

LYNNE PIOTROWSKI,
Complainant,

v.

**Secretary, DEPARTMENT OF
WORKFORCE DEVELOPMENT,**
Respondent.

**RULING ON MOTION
TO DISMISS**

Case No. 00-0137-PC-ER

This is a complaint alleging race discrimination and retaliation for engaging in protected fair employment activities. Respondent has filed a motion to dismiss for untimely filing. 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. Complainant was employed by respondent for approximately 10 years as an Equal Rights Officer in the Equal Rights Division.

2. Effective April 11, 1999, complainant resigned from her employment with respondent in order to accept a position in another state agency. Immediately prior to April 11, 1999, complainant had been working four ten-hour days each week.

3. During the entire period of her employment in state service, complainant received a paycheck every other week. Accompanying this paycheck was a document which indicated, among other things, the amount of leave complainant had used during the pay period for which the paycheck was issued and the amount of leave complainant had used so far that calendar year up to and including such pay period.

4. On December 9, 1999, complainant reviewed her leave usage for the calendar year and discovered that her sick leave balance was 10 hours less than her records indicated it should be. Upon further investigation, complainant discovered that

respondent had recorded that she had used 10 hours of sick leave on a particular day during her last week of employment, but that complainant's records indicated that she had worked 10 hours that day. Complainant brought this alleged discrepancy to respondent's attention, and requested that her sick leave balance be increased by 10 hours. On December 20, 1999, complainant was advised by respondent that, based on respondent's records, complainant's sick leave balance was correct and would not be increased as requested.

5. The actions which are the subject of this complaint are allegedly discriminatory and harassing incidents which occurred during complainant's employment with respondent, and respondent's reduction of complainant's sick leave balance by 10 hours during her last week of employment as described in Finding 4, above. Complainant had formed a belief during her employment by respondent that she was being discriminated against and harassed by management of the Equal Rights Division, and had reported this belief to her superiors.

6. This charge of discrimination/retaliation was filed with the Commission on October 12, 2000.

This action was brought pursuant to the Fair Employment Act, which requires that a complaint be filed with the Commission no more than 300 days after the alleged discrimination/retaliation occurred. §111.39(1), Stats. This 300-day filing requirement is in the nature of a statute of limitations and, as a result, subject to equitable tolling. *Milwaukee Co. v. LIRC*, 113 Wis.2d 199, 205, 335 N.W.2d 412 (Ct.App. 1983). Complainant has the burden to show that her complaint was timely filed. *See, Ziegler v. LIRC*, 93-0031-PC-ER, 5/2/96.

Certain allegations in complainant's charge relate to acts of discrimination/harassment which occurred during the course of complainant's employment by respondent. Since this employment relationship ended effective April 11, 1999, and the subject charge was not filed until October 12, 2000, more than 300

days later, the complaint was not timely filed as to these allegations. *Hedrich v. UW*, 98-0165-PC-ER, 2/10/99.

The remaining allegation of complainant's charge relates to respondent's reduction of complainant's sick leave balance by 10 hours during her last week of employment. Complainant argues that the 300-day filing period should be measured from the date (December 9, 1999) that she discovered the discrepancy or the date (December 20, 1999) that respondent denied complainant's request to increase her sick leave balance by 10 hours. Respondent argues that the 300-day filing period should be measured from the date in April of 1999 that complainant received her pay stub/leave accounting document for the last week of her employment by respondent.

The standard to be applied in resolving such a dispute was articulated by the Commission in *Sprenger v. UW-Green Bay*, 85-0089-PC-ER, 7/24/86, i.e., the operative date for determining when the 300-day filing period should commence is the date that the facts that would support a charge of discrimination were apparent or should have been apparent to a similarly situated person with a reasonably prudent regard for his or her rights. Here, complainant did not have to conduct any type of investigation or make any type of inquiry to discover that 10 hours of sick leave had been deducted from her leave balance for her last week of employment with respondent. See, *Sprenger, supra.*, *Rudie v. DHSS & DER*, 87-0131-PC-ER, 9/19/90. This deduction was stated on the pay stub/leave accounting document that she received in April of 1999 after her last week of work for respondent. The fact that complainant failed to review this document until the end of the calendar year, or did not form a belief that the deduction was due to discrimination/retaliation until that time, does not toll the filing period. See, *Christensen v. UW-Stevens Point*, 91-0151-PC-ER, 11/13/92; *Gozinske v. DHSS*, 86-0038-PC-ER, 6/25/86. A person similarly situated to complainant, who had already formed the belief that she was being discriminated/retaliated against by respondent, with a reasonably prudent regard for her rights, would have reviewed the pay stub/leave accounting document upon receipt. The 300-day filing period should be measured from April of 1999. Since complainant did

not file her charge until October 12, 2000, more than 300 days later, it is concluded that her charge was not timely filed.

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 complainant is dismissed for untimely filing.

Dated: March 21, 2001

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:000137Crull


JUDY M. ROGERS, Commissioner

Parties:

Lynne Piotrowski
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Madison WI 53711

Jennifer Reinert
Secretary, DWD
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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.)

2/3/95