

**JILL KRAUSE,**  
*Complainant,*

v.

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

RULING ON MOTION  
TO DISMISS

Case No. 01-0166-PC-ER

This matter is before the Commission to resolve respondent's motion to dismiss and for sanctions which was filed with the Commission on February 11, 2002. Respondent seeks dismissal of this complaint on the ground that complainant failed to reply to a certified letter from the Commission within the 20 days §111.39(3), Wis. Stats, requires. Respondent seeks sanctions on the ground that complainant violated §802.05(1)(a), Stats., by failing to conduct a reasonable inquiry into the facts and the law prior to signing her complaint. Both parties have filed briefs. The findings that follow are based on apparently undisputed facts in the record before the Commission, and are made solely for the purpose of resolving this motion.

#### FINDINGS OF FACT

1. Complainant filed a complaint with the Commission on October 9, 2001, alleging the respondent had violated the Family Medical Leave Act (FMLA) when it failed to waive or extend complainant's probationary period and failed to permanently hire her.

2. On October 15, 2002, complainant notified the Commission that Mr. Geoffrey Skoll (Mr. Skoll), who is a non-attorney, would be representing complainant. Complainant made the request, in writing, that all correspondence should be sent to Mr. Skoll at the following address: P.O. Box 11116, Milwaukee, WI 53211.

3. On October 15, 2001, the respondent filed a Notice of Motion and Motion to Dismiss, alleging the complainant was ineligible for leave under the Wisconsin Family and Medical Leave Act.

4. On October 16, 2001, a letter was sent to Mr. Skoll from an Equal Rights Investigator with the Commission, explaining that if complainant wished to amend the original complaint to include disability discrimination, the blank complaint form would need to be completed, with complainant's notarized signature. In addition, the letter requested information and facts which would identify a claim of disability discrimination, including complainant's disability, any requested accommodation, when and to whom it was requested, and any information that would show a connection between complainant's disability and her termination. The letter provided that the form was to be returned on or before October 31, 2001.

5. On October 18, 2001, the investigator sent a letter to both parties, stating that Mr. Skoll had indicated he would be withdrawing the FMLA claim and amending the complaint to include disability discrimination. Mr. Skoll was asked to submit the FMLA withdrawal in writing by October 25, 2001.

6. On October 26, 2001, the investigator sent an e-mail to Mr. Skoll inquiring whether Mr. Skoll had mailed a letter confirming complainant's withdrawal of the FMLA complaint. Mr. Skoll responded that he had mailed the letter on October 22, 2001.

7. On October 29, 2001, the Commission received a letter confirming complainant's withdrawal of the FMLA complaint. In addition, the letter stated that complainant would amend her complaint and submit a perfected amended complaint by October 31, 2001. The letter was signed by Mr. Skoll.

8. On October 31, 2001, the Commission received a faxed copy of complainant's amended complaint in this case.

9. On November 1, 2001, the Commission received the mailed copy of complainant's "amendment to complaint." The amendment contained Mr. Skoll's notarized signature, but not complainant's.

10. On November 1, 2001, the investigator sent a letter to Mr. Skoll acknowledging receipt of the "amendment to complaint." The investigator explained that Commission rules require complainants to sign complaints and amendments, with a notarized signature. In addition, the investigator stated that the properly completed amendment was to be filed with the Commission on or before November 30, 2001.<sup>1</sup>

11. After not having received a completed amendment, on December 3, 2001, the investigator sent complainant's representative, Mr. Skoll, a certified letter, explaining that a response had to be received by the Commission within 20 calendar days of the date of the certified letter or the case could be dismissed for lack of prosecution. Specifically, the letter stated:

Pursuant to §111.39(3), Stats., which relates to claims filed under the Fair Employment Act:

The (commission) shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the (commission) concerning the complaint and if the correspondence is sent by certified mail to the last known address of the person.

12. The Commission did not receive any response to the December 1, 2001, letter within the specified period of 20 days.

13. On January 22, 2002, the Commission received an amended complaint in this case with complainant's notarized signature.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.

---

<sup>1</sup> The letter, in part, stated: "If you wish to amend this complaint to include disability discrimination, please complete either the enclosed form, or complete a form which furnishes the same information as requested by the Commission complaint form, and have the complainant sign this document in the presence of a notary public, and then file the completed, notarized amendment with the Commission."

2. Complainant has the burden to show that her response to the Commission's December 3, 2001, certified letter, was timely filed pursuant to §111.39(3), Stats., and §PC 1.01(12), Wis. Adm. Code.

3. Complainant has not satisfied her burden.

4. Respondent has the burden to show sanctions should be imposed pursuant to §802.05(1)(a).

5. Respondent has failed to sustain its burden.

#### OPINION

In complainant's letter dated February 14, 2002, she states that a perfected complaint was submitted on January 18, 2002. The Commission received the perfected complaint on January 22, 2002, as affirmed by the Commission's date stamp on the document. Either date is well beyond the 20 days deadline set forth in the December 3, 2001, certified letter. The complainant indicated the reason for missing the 20 day deadline was a "consequence of miscommunications and unreceived mail." (Letter to Commission from Mr Skoll received February 19, 2002)

With respect to the 20 day certified letter provision in §111.39(3), Stats., the Commission has taken the position that once the Commission has sent a certified letter to a complainant, it is to dismiss the complaint if the complainant fails to respond to the letter within 20 days. *Wyman v. UW(Madison)*, 99-0078-PC-ER, 1/25/2000.

In *King v. DHSS*, 88-0007-PC-ER, 5/29/91, the complainant's response to the Commission's correspondence was received 21 days after the date the Commission letter was mailed. The Commission has held that this 20 day period begins to run on the date the Commission's letter is mailed. *Id*; *Jackson v. DHSS*, 87-0149-PC-ER 3/10/88; *Billingsley v. DOR*, 87-0132-PC-ER 7/13/88; *Block v. UW-Madison Extension*, 88-0052-PC-ER, 7/27/89. Therefore, the complaint was dismissed.

In *Billingsley*, the Commission held that to be timely under §111.39(3), Stats., a response must be received by the Commission within the 20 day period. *King* at 2; *Billingsley*. The Commission found the definition of "respond" was consistent with

the definition in BLACK'S LAW DICTIONARY 1475 (4<sup>th</sup> ed. 1968); "[t]o make or file an answer." *Id.*

In *Powell v. DHFS*, 97-0147-PC-ER, 1/14/98, the complainant responded to a certified letter sent by the Commission on December 1, 1997, when the response was due no later than November 28, 1997. Though complainant explained that his father, who was living in Michigan, was diagnosed with cancer and there had been a death in his family, the Commission found the arguments raised did not change the fact that the complainant did not file his response within the 20 day period specified by the statute. The case was dismissed. (Dismissal did not affect the appeal that was also pending before the Commission or the proceeding pending before the Equal Employment Opportunity Commission) *Id.* at 3.

In *Simon v. Karakahl Inn*, 199601057, LIRC 11/30/01, the Equal Rights Division sent a certified letter to complainant at Dodge Correctional Institution after receiving information the complainant's attorney was deceased. The case file contained a second mailing receipt for a certified letter, indicating that it had been sent to the complainant at a post office box number in Fox Lake, Wisconsin, in care of Fox Lake Correctional Institution. The 20-day period that a person is allowed to respond to department correspondence had not expired when the department received information regarding a new address for the complainant. LIRC concluded that the mailing receipt for certified mail addressed to the complainant should have prompted ERD to question whether the complainant's address continued to be at Dodge Correctional Institution. The order for dismissal was set aside. *Id.* The particular facts of that case—i. e., the address changed while the original 20 day period was in process—are not paralleled here.

In this case, the investigator sent a certified letter on December 3, 2001, to complainant's designated representative, Mr Skoll. Subsection PC 1.04(1), Wis. Adm. Code, states:

A party is entitled to appear in person or by or with the party's representative in any case before the commission except as otherwise prohibited by law. The representative shall be presumed to have full authority

to act on behalf of the party, including the authority to file or withdraw a case.

The Commission had earlier received a memo from complainant on October 15, 2001, stating in part, that all correspondence should be sent to Mr. Skoll at the address provided. From that time on, all correspondence involving the complainant was directed to Mr. Skoll, including the certified letter sent on December 3, 2001.

Pursuant to §111.39(3), Stats., the Commission must dismiss a complaint filed under the Fair Employment Act if the complainant fails to respond within 20 days to “correspondence sent by certified mail to the last-known address of the person.” In the present case, Mr. Skoll was the complainant’s representative, and under §PC1.04(1), Wis. Adm. Code, set forth above, had “full authority to act on behalf of the party [complainant]. Therefore, since there was no timely response to the Commission’s December 3, 2001, certified letter,<sup>2</sup> this complaint must be dismissed.

Complainant argues that because a perfected complaint was not mailed back to the Commission until January 18, 2002, no complaint was before the Commission between the dates of October 15, 2001, and January 18, 2002. Complainant also implicitly argues that because there was no complaint until January 18<sup>th</sup>, the 20 day certified letter based on §111.39(3), could have no effect.

The Commission notes that it has had an open file in this matter since the original complaint was filed on October 9, 2001. The case file was still open at the time respondent mailed the certified letter that is the subject of this ruling.

Commission rule §PC 2.02(3) Wis. Adm. Code reads:

A complaint may be amended by the complainant subject to approval by the commission, to *cure technical defects* or omissions, or to clarify or amplify allegations made in the complaint or to set forth additional facts or allegations related to the subject matter of the original charge, and *those amendments shall relate back* to the original filing date. (Emphasis added)

---

<sup>2</sup> As noted above, the complainant indicated the reason for missing the 20 day deadline was a “consequence of miscommunications and unreceived mail.” (Letter to Commission from Mr. Skoll received February 19, 2002)

The Commission received complainant's unperfected complaint on November 1, 2001, amending her allegations to include a discrimination claim, based on disability. The investigator sent complainant a letter explaining that the amendment required a notarized signature. The complainant did not supply the signature until January 22, 2002. The Commission never dismissed the original complaint and the case has remained open ever since it was initially filed on October 9, 2001. Supplying a notarized signature on an otherwise perfected complaint is considered curing a technical defect and therefore relates back to the original filing date. Therefore, this complaint has been pending since the original filing date of October 9, 2001, and the requirements of §111.39(3), Stats., have been applicable to this matter since no later than November 1, 2001.

In addition, respondent seeks sanctions based on complainant's failure to have conducted a reasonable inquiry into the facts and law prior to signing the charge of discrimination. Respondent asserts such sanctions are required by §802.05(1)(a), Wis. Stats. However, pursuant to §801.01(2), Wis. Stats., "Chapters 801 to 803 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings." Therefore, while §802.05(1)(a), Stats., expresses what the Commission considers to be a salutary principle, it does not apply to administrative proceedings of this nature. Therefore, the provisions of this subsection which authorize a court to impose costs and fees as a sanction for failure of compliance do not apply to this proceeding. Respondent also cites *Balele v. DER*, 98-0145-PC-ER, 2/28/00, as authority for the award of expenses. In that case, the order was based on discovery sanctions under §804.12, Wis. Stats. The Commission, via §PC 4.03, Wis. Adm. Code, has explicitly adopted by reference ch. 804, Wis. Stats., which includes authority to award expenses as a sanction, and the motion in this case is not based on a discovery dispute.<sup>3</sup> See also, *Tatum v. LIRC*, 132 Wis. 2d 411, 392 N. W 2d 840 (Ct. App. 1986)

---

<sup>3</sup> Respondent refers in its brief in support of its motions to alleged failures by complainant to respond to its discovery request, but states "UWM considered bringing a Motion to Dismiss and for Sanctions for the complainant's failure to comply with discovery requests. However,

(No authority to impose costs and fees for commencing a frivolous WFEA administrative proceeding) Therefore, respondent's motion for the payment of respondent's expenses is denied.

ORDER

Respondent's motion to dismiss for failure to timely respond to Commission's certified letter within 20 days pursuant to §111.39(3) is granted, and this case is dismissed.

Respondent's motion for sanctions is denied.

Dated: May 24, 2002.

STATE PERSONNEL COMMISSION

KST:010166Cru11.01

  
ANTHONY J. THEODORE, Commissioner

  
KELLI S. THOMPSON, Commissioner

Parties:

Jill Krause  
9528 W. Becher St.  
West Allis, WI 53227

Nancy Zimpher  
Chancellor, UW-Milwaukee  
PO Box 413  
Milwaukee, WI 53201-0413

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 par-

---

because the Complainant had also failed to respond to the twenty-day letter, UWM decided to defer to the dismissal on that basis." (Respondent's brief filed February 11, 2002, p. 3.)



ties 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