

STATE OF WISCONSIN

PERSONNEL COMMISSION

PASTORI M. BALELE,
Complainant,

v.

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

RULING ON MOTION
TO DISMISS

Case No. 99-0004-PC-ER

This is a complaint of discrimination on the bases of color, national origin or ancestry, and race. On July 1, 1999, respondent filed a motion to dismiss certain aspects of this complaint based on untimely filing. The parties were permitted to brief this motion and the schedule for doing so was completed on August 13, 1999. The following findings of fact are based on information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

FINDINGS OF FACT

1. The motion here relates to the following portions of the hearing issues to which the parties have agreed:

1. Whether respondent discriminated against complainant on the basis of color, national origin or ancestry, or race in regard to the following:

a. Respondent's decision not to select complainant for the position of Director of Admissions, UW-Madison, during 1998. .

..

c. Respondent's decision not to select complainant for the position of Assistant Dean for Fiscal Affairs, UW Medical School, during 1998. . . .

2. Although complainant represented in his complaint that he competed for the Director of Admissions position in 1998, this recruitment actually took place in 1997,

and complainant was notified that he was not selected as a finalist for this position on May 8, 1997.

3. Complainant applied for the Assistant Dean for Fiscal Affairs position on November 7, 1997, and was notified on February 13, 1998, that his application was not selected for interview and would not be given further consideration.

4. This complaint was filed on January 4, 1999.

Section 111.39(1), Stats., requires that complaints of discrimination under the Fair Employment Act, like this one, be filed within 300 days of the date that the alleged discrimination occurred. Here, in regard to both positions under consideration, the complaint was not filed within 300 days of the date that complainant received notice that he was no longer under consideration for the position. As a result, it must be concluded that the complaint was not timely filed as to these two positions.

Complainant, however, argues that a continuing violation theory should apply here to render the complaint timely as to these two positions. However, the Commission has been consistent in holding that a continuing violation theory would not apply to allegations involving discrete personnel transactions such as hiring, transfer, or promotion decisions, i.e., that these are discrete, isolated, and completed actions which are to be regarded as individual violations. *See, LaRose v. UW-Milwaukee*, 94-0125-PC-ER, 4/2/97; *Schultz v. DOC*, 96-0122-PC-ER, 4/2/97; *McDonald v. UW-Madison*, 94-0159-PC-ER, 8/5/96; *Boyle v. DHSS*, 84-0090-PC-ER, 2/11/88. Complainant's argument in this regard fails.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.45(1)(b), Stats.
2. Complainant has the burden to show that the allegations which formed the basis of issues 1.a. and 1.c. were timely filed.
3. Complainant has failed to sustain this burden.

ORDER

Those portions of the complaint relating to the Director of Admissions, UW-Madison position (issue 1.a.), and Assistant Dean for Fiscal Affairs, UW Medical School position (issue 1.c.) are dismissed. The issues for hearing are now as follows:

1. Whether respondent discriminated against complainant on the basis of color, national origin or ancestry, or race in regard to the following:

b. Respondent's decision not to select complainant for the position of Administrative Manager Associate Director, Transportation Services, UW-Madison, during 1998.

d. Respondent's decision not to select complainant for the position of Human Resources Manager, UW-Madison, during 1998.

2. Whether the pre-interview candidate screening process used by respondent as a part of the selection process for the position of Administrative Manager Associate Director, Transportation Services, UW-Madison, had a disparate impact on racial minorities.

3. Whether the post-certification process followed by respondent during 1998 to fill a vacancy in the position of Human Resources Manager had a disparate impact on racial minorities.

Dated: August 25, 1999

STATE PERSONNEL COMMISSION

Laurie R. McCallum/jms
LAURIE R. McCALLUM, Chairperson

LRM.990004Cru11

Judy M. Rogers
JUDY M. ROGERS, Commissioner

Commissioner Donald R. Murphy did not participate in the consideration of this matter.