

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by  
Stephen W. Cooper, Commissioner  
Department of Human Rights,

ORDER

Complainant,

Vs

Hennepin County,

Respondent.

The above-entitled matter comes before Administrative Law Judge Peter C Erickson upon a Motion for Summary Judgment filed by the Respondent on June 8, 1990. The last brief on this motion was filed on July 19, 1990. Janeen E. Rosas, Assistant County Attorney, 2000 Government Center, Minneapolis, Minnesota 55487, appeared on behalf of the Respondent, Hennepin County. Erica Jacobson, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of Complaint, Minnesota Department of Human Rights.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69.

Based upon all of the records, files and arguments of counsel, the Administrative Law Judge makes the following:

ORDER

Respondent's Motion for Summary Judgment on the ground of laches is GRANTED. This matter is dismissed with prejudice.

Dated this            day of July, 1990.

Judge

PETER C. ERICKSON Administrative Law



MEMORANDUM

Respondent argues that summary judgment should be granted in its favor on two separate grounds: (1) that due to the significant delay between the filing of a charge and issuance of a complaint in this case, laches has been established which warrants summary judgment; and (2) the Minnesota Department of Human Rights lacks jurisdiction over this case.

This case initially arose in November of 1984 when the charging party, Constance Leaf, filed a complaint with the EEOC, alleging a violation of Title VII of the Civil Rights Act. Ms. Leaf had been employed by Hennepin County as a sheriff's deputy trainee from November of 1983 until November of 1984 when she was terminated due to inadequate job performance. The charge filed with the EEOC was transmitted to the Minneapolis Department of Civil Rights (MDCR) but, due to a work-sharing arrangement, the EEOC agreed to initially process the charge.

After investigating, the EEOC found probable cause in January of 1986 and proposed terms for settlement. Because this matter could not be settled, it was referred to the U.S. Department of Justice for possible litigation. However, in April of 1986, the Department of Justice declined to pursue this case and issued a "right to sue" letter to Ms. Leaf. Leaf was advised she had ninety days to bring a civil action against the Respondent but she declined to do so. At approximately the same time, the MDCR conducted its own investigation of this matter and issued a finding of probable cause. However, before a public hearing could be held, the Minnesota Court of Appeals issued an Order, dated June 16, 1987, which prohibited the MDCR from taking any further action and further stated that "This order shall not prevent the underlying complaint from being investigated by a state department, if appropriate."

Consequently, in September of 1987, the MDCR transferred the case to the Minnesota Department of Human Rights pursuant to Minn. Stat. 363.116 (1988). The State Department accepted jurisdiction over this case and in March of 1988, the Commissioner found probable cause to believe that Hennepin County had committed an unfair discriminatory practice. Subsequently, a complaint was issued on May 10, 1990.

Respondent argues that the five and one-half year delay between filing

the charge of discrimination and issuance of a complaint by the Minnesota Department of Human Rights constitutes an unreasonable delay which has resulted in prejudice to it. The Office of Administrative Hearings has adopted the two-prong test used by the federal courts in discrimination cases to determine whether laches exists which warrants dismissal: (1) whether the agency unreasonably delayed bringing suit, and (2) whether the employer was substantially prejudiced by the delay. State v. Cold Spring Granite Company, HR-87-006-PE (Order issued December 19, 1986); State v. City of Buhl,

HR-80-004-JL (Order issued January 6, 1988).1 Those issues will be discussed below.

As stated above, the delay in bringing this action has been five and one-half years after the charge was initially filed. Part of that delay was a period of over two and one-half years between the transfer of this case to the Minnesota Department of Human Rights and issuance of a complaint. Three separate investigations of this matter were conducted by three separate agencies and each issued a finding of probable cause during that five and one-half year period. The State contends that part of the delay was caused because the Special Assistant Attorney General initially assigned to this case left the Attorney General's office and a second attorney, Erica Jacobson, had to take over conduct of the case. However, in balancing the five and one-half year delay against the single reason offered by the Complainant for the delay, the judge concludes that the delay herein was unreasonable. The fact that a federal agency, a local agency, and the Minnesota Department of Human Rights each participated in this litigation is also not a reason which justifies the delay herein. As the facts show, Ms. Leaf could have filed a civil action in this matter in the spring of 1986. Consequently, the issue of prejudice to the Respondent must be examined.

The affidavit filed by James B. O'Shea, Hennepin County Sheriff's Department, attached to Respondent's Memorandum states that of the ten supervisory personnel who observed Constance Leaf's work performance in the Hennepin County jail, five have been assigned to other divisions and two are no longer employed by the Sheriff's Department. Four of the supervisory personnel who are still employed by the Hennepin County Sheriff's Department have filed affidavits stating that they no longer have a present recollection of work conduct exhibited by Constance Leaf which was the basis for her termination. Each asserts that the approximate six-year period of time which has elapsed since Ms. Leaf was employed has made it unable for them to remember events and job performance which was the reason for the discharge.

The judge has concluded that the Respondent has shown sufficient prejudice to warrant a dismissal of this action. The judge is cognizant of the fact that in Human Rights actions, it is incumbent on the respondent-employer to articulate legitimate, non-discriminatory reasons for the action taken. Although the ultimate burden rests with the Complainant, the shifting burden methodology places a heavy obligation on the Respondent to reconstruct employment history and remember important facts to meet its burden of production. As was stated above, the charging party had an opportunity to

1 Cold Spring Granite Company and City of Buhl adopt the standard set out in Occidental Lift insurance Co. v. EEOC, 432 U.S. 355 (1977); EEOC V. Liberty Loan Corp., 584 F.2d 853 (8th Cir. 1978); and EEOC v. Dresser Industries Inc. 668 F.2d 1199 (11th Cir. 1982). Although there are no Minnesota cases which address laches in a Human Rights context, the case of State v. St. Paul Fire & Marine Ins., 434 N.W.2d 6 (Minn. App. 1989), uses the same standard for the dismissal of an action brought against an insurer to recover monetary damages.

litigate this matter after she received the "right to sue" letter from the EEOC. She chose not to exercise that option at that time. Over four years have passed since she was provided that opportunity. The Minnesota Department of Human Rights failed to issue a complaint until more than two and one-half years had elapsed since the charge was referred to it. Two agencies had already determined that there was probable cause to bring an action before the Department of Human Rights began its investigation. The judge has determined that Respondent has been substantially prejudiced by the long delay and consequently, that this matter should be dismissed.

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