

STATE OF WISCONSIN

PERSONNEL COMMISSION

ANGELA L. BOUTWELL-PITT

Complainant,

v.

**Secretary, DEPARTMENT OF
WORKFORCE DEVELOPMENT,**

Respondent.

**RULING ON MOTION
TO DISMISS**

Case No. 99-0107-PC-ER

This is a complaint of race and sex discrimination. On June 30, 1999, respondent filed a motion to dismiss for untimely filing. The parties were permitted to brief this motion and the final brief was filed on July 19, 1999. The following findings are derived from information provided by the parties, appear to be undisputed, and are made solely for the purpose of deciding this motion.

FINDINGS OF FACT

1. This complaint was filed with the Commission on June 18, 1999. On the complaint form, complainant indicated that June 19, 1998, was the most recent date on which she believed the respondent had acted illegally against her.

2. Complainant acknowledges that this complaint was not filed within the applicable statutory 300-day filing period. In her brief, complainant offers the following rationale for failing to meet this filing requirement:

1. Excusable Neglect, pursuant to the facts averred in the attached personal affidavit of the complainant.

2. Public Policy, pursuant to sentiments, goals and objectives expressed in federal civil rights legislation, e.g., Title VII of the Civil Rights Act of 1964 found at 42 U.S.C. Sections 2000 et seq.

3. In the affidavit referenced in 2. above, complainant states as follows, in relevant part:

I filed said complaint beyond the 300 day period of limitation contrary to Section 111.39(1), Wis. Stats. for the following reasons:

- a. I am untrained in the law and was unaware of the requirements of Section 111.39(1), Wis. Stats.
- b. I first disputed this matter via the existing union grievance procedure, and was specifically advised by a union representative that I had a year to file this complaint.
- c. I thought it best to wait for the outcome of the union grievance procedure before pursuing other avenues of redress.

This complaint was filed pursuant to the Wisconsin Fair Employment Act (FEA) which requires, in §111.39(1), Stats., that complaints be filed “. . . no more than 300 days after the alleged discrimination . . . occurred.” It is not disputed here that complainant failed to satisfy this 300-day filing requirement.

As a statute of limitations, this 300-day filing period is subject to equitable tolling. *Wright v. DOT*, 92-0012-PC-ER, 2/25/93. Complainant contends in this regard that she was unaware of the requirements of §111.39(1), Stats. However, the Commission has been consistent in holding that lack of knowledge of the law will not toll the running of statutory time periods. *Gillett v. DHSS*, 89-0070-PC-ER, 8/24/89; *Masko v. DHSS*, 95-0096-PC-ER, 4/4/96; *Holmes v. UW-Madison*, 97-0037-PC-ER, 4/24/97. Complainant also argues that the time period should be tolled because she filed a union grievance and it had not yet been decided by the time the 300-day period had elapsed. However, the Commission has held that the filing of another action does not toll the statutory filing period under the FEA. *King v. DHSS*, 86-0085-PC-ER, 8/6/86; *Hoepner v. DHSS*, 79-191-PC-ER, 6/30/81. Complainant also attempts to invoke the doctrine of equitable estoppel by arguing that her union representative had told her she had a year to file her complaint with the Commission and she followed this advice. However, the actions of a union representative would not be attributable to

respondent and, as a result, could not be used to estop the respondent from asserting this timeliness objection. *See, Ziegler v. LIRC*, 93-0031-PC-ER, 5/2/96. Finally, complainant argues that the filing period should be tolled based on the public policy expressed in federal civil rights legislation. It should first be noted that this action was brought pursuant to state, nor federal, law. Moreover, if the public policy favoring non-discrimination were interpreted as complainant urges here, neither the state or federal legislative bodies enacting these laws would have established filing deadlines in the first place. It is concluded that this complaint was not timely filed and complainant has not offered a sufficient basis for tolling the filing period here.

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 complaint was timely filed.
3. Complainant has failed to sustain this burden.

ORDER

Respondent's motion to dismiss is granted and this complaint is dismissed.

Dated: July 28, 1999

LRM:990107Cdecl

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Angela L. Boutwell-Pitt
729 North Thompson Dr
Madison WI 53704

Linda Stewart
Secretary, DWD
P.O. Box 7946
Madison, WI 53707-7946

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