

**SHUYING VANG,**  
*Complainant,*

v.

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

**RULING  
ON MOTION  
FOR SUMMARY  
JUDGMENT**

Case No. 97-0174-PC-ER

This matter is before the Commission on the respondent's motion for summary judgment. The issue raised by the complaint is as follows:

Whether respondent discriminated against complainant on the basis of national origin/ancestry or race when he was a) investigated based on a complaint of sexual harassment against him, or b) denied an Equal Rights Officer position in August of 1997.

Complainant is represented by counsel.

**FINDINGS OF FACT**

1. At all relevant times, the respondent has had a policy in place prohibiting its employees from engaging in conduct that "can be construed as sexual or other illegal harassment." The policy also states that "DWD will investigate alleged harassment in a responsible and timely manner and address allegations of harassment which have merit."

2. Complainant identifies his national origin or ancestry as Lao/Hmong and his race as Asian.

3. Complainant has been employed by respondent since 1982. As of 1997, complainant worked in respondent's Job Service office in Green Bay. He had previously worked in respondent's Menasha Job Service office.

4. The Menasha Job Service office shares office space with Goodwill Industries.

5. On June 17, 1997, an internal Transfer Opportunity Bulletin announced that an Equal Rights Officer - Entry position (ERO) was available in Menasha.

6. The position includes responsibility for conducting investigations of claims under the Fair Employment Act, including claims of sexual harassment.

7. Complainant applied for the vacancy and was one of three eligible persons. The applicants were invited to an interview on July 17, 1997, in Madison. Georgina Taylor, Section Chief for the Civil Rights Bureau, and LeAnna Ware, Director of the Civil Rights Bureau, were two of the three interview panelists.

8. On July 17<sup>th</sup>, only two candidates were present as scheduled for the interview. Complainant was not present and gave no prior notice that he would not attend the interview.

9. On or about July 23, 1997, complainant's supervisor asked him about his scheduled interview of the ERO position. Complainant said he was unaware of the interview. Complainant then contacted Ms. Taylor and explained he had not received notice of the interview because he had been on vacation. Ms. Ware and Ms. Taylor decided to reschedule complainant for an interview on July 24<sup>th</sup>.

9. Complainant attended the interview on July 24<sup>th</sup>. He was selected for the vacant ERO position in Menasha because, in part, he is bilingual and bicultural.

10. By e-mail message on July 29<sup>th</sup>, Ms. Taylor informed staff in Madison and Menasha that complainant had accepted an offer to fill the ERO position in Manasha and that he would begin work on August 18<sup>th</sup>.

11. On July 20, 1997, a female employe (hereafter referred to as Jane Doe) of Goodwill Industries in Menasha telephoned Ms. Ware and described a series of incidents of alleged sexual harassment by complainant of Ms. Doe during 1996 and 1997. Ms. Doe subsequently filed a written complaint dated August 6, 1997.

12. Ms. Ware conferred with Ms. Taylor and three other of respondent's employes, including respondent's legal counsel and Affirmative Action Equal Opportunity officer, and decided to hold the ERO position open until the Ms. Doe's allegations could be investigated. Complainant was informed of this decision on July 20<sup>th</sup>.

13. The AA officer of respondent's Division of Workforce Excellence investigated the complaint by Ms. Doe. The investigation included two interviews of complainant.

14. The AA officer reported his findings in an investigative report. According to the report, two Goodwill employees (other than Ms. Doe) reported hearing complainant make comments about Ms. Doe's appearance and observed him standing very close to Ms. Doe when he talked to her. Complainant admitted he grabbed and held Ms. Doe's hand one time. Complainant admitted he held a female employe's chin while he talked to her. Another employe indicated complainant had also held her chin as he talked to her and had witnessed complainant doing the same thing to Ms. Doe. The report concluded that complainant had made comments to Ms. Doe concerning her appearance, and had continued to make such comments after Ms. Doe told him the comments offended her. The report concluded that complainant had grabbed Ms. Doe's hand without her consent and that he touched women on the chin when he spoke with them, sometimes without consent.

15. Ms. Ware determined there was probable cause that sexual harassment had occurred.

16. This was the first time respondent's Equal Rights Division had to consider rescinding a job offer as a result of sexual harassment complaint.

17. On August 28, 1997, Ms. Ware informed complainant by telephone of respondent's decision to rescind the employment offer for the ERO position.

#### OPINION

The Commission uses the following standard in reviewing a motion for summary judgment:

On summary judgment the moving party has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. On summary judgment the court does not decide the issue of fact; it decides whether there is a genuine issue of fact. A summary judgment should not be granted unless the moving party demonstrates a right to a judgment with such clarity as to leave no room for controversy; some courts

have said that summary judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment.

The papers filed by the moving party are carefully scrutinized. The inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion. If the movant's papers before the court fail to establish clearly that there is no genuine issue as to any material fact, the motion will be denied. If the material presented on the motion is subject to conflicting interpretations or reasonable people might differ as to its significance, it would be improper to grant summary judgment.

*Grams v. Boss*, 97 Wis.2d 332, 338-339, 294 N.W.2d 473 (1980), citations omitted.

Complainant alleges he was discriminated against based on his national origin/ancestry and race when 1) respondent initiated an investigation of him as a consequence of Ms. Doe's allegations, and 2) when respondent rescinded its offer of employing complainant in the ERO position.

The complainant has the ultimate burden of persuasion in this matter and the Commission typically follows the shifting burden of persuasion outlined in *McDonnell Douglas v. Green*, 411 U.S. 273 (1973).

Complainant has failed to demonstrate a prima facie case of discrimination with respect to respondent's action of conducting an investigation of the sexual harassment allegations by Ms. Doe. Respondent has a policy prohibiting its employees from acting in a way that can be construed as sexual harassment. Respondent's harassment policy also requires it to conduct timely investigations of any allegations of harassment by its employees. It is undisputed that respondent received Ms. Doe's allegations shortly after offering to employ complainant as an Equal Rights Officer. There is no indication that respondent has ever decided not to investigate a sexual harassment complaint where the employe involved was not Asian, not Laotian or not Hmong. There is no information identified by the complainant suggesting that respondent's decision to investigate the allegations was based, even in part, on either his national origin/ancestry, or race.

Similarly, the complainant has failed to demonstrate a prima facie case of discrimination relating to the rescission of the job offer. It is undisputed that respondent's investigation resulted in a conclusion that there was probable cause to believe the complainant had sexually harassed Ms. Doe. The ERO position is responsible for conducting investigations of violations of the Fair Employment Act, including allegations of sexual harassment. It is undisputed that the respondent's Equal Rights Division had never before been faced with having made a job offer to a current DWD employe and then finding that the employe had probably engaged in sexual harassment. There is no information identified by the complainant suggesting that respondent's decision to rescind the offer was based, even in part, on either his national origin/ancestry, or race.

Under these circumstances, the respondent's motion for summary judgment must be granted.

#### CONCLUSIONS OF LAW


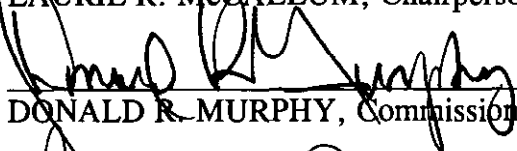

1. Respondent has the burden to show entitlement to summary judgment.
2. There are no genuine issues as to material facts.
3. Respondent has met its burden.

ORDER

Respondent's motion for summary judgment is granted and this complaint is dismissed.

Dated: February 28, 2000 STATE PERSONNEL COMMISSION

KMS:970174Cru12

  
LAURIE R. MCGALLUM, Chairperson  
  
DONALD R. MURPHY, Commissioner  
  
JUDY M. ROGERS, Commissioner

Parties:

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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 appli-

cation 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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