

The surviving allegation regarding Mr. Hensrud checking on complainant's whereabouts was considered timely filed as to such actions occurring during the actionable period and, by operation of the continuing violation doctrine, the same

actions occurring before the actionable period. (Prior Ruling, p. 24) The Commission specifically noted in regard to this conclusion as follows (footnote 1, p. 24, Prior Ruling):

This conclusion was based on the assumption that Ms. Tafelski's allegation of Hensrud's checking up on her whereabouts continued to occur within the actionable period. It could be, however, that Ms. Tafelski ultimately would be unable to provide the existence of such conduct during the actionable (period); in which event the timeliness ruling here could be revisited by the Commission.

OPINION

Respondent moves for dismissal of the sole surviving allegation based on the affidavit of Mr. Hensrud that he stopped tracking complainant's absences on or shortly before October 12, 1994, when complainant tendered her resignation.

Complainant replied to respondent's present motion denying that Mr. Hensrud stopped checking on her whereabouts as of October 12, 1994. In support, she provided a copy of her memo to Mr. Hensrud dated November 1, 1994, detailing her time for October as a pre-condition for management releasing her October paycheck. When viewed in a light most favorable to complainant (as must be done in the context of respondent's present motion), it remains plausible that Mr. Hensrud used information gained from his vigilance of complainant's whereabouts (which he concedes occurred as late as October 12, 1994) to compare with complainant's documentation of her work time as listed in her memo of November 1, 1994. This potential continuing use of information gathered previously by Mr. Hensrud, however, ended with his approval of her leave report on November 1, 1994, as evidenced by the copy of the leave report provided by complainant.

Beyond a bald assertion that discrimination continued until her last day of work, complainant provided no evidence that Mr. Hensrud continued his vigilance of her whereabouts past her resignation date of October 12, 1994. Similarly she provided no evidence that Mr. Hensrud used the information obtained from such vigilance after November 1, 1994. The actionable period commenced on November 3, 1994. Accordingly, complainant has not shown that any discriminatory action occurred within the actionable period and this case must be dismissed.

ORDER

Respondent's motion to dismiss is granted.

Dated: June 4, 1997.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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Parties:

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President, UW-System
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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 (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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