

STATE OF WISCONSIN

PERSONNEL COMMISSION

LYNN SIEWERT,
Complainant,

v.

**Secretary, DEPARTMENT OF
TRANSPORTATION,**
Respondent.

DECISION
AND
ORDER

Case No. 98-0220-PC-ER

NATURE OF THE CASE

The underlying matter is a complaint of discrimination on the basis of disability.

The issue to be decided here is as follows:

Whether complainant had good cause for failing to have filed a notarized complaint as requested by the Commission, as set forth in the "Ruling on Petition for Rehearing," dated March 12, 1999.

A hearing on this issue was held on May 24, 1999, before Laurie R. McCallum, Chairperson.

FINDINGS OF FACT

1. This complaint was originally filed with the EEOC (United States Equal Employment Opportunities Commission), and cross-filed with this Commission. On December 7, 1998, this Commission received a copy of an EEOC order dismissing complainant's charge.

2. By a letter dated December 14, 1998, this Commission advised complainant that if she now desired to pursue this charge before the Commission, she had to sign her charge (a copy of which was enclosed) before a notary public and return the notarized charge by December 30, 1998. Complainant did not do this.

3. In a January 11, 1999, letter, the Commission advised complainant that if she did not return the notarized charge by January 22, 1999, it would be assumed that she did not wish to pursue this matter and it would be dismissed. Complainant still did not return the notarized charge or otherwise contact this Commission, and on February 10, 1999, the Commission dismissed this case for the following reason: "Based on complainant's failure to respond to the Commission's January 11, 1999, letter, she has indicated that she did not wish to cross-file her complaint with the Personnel Commission."

4. After the Commission construed her letter filed February 17, 1999, as a petition for rehearing and asked her to clarify on what basis she was requesting a rehearing, she filed the notarized charge on March 5, 1999, along with a letter which includes the following:

When the EEOC mailed me a paper to sign in order to cross-file with the PC, I had trouble dealing with the paper and getting it back to you. First, I signed it and later realized I had to get it notarized. So I let it sit and I was going to bring it to the bank to resign it in front of a notary and get it notarized, and I wanted a copy, and I never had a chance to do any of this.

I was having great difficulty in coping in December and in January. I kept on feeling that I was going to have another nervous breakdown. I went to see the doctor about it a number of times. I was so scared that another nervous breakdown was around the corner and I didn't know how to stop its progression. When I saw the doctor, we questioned if it was perhaps a sugar problem or an estrogen problem. We checked out both the sugar and the estrogen, and it was neither.

I have fears from the nervous breakdown. My body is not the same. Between the crushing anti-Semitism [sic] and the harassing me at the prison and the taunting me with "Granny" and then the nervous breakdown following shortly thereafter at the DOT, I've reached my limits and something has happened in my head. I start to tremble, and cry, and fear, and helplessly sob, not knowing which way to turn. I was fired a year ago and can't get a job anyplace. I have zero income. There are weeks I find it hard to cope with the rejections, with the hunger, with the being fired for having a nervous breakdown on the job. There are times I can't cope with it all anymore [ellipses in original] and so it is in my struggling to navigate with the EEOC, the PC, the DVR, and the whole business. What good does it do me to try

to deal when I get turned down all the time anyway, and I can't afford another lawyer to help me deal with the legalese. When I have trouble dealing with all the papers and the notarizing and the whole bit, please forgive me—I am doing the best I can. I have no one to help me and at times the whole thing is overwhelming. Please understand I try to cooperate with everyone all the time, and when I fall short, it's not intentional.

5. The Commission interpreted this letter filed on March 5, 1999, as a petition for rehearing and granted the petition, noting in its ruling the following:

Liberally interpreting complainant's letter quoted above, it appears complainant contends that she was unable to proceed to have her charge notarized and to return it to the Commission due at least in part to her psychiatric situation during that period of time. If complainant could establish that this indeed was the case (presumably through a doctor's opinion), this arguably would provide a basis for a different decision than the order the Commission entered on February 10, 1999. That is, the Commission interpreted complainant's failure to have submitted her notarized charge of discrimination as indicating that she did not wish to proceed with her charge before the Commission. Based on her most recent letter, she in effect appears to be asserting that her failure to act was not based on a decision to drop her case, but rather to circumstances beyond her control. If she could establish this, it arguably would provide a basis for a conclusion that the Commission's February 10, 1999, order was premised on a "material error of fact," §227.49(3)(b), Stats. Therefore, the Commission will grant the petition to the extent of temporarily withdrawing its February 10, 1999, order, to allow evidentiary proceedings on complainant's allegations.

6. The only medical evidence provided by complainant is a letter dated March 17, 1999, from Robert O. Burns, M.D., an internal medicine specialist, which stated as follows, in relevant part:

This letter is written at the request of Lynn Siewert to explain her lateness in filing her appropriate documents. She explains that she has been under tremendous stress from the whole problem related to a nervous breakdown at work and that her difficulties in finding some resolution has lead to an increasing anxiety and, as she describes, an impending nervous breaking. This would seem to explain her lack of promptness in filling out the appropriate forms.

7. Complainant had been receiving psychiatric care prior to December of 1998. She was not under the care of a psychiatrist from December of 1998 through March of 1999.

8. Complainant acknowledges receiving the Commission's letters of December 14, 1998, and January 11, 1999.

9. Complainant traveled to Florida on January 13, 1999, and stayed there until January 26, 1999, for the purpose of participating in job interviews.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

2. Complainant has the burden to show that her mental health condition in December of 1998 and January of 1999 rendered her unable to have her charge of discrimination notarized as directed by the Commission.

3. Complainant has failed to sustain this burden.

OPINION

The particular deadlines the Commission established for complainant to file a notarized charge of discrimination were not based on any specific statutory requirements. The Commission has taken the approach that a party's failure to comply with similar deadlines can be excused under certain circumstances:

[T]he Commission will accept a late filing if the complainant shows good cause as to why the [document] was filed late.

Good cause, generally speaking, is established when the complaint shows that the filing was late for a reason beyond complainant's control Illness is a reason which could result in a finding that an appeal was filed late for good cause . . . [if complainant] establishe[s] that his illnesses were the reason why his [or her document] was filed late. *Allen v. DOC*, 95-0034-PC-ER, 11/7/97, pp. 4-5.

The evidence of record here does not support a conclusion that complainant was unable due to her mental health condition at the time to have her complaint notarized. It

should first be noted that the only medical evidence is provided by Dr. Burns, an internist, not a psychiatrist or other mental health professional. Moreover, the letter from Dr. Burns does not set forth his professional opinion that complainant was unable during the relevant time period to perform this task but simply summarizes what complainant has reported to him and indicates that "this would seem to explain her lack of promptness." It should also be emphasized that, despite complainant's representations about the severity of her mental health problem from December of 1998 through January of 1999, she was not under the care of a mental health professional at that time.

The record also shows that complainant, even though contending that she was virtually paralyzed by anxiety during this period of time, flew by herself from Wisconsin to Florida, remained in Florida for 13 days, participated in job interviews in Florida, and flew back to Wisconsin by herself. This course of conduct is inconsistent with a finding that complainant was unable to have her complaint notarized and it is so concluded.

Finally, complainant contended for the first time at hearing that she did not receive the letter of January 11, 1999, until she returned from Florida on January 26, 1999. However, even if this were true, it does not explain why complainant did not properly respond to the Commission's letter of December 14, 1998; or why she waited until March 5, 1999, 38 days after she returned from her trip, to comply with the directive in the letter of January 11, 1999, to file a notarized complaint with the Commission.

ORDER

The Commission's order of February 10, 1999, is reinstated, and this complaint is dismissed.

Dated: June 30, 1999

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM
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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 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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