

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Leonard Howard,

Complainant,

v.

Northwest Airlines,

Respondent.

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-
ORDER DENYING MOTION
FOR RECONSIDERATION

The above-entitled matter is pending before Administrative Law Judge Allen E. Giles as a result of a Motion for Reconsideration initially filed on April 23, 1997 and supplemented with a Memorandum received on May 9, 1997. In the Motion and Memorandum, Complainant Leonard Howard requests that the Administrative Law Judge reconsider a decision issued on July 3, 1996, which dismissed the complaint and charges of discrimination filed by Complainant against Respondent Northwest Airlines, Inc. On May 23, Respondent Northwest Airlines filed a Memorandum in Opposition to Claimant's Motion for Reconsideration. On June 10, 1997, Complainant filed a reply to Respondent's Memorandum. The record closed for consideration of this Motion on June 10, 1997.

Reino J. Paaso, Attorney at Law, 310 Fourth Avenue South, Suite 500, Minneapolis, Minnesota 55415, submitted written argument on behalf of the Complainant.

Sherry L.S. Trudeau and Donald Chance Mark, Jr., Meagher & Geer, PLLP, Attorneys at Law, 4200 Multifoods Tower, 33 South Sixth Street, Minneapolis, Minnesota 55402-3788, submitted written argument on behalf of the Respondent.

Based upon the Memorandum submitted by the parties and for the reasons set out in the Memorandum of this Order, the Administrative Law Judge determines that it is appropriate to issue the following:

ORDER

The Complainant's Motion and Petition for Reconsideration is hereby DENIED.

Dated this _____ day of July 1997.

ALLEN E. GILES
Administrative Law Judge

MEMORANDUM

Complainant's Motion for Reconsideration requests that the Judge reconsider and redecide facts previously determined by an Order issued as a **Final Decision** on July 3, 1996. The request for reconsideration is filed approximately nine months after the Final Decision was issued in this case. Complainant cites Minn. Rules pt. 1400.8300 (1995) as the authority which empowers the Administrative Law Judge to rehear and redetermine the issues in this case. The subject rule provides in relevant part as follows:

Where the judge's decision is binding on the agency, a petition for reconsideration or rehearing shall be filed with the judge. The petition must be filed within a reasonable time but not after an appeal is taken nor more than one year after the decision was issued. Pursuant to Minnesota Statutes § 14.64, a petition for reconsideration must be filed within ten days after the decision in order to toll the time for appeal to the court of appeals.

Complainant argues that because no appeal has been taken, he has a period of one year to request reconsideration or rehearing of the final decision issued in this case. The Judge believes that Complainant Howard's assertion of a right to reconsideration and his interpretation of the subject rule are erroneous for the following reasons.

The Final Decision issued in this case provided Complainant the following notice:

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2 and 3, 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 person

aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

The Administrative Procedure Act requires that (unless a request for reconsideration is made within 10 days) an appeal from a final decision must be made within 30 days to the Court of Appeals. Minn. Stat. §§ 14.63 and 14.64. Complainant Howard did not file an appeal. Because Complainant Howard did not request reconsideration within ten days and did not file an appeal within thirty days after issuance of the Final Decision, his rights to challenge the decision by appeal or request for reconsideration have expired.

Neither the Minnesota Administrative Procedure Act nor the Minnesota Human Rights Act grants Complainant a right of rehearing or reconsideration. However, the Administrative Law Judge may, under certain circumstances, exercise his discretion to rehear or reconsider a matter. See, for example, Minnesota Administrative Procedure, p. 245; Pfalzgraff v. Commissioner of Economic Security, 350 N.W.2d 458, 460 (Minn. Ct. App. 1984). For example, it would be appropriate for the Judge to exercise discretion to correct fraud, mistake or misconception of facts after notice to the parties. Anchor Cas. Co. v. Bongards Co-op. Creamery Ass'n., 253 Minn. 101, 106, 91 N.W.2d 122, 126 (1958). Complainant does not assert that there is new evidence, fraud or mistake, or some similar compelling circumstance; rather, Complainant requests that the Judge redetermine facts already determined in this case. The Judge does not believe that a redetermination of the facts is a compelling reason for triggering the exercise of discretion, particularly in a circumstance where nine months have passed since the facts were determined.

Another reason that the request for reconsideration must be denied is that one year is not a reasonable period. The rule cited above requires that a petition for reconsideration be filed within a reasonable period. One year, as asserted by Complainant, is not a "reasonable period". The record and file of this case have been closed and returned to the Minnesota Human Rights Department months ago. The Judge does not have a file or record to reconsider factual determinations. The Administrative Procedure Act establishes a reasonable period for requesting reconsideration. Minn. Stat. § 14.64 requires that a request for reconsideration must be filed within ten days of the final decision of the agency. The Judge believes that for Complainant Howard's request for reconsideration to be timely, it should have been filed on or before July 13, 1996, ten days after issuance of the final decision. In addition, prior to the ten-day filing requirement of Minn. Stat. § 14.64, case law established that a reasonable time for requesting reconsideration of an agency decision was co-extensive with the time within which appeal could be filed. Anchor Cas. Co., supra. Complainant's request for reconsideration also fails to meet this standard.

The final reason that the request for reconsideration must be denied is that the Judge has lost jurisdiction to reconsider this matter. An administrative agency is deprived of jurisdiction to review its decisions if a timely appeal is not filed as required

by statute. Leisure Hills Inc. v. Levine, 366 N.W.2d 302, 304 (Minn. Ct. App. 1985),
Because Complainant Howard did not request reconsideration within ten days and did
not file an appeal within thirty days after issuance of the Final Decision, the Judge has
no jurisdiction to address this matter.

AEG