

STATE OF WISCONSIN

PERSONNEL COMMISSION

KATRINA MOSLEY,
Complainant,

v.

**Secretary, DEPARTMENT OF
WORKFORCE DEVELOPMENT,**
Respondent.

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

Case No. 97-0119-PC-ER

Respondent filed a motion to dismiss the above-noted case on August 26, 1997. By letter dated August 26, 1997, the Commission established a briefing schedule with the final brief due by September 22, 1997.

FINDINGS OF FACT

1. The Commission received this complaint on July 30, 1997. Complainant alleged therein that respondent discriminated against her because of her race in violation of the Fair Employment Act (FEA) and retaliated against her for participating in activities protected under the FEA (hereafter, FEA Retaliation). She checked the boxes on the complaint form to indicate that the action of discrimination/retaliation were related to: a) failure to hire or promote and b) harassment.

2. The main event discussed in the complaint relates to her claim for unemployment compensation (UC) benefits beginning on July 6, 1997. Materials attached to the complaint indicate that the University of Wisconsin Hospital Clinics Board (UWHCB) (one of her base-period employers for calculating entitlement to UC benefits under §108.06(1), Stats.) alleged that complainant had been discharged from UWHCB for misconduct, within the meaning of §108.04(5), Stats. The UC Division of the Department of Workforce Development (DWD) issued an initial determination (pursuant to §108.09, Stats.) which concluded that UWHCB's misconduct allegation was correct and accordingly, imposed the UC benefit reductions mandated under §108.04(5), Stats. Complainant appealed the UC determination (also pursuant to §108.09, Stats.) to obtain a hearing to review the misconduct issue before a UC administrative law judge.

3. Complainant also notes in her complaint that she previously worked for DWD from April 20, 1992, through her resignation on September 9, 1992; a period

which she characterized as “marked by harassment and discrimination on the basis of race and religion.” She contends that the reduction of her entitlement to UC benefits in July 1997, demonstrates DWD’s continued discrimination against her because of her race.

4. By letter dated September 4, 1997, complainant amended her complaint to add creed as a basis of alleged discrimination in regard to matters raised in the initial complaint.

5. Complainant previously filed discrimination complaints against DWD (Mosley v. DILHR, 93-0035, 0050, and 0063-PC-ER) regarding her term of employment with DWD. The cases were settled in April 1995, and were dismissed by the Commission on April 17, 1995, based on the settlement agreement.

6. Respondent noted in arguments filed with its motion to dismiss that the individual UC staff person who issued the UC initial determination does not know complainant, did not know of complainant’s race and was unaware that complainant previously had filed discrimination complaints against DWD. The only evidence complainant offered in rebuttal was to note that the hiring process which resulted in DWD hiring the person who issued the UC initial determination “began prior to my resignation from the Department of Industry, Labor and Human Relations (now DWD). (See complainant’s letter dated 9/4/97.)

7. DWD argued in its motion that the Commission lacked jurisdiction over this complaint because respondent’s issuance of the UC initial determination was made in fulfillment of its statutory duty to administer the UC program, and not as an action taken by DWD as complainant’s employer.

OPINION

Respondent’s motion to dismiss is reviewed under the standard described in *Phillips v. DHSS & DETF*, 87-0128-PC-ER (3/15/89), *aff’d*. *Phillips v. Wis. Pers. Cmsn.*, 167 Wis2d 205, 482 N.W.2d 121 (Ct. App. 1992), as follows:

[T]he pleadings are to be liberally construed, [and] a claim should be dismissed only if “it is quite clear that under no circumstances can the plaintiff recover.” The facts pleaded and all reasonable inferences from the pleadings must be taken as true, but legal conclusions and unreasonable inferences need not be accepted.

The Commission’s jurisdiction under the FEA is limited to processing complaints of discrimination/retaliation against “each agency of the state . . . as an

employer.” §111.375(2), Stats. Here, the denial of UC benefits relates to respondent’s regulatory authority, rather than its authority as an employer. The Commission, accordingly, lacks jurisdiction to review the claim. *Mehler v. DHSS*, 94-0114-PC-ER, 12/22/94. *In Accord, Huff v. UW System*, 96-0013-PC-ER, 5/2/96; *Hassan v. UW-Madison*, 93-0189-PC-ER, 3/29/94; and *Collins v. DHSS*, 83-0080-PC-ER, 8/17/83.

ORDER

That respondent’s motion be granted and that this case be dismissed for lack of jurisdiction.

Dated: September 24, 1997.

STATE PERSONNEL COMMISSION
Laurie R. McCallum
LAURIE R. McCALLUM, Chairperson
Donald R. Murphy
DONALD R. MURPHY, Commissioner
Judy M. Rogers
JUDY M. ROGERS, Commissioner

JMR
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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.)

2/3/95