

STATE OF WISCONSIN

PERSONNEL COMMISSION

DEBRA D. LAWLER,
Complainant,

v.

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

**RULING
ON
MOTION TO
DISMISS
CLAIM**

Case No. 99-0131-PC-ER

This matter is before the Commission on the respondent's motion to dismiss that portion of the complaint arising from the decision not to hire the complainant in June of 1998 as an Office Student Hourly employe in respondent's College of Letters and Science. The parties have filed written arguments and the following findings appear to be undisputed.

FINDINGS OF FACT

1. In May or June of 1998, complainant applied for a vacant Office Student Hourly position in respondent's College of Letters and Science. She was interviewed by Chris Bruhn for the vacancy on June 15, 1998. Another candidate, Maureen Woods, was selected and complainant was notified of the decision by June 22, 1998.

2. On September 10, 1999, complainant filed a complaint of age discrimination with the Personnel Commission. Complainant described the alleged discrimination as follows:

I was not hired for a job for which I was clearly qualified. This happened on two separate occasions, for the same position. When another position opened in the same office, I was refused an interview. I pursued this in May 1999 with Atty Theresa Elguezabal with the Equal Opp. Office of UW. She promised she would report back to me. Please see attached copies of e-mail in support of this claim.

Complainant noted that the hiring decisions in question "first" occurred in approximately May of 1998 and last occurred on April 22, 1999.

3. The e-mail messages attached to her complaint showed that on December 14, 1998, complainant wrote Chris Bruhn and asked to be considered for an office assistant position. Complainant also asked if Mr. Bruhn had retained her resume from when she had applied for a position in the spring of 1998. Mr. Bruhn responded by noting that complainant's resume had been retained and that he would be in touch when respondent was able to consider her. The second e-mail attached to the complaint showed that on April 19, 1999, complainant wrote Sandra Englesby and asked to be considered for a summer clerical opening. On April 22, 1999, Ms. Englesby replied by informing complainant that the position had been filled.

4. Respondent subsequently filed an answer to the complaint. In its answer, respondent noted the following:

Complainant does not specify the exact positions of which she complains. However, from Respondent's review of the attachments to the Complaint, it appears that the two subject positions are: 1) Student Clerical Assistant, University of Wisconsin-Madison, College of Letters & Science, Payroll & Benefits, and 2) Office Student Hourly, University of Wisconsin-Madison, College of Letters & Science, Office of Deans.

5. In her response to the respondent's answer, it became clear that complainant sought review of the original decision to hire Ms. Woods in June of 1998. Complainant also argued that the respondents' actions in December of 1998, when respondent allowed Ms. Woods to return to the Office Student Hourly position after having vacated it due to illness, were "open to question."

6. Respondent responded by filing a motion to dismiss, as untimely, complainant's claim relating to the decision to hire Ms. Woods in June of 1998.

CONCLUSIONS OF LAW

1. Complainant has the burden of establishing that her complaint, as it relates to the decision not to select her for the position of Office Student Hourly in June of 1998, was timely filed.

2. Complainant has failed to meet her burden.

OPINION

The time limit for filing complaints of discrimination under the Fair Employment Act is found in §111.39(1), Stats:

The [Commission] may receive and investigate a complaint charging discrimination, . . . if the complaint is filed with the [Commission] no more than 300 days after the alleged discrimination . . . occurred.

Complainant contends that the Commission may review the June, 1998 decision not to select her for the Office Student Hourly position based on a continuing violation theory. A party is not required to file a Fair Employment Act claim within 300 days of the initial accrual of a claim if the claim involves a continuing violation. *Gurrie v. DOJ*, 98-0130-PC-ER, 11/4/98.

As explained in *Tafelski v. UW*, 95-0127-PC-ER, 3/22/96, the continuing violation doctrine allows an employe to get relief for an otherwise time-barred act by linking it with an action that occurred within the limitations period. The Commission has previously held that transfer, promotion and termination decisions are discrete, isolated and completed actions which have to be regarded as individual violations, with a degree of permanence which should trigger a complainant's awareness of and duty to assert her rights. *McDonald v. UW-Madison*, 94-0159-PC-ER, 8/5/96; *Schultz v. DOC*, 96-0122-PC-ER, 4/2/97.

The decision not to hire the complainant for the Office Student Hourly position in June of 1998 was also a discrete, isolated and completed action. It is undisputed that the complainant learned of that decision shortly after it was made in June of 1998. She did not file her discrimination complaint until September of 1999, which was more than 300 days later. The continuing violation doctrine is inapplicable to the discrete hiring decisions that are the subject of this complaint. Therefore, complainant's allegation related to the Office Student Hourly hiring decision in June of 1998 is untimely.

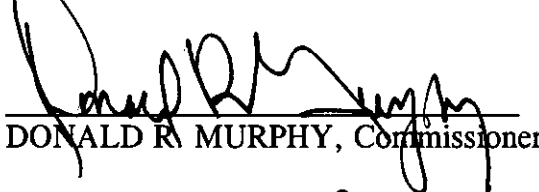
ORDER

Respondent's motion to dismiss that portion of this complaint relating to the Office Student Hourly selection decision in June of 1998 is granted. The investigation of complainant's remaining contentions will proceed.

Dated: March 10, 2000 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

KMS:990131Crull


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner