

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the matter of)
SANDRA PELOSI,)
Complainant,)
)
vs.)
)
STATE OF HAWAII,)
DEPARTMENT OF HUMAN SERVICES,)
Respondent,)
)
and)
)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,)
Appellee.)
_____)

CASE NO. OSAB 98-001(M)
(DISCRIMINATION CASE))

DECISION AND ORDER

This occupational safety and health case is before us on appeal by SANDRA PELOSI ("Complainant"), from a decision of the Director of the DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS ("DLIR"), dated December 11, 1997, denying her Hawaii Revised Statutes ("HRS") §396-8(e) discrimination complaint.

On May 5, 1998, STATE OF HAWAII, DEPARTMENT OF HUMAN SERVICES ("Respondent") filed a motion to dismiss Complainant's discrimination complaint. The DLIR took no position on the motion.

A hearing on the motion was held on May 21, 1998. Having heard the positions of the parties, we grant Respondent's motion to dismiss Complainant's discrimination complaint.

FINDINGS OF FACT

1. Complainant was terminated from her job on June 12, 1996.

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2. Complainant filed a complaint with DLIR's Occupational Safety and Health division on October 3, 1997, alleging that unhealthy working conditions made her sick and unable to work, and that Respondent illegally terminated her because of her disability.

3. Complainant alleges that Respondent violated HRS §396-8(e).

4. Complainant's complaint was filed more than 60 days after the date of termination.

5. Complainant's complaint was untimely filed.

CONCLUSIONS OF LAW

Respondent contends that Complainant's complaint should be dismissed because her complaint was not timely filed, and because the unhealthy working conditions alleged by Complainant are not covered by Hawaii's occupational safety and health law. We agree with Respondent that Complainant's complaint was untimely filed.

Hawaii Revised Statutes §396-8(e)(1) provides:

No person shall discharge, suspend or otherwise discriminate in terms of and conditions of employment against any employee by reason of:

(A) The employee's failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or

(B) The employee's failure or refusal to engage in any unsafe practices in violation of this chapter or of any standard, rule regulation, citation or order issued under the authority of this chapter[.]

Section 396-8(e)(4) requires the following:

Any employee who believes that there has been a discharge or discrimination against the employee by any person in violation of this subsection may, within sixty days after the violation occurs, file a complaint with the director alleging unlawful discharge or discrimination and setting forth the circumstances thereof[.]


Based on the provisions of HRS §396-8(e), we conclude that Complainant's discrimination complaint, filed more than 60 days after her termination, was not timely filed.

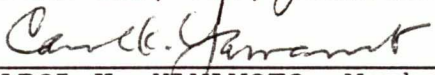
Accordingly, Complainant's complaint must be dismissed.


ORDER

Complainant's complaint, filed on October 3, 1997, is hereby dismissed, in accordance with the foregoing.

Dated: Honolulu, Hawaii, MAY 22 1998.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Sandra Pelosi
Complainant

Jeffrey M. Taylor, Esq.,
Special appearance for
Complainant

Steve K. Miyasaka, Esq.,
for Respondent

J. Gerard Lam, Esq.,
for the Director, Department
of Labor and Industrial
Relations-Appellee

I do hereby certify that the foregoing
is a full, true and correct copy of
the original on file in this office.



NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.