

STATE OF WISCONSIN

PERSONNEL COMMISSION

HAI-SHEN CHOU
Complainant,

v.

**Secretary, DEPARTMENT OF NATURAL
RESOURCES,**
Respondent.

**RULING ON MOTION
TO COMPEL
DISCOVERY**

Case No. 00-0019-PC-ER

This is a complaint of age and race discrimination relating to a failure to reinstate complainant to a position from which he had voluntarily demoted. Complainant has filed a motion to compel discovery. The parties were provided an opportunity to brief this motion and the schedule for doing so was completed on August 11, 2000. Respondent filed its responsive brief according to the schedule but complainant did not file a reply brief. The following findings 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. This complaint, filed on February 7, 2000, alleges age and race discrimination in regard to respondent's decision not to reinstate complainant to his former position after a voluntary demotion.

2. The reasons offered by respondent in its answer to the complaint for declining to reinstate complainant to his former position include complainant's failure to observe work rules relating to work hours and meal reimbursements, his responsibility for delays in the program's decision-making process which necessitated his supervisor's (Lakshmi Sridharan) intervention, and his contribution to the low morale of subordinate staff.

3. In a letter dated May 24, 2000, complainant requested certain information from respondent as a part of the discovery process. In a letter dated June 27, 2000, complainant filed this motion to compel discovery, contending that respondent failed to provide the following information as requested on May 24:

(a) A confidential memo from Bill Yantawood to Lakshmi Sridharan and cc to Gloria McCutcheon. Memo was issued before Christmas of 1999 concerning personal concerns and management problems raised by Bill. All correspondence, e-mails, attachments & resolutions related to the above memo shall be included. (identified as request #1 by complainant in his May 24 letter)

(b) Grievance filed by Mike Griffin, Marv Patton & Larry Weix of DNR-SER & NER on 9/18/98 concerning unprofessional comments made by Lakshmi Sridharan. All correspondence, steps of grievance, attachments, e-mails and resolutions should be included. (identified as request #3 by complainant in his May 24 letter)

4. On July 12, 2000, respondent supplemented its response to the discovery request identified in ¶3.(a), above. It is presumed, as a result of this supplementation as well as complainant's failure to address this matter further after July 12 despite the opportunity to file a reply brief after that date, that this discovery response is no longer in dispute.

5. In its brief filed July 18, 2000, respondent provided to the Commission a copy of the memo which is the subject of the discovery request identified in ¶3.(b), above. Some sections of this memo deal with Mr. Yantawood's opinion that Ms. Sridharan did not provide appropriate support for him as a supervisor in his dealings with his subordinates.

OPINION

Section PC 4.03, Wis. Adm. Code, provides that "[a]ll parties before the Commission may obtain discovery as provided by ch. 804, Stats." Section 804.01(2)(a), Stats., states that, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending

action,.. ” and that, “[i]t is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Since complainant’s performance as a supervisor is one of the factors respondent has represented it relied upon in declining to reinstate him, and since, in his charge, complainant attributes to Ms. Sridharan certain of the decision-making and other problems in the program which respondent has attributed to him, information relating to Ms. Sridaharan’s performance as a manager vis a vis another supervisor in the program could lead to the discovery of relevant evidence. As a result, it is concluded that the Yantawood memo which is the subject of this discovery dispute is discoverable within the meaning of §804.01(2)(a), Stats. However, because the Yantawood memo contains sensitive information as well as information unrelated to this case, the Commission will issue a protective order to assure that the memo is used only for purposes of litigating this discrimination charge.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.45(1)(b), Stats.
2. Complainant has the burden to show that the information requested by complainant which is the subject of this ruling is discoverable within the meaning of Ch. 804, Stats.
3. Complainant has sustained this burden.

ORDER

Respondent is ordered to provide a copy of the Yantawood memo (see Finding 3.(a), above) to complainant within 30 days of the date of this ruling.

Dated: August 28, 2000

LRM:000019Cru1

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


JUDY M. ROGERS, Commissioner