

FILED

JUN 28 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**EUGENE VISLISEL,**

)

Plaintiff-Appellant,

)

Filed June 28, 1983

vs.

)

**IOWA CIVIL RIGHTS COMMISSION,
et al.,**

)

3-102
2-68999

)

Defendants-Appellees.

Appeal from Linn District Court - Thomas L. Koehler, Judge.

Plaintiff appeals from the district court's decision on judicial review affirming defendant agency's adverse ruling on his complaint of age and disability discrimination against the City of Cedar Rapids. APPEAL DISMISSED.

Eugene Vislisel, pro se.

Thomas J. Miller, Attorney General of Iowa, and Scott H. Nichols, Assistant Attorney General, for defendants-appellees.

Considered en banc.

PER CURIAM

Plaintiff appeals from the district court's decision on judicial review affirming defendant agency's adverse ruling on his complaint of age and disability discrimination against the City of Cedar Rapids. We dismiss plaintiff's appeal.

In February, 1977, the City of Cedar Rapids rejected plaintiff's application for a position as a housing relocation specialist. The position was given to a more qualified applicant. The successful applicant was promoted to the position of Administrative Assistant on January 3, 1978, and on February 20, 1978, another city employee was hired to fill the vacant position pursuant to a city hiring policy giving preference to city employees. Plaintiff's application remained on file but no consideration was given to any outside applicants.

On September 5, 1978, plaintiff filed a complaint with the Iowa Civil Rights Commission alleging employment discrimination based on age and physical and mental disability. At that time plaintiff was 46 years old, had a bad back, and had a history of mental illness. The City denied that it was even aware that plaintiff had a history of mental illness, alleged that plaintiff's back injury was not a consideration in deciding not to hire him, and stated that plaintiff's charge of age discrimination is unsupported since the successful applicant was older than plaintiff. The City further argued that plaintiff's claim was barred by the applicable statute of limitations.

The agency found that plaintiff's complaint with regard to the initial hiring decision was barred by a failure to file the complaint within 120 days as required by Iowa Code section 601A.14(15) (1977), and that there was no probable cause with regard to his complaint as it related to the filling of the same position when it subsequently became vacant. The district court affirmed the agency's ruling. Plaintiff appeals from that decision.

Iowa Code section 601A.14(15) (1977) provides that "[a]ny verified complaint filed under this chapter shall be so filed within one hundred twenty (120) days after

the alleged discriminatory or unfair practice occurred." The discriminatory practices alleged here occurred, if at all, in February of 1977 and in February of 1978, when the hiring decisions were made by the City of Cedar Rapids. Plaintiff did not file his complaint until September 5, 1978, well beyond the time that the 120 day limitation period had elapsed.

Plaintiff erroneously relies on the equitable doctrine of laches, and argues that because he was not aware of the alleged discriminatory practices until June of 1978 he is not barred by laches from asserting his claim. We agree that his claim is not barred by laches. However, it is barred by statute.

Statutory limitations, like that contained in Iowa Code section 601A.14(15) (1977), are jurisdictional in nature. Failure to file a timely complaint under Iowa Code chapter 601A deprives the Iowa Civil Rights Commission of jurisdiction to hear the dispute.

The time in which an administrative proceeding may be brought is often regulated by the statute providing for such proceeding, and a failure to comply with such statute may bar the administrative proceeding and any judicial proceeding which depends thereon.

Iowa Civil Rights Commission v. Massey Ferguson, Inc., 207 N.W.2d 5, 9-10 (Iowa 1973).

The Iowa Civil Rights Commission properly dismissed plaintiff's claim, as it related to the initial hiring decision, on jurisdictional grounds. We are, however, puzzled as to why the Commission entertained plaintiff's challenge to the subsequent hiring decision, since it clearly lacked jurisdiction to do so. Since plaintiff failed to file a timely complaint, we do not have jurisdiction to consider his complaint on the merits. We, therefore, dismiss his appeal.

In processing this appeal, defendants expended the sum of \$32.00 to insure the inclusion of necessary materials in the appendix. Iowa R. App. P. 15(b) places the initial cost of producing the appendix on appellants, unless the parties agree

otherwise. Defendants request that plaintiff be ordered to reimburse them for the costs incurred in designating the contents of the appendix. We hereby order plaintiff to pay the sum of \$32.00 to defendants for the costs incurred in preparing the appendix.

APPEAL DISMISSED.