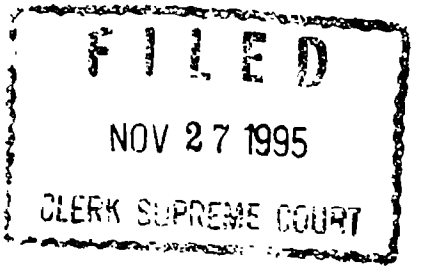
IN THE COURT OF APPEALS OF IOWA

No. 5-430 / 94-1278



KAREN IRELAND,

Appellant,

vs.

STATE OF IOWA, IOWA DEPARTMENT OF TRANSPORTATION, CHARLES MAFFIN, and RUDOLPHO LAUDENCIA,

Appellees.

Appeal from the Iowa District Court for Polk County, Donna Paulsen, Judge.

Ireland filed a petition alleging her employers, defendants, discriminated against her on the basis of her sex and retaliated against her because she complained about the discrimination. **AFFIRMED.**

Michael J. Carroll of the James Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Mark Hunacek, Assistant Attorney General, for appellees.

Considered by Sackett, P.J., Habhab, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The appellant, Karen Ireland, filed a petition with the district court alleging that the defendants and appellees had discriminated against her on the basis of her sex and further claiming that she had been retaliated against for making certain complaints. The trial court, on a motion for summary judgment by the defendants, dismissed the petition, which gives rise to the instant appeal.

We affirm.

The appellant commenced working for the Iowa Department of Transportation (DOT) in 1989, serving as a rest room custodian.

In August of 1991, she was informed by DOT that she was terminated as of September 10, 1991. The reason for termination was the downsizing of the DOT workforce at that time, and although the appellant was a member of the union representing DOT employees, she did not have enough seniority in her employment to "bump" employees with lesser service.

She also signed a form entitled "Notice of Termination of Employment" which also stated that her employment terminated on September 10, 1991.

At the time of her termination, the appellant was off work due to a work-related injury and was at that time receiving workers' compensation benefits.

In August of 1992, the plaintiff was released by her physician to return to work. She requested that she be returned to her employment with DOT. She was not rehired.

As a consequence of the foregoing, she filed her charge of discrimination against the DOT with EEOC and the Iowa Civil Rights Commission. The charge filed in February 1993 alleged she had been discriminated against because of her sex.

Iowa Rule of Civil Procedure 237(c) provides that if the pretrial proceedings, including pleadings, depositions, interrogatory answers, admissions, and affidavits, reflect no genuine issue as to a material fact, and the non-movant is entitled to the summary judgment "as a matter of law" then the granting of such summary judgment is appropriate. Such record is examined in a light most favorable to the movant, but the non-movant cannot rest on the pleadings but must go forward with facts supporting at least a prima facie claim. *Fogel v. Trustees*, 446 N.W.2d 451, 454 (Iowa 1989). If reasonable minds could reach different conclusions from undisputed facts, then the movant is not entitled to summary judgment as a matter of law. *Knapp v. Simmons*, 345 N.W.2d 118, 121 (Iowa 1984).

Our review is to determine whether or not the trial court erred in granting summary judgment, and, as a consequence, we, too, turn to the record that was before the trial court at the time of the rendition of the summary judgment.

The trial court found that the appellant had not timely filed her discrimination complaint and that as a consequence, the court had no jurisdiction to entertain the petition filed by the appellant.

Our Code provides that discrimination claims must be filed with the Civil Rights Commission "within 180 days after the alleged discriminatory practice

occurred." Iowa Code § 216.15 (1993). Under 42 U.S.C. § 2000(e), a claim filed with the Federal "Equal Employment Opportunity Commission" must be filed within 300 days of the alleged unlawful practice. These time periods are the outside time limits for filing such complaints.

The appellant contends that she was terminated in August 1992, and that therefore her filings with both the state and federal commissions were timely.

The record, however, clearly reflects that the appellant received oral notification of termination in August 1991, received a certified letter in September 1991 (which she acknowledged receiving), which advised her she was being laid off, and the appellant also signed in September 1991 a "notice of termination of employment."

The "notice of termination" indicated she was a possible subject for rehire which buttresses the fact that the appellant's job was terminated at that time.

Although the appellant contends she was coerced into signing the notice of termination, such coercion in and of itself could possibly have been an unlawful practice which also occurred in September 1991. It is abundantly clear from the record therefore that her employment was terminated in September 1991.

Ireland further asserts that when she was discharged from the physician's care in August of 1992, that the failure of the DOT to rehire her constituted a continuing violation.

We are not directed to any authority that holds that the subsequent failure to rehire constitutes a continuing violation of any fair employment practices policy. Like the trial court, we find the recent *Boge v. Ringland-Johnson-Crowley Co.*, 976 F.2d 448 (8th Cir. 1992), to be instructive. It was there held that a failure to rehire in an age discrimination case did not constitute a continuing violation of the original alleged wrongful discharge because of age discrimination. *Id.* at 451.

We note that while it is not always necessary to refile a complaint each time a discriminatory practice occurs, it is generally necessary that a filed complaint should precede such recurring practices. Again we turn to federal authorities because we are not directed to any Iowa authority. A claim of discrimination normally includes those subsequent discrimination practices "which a reasonable investigation would have uncovered." *Harper v. Godfrey Co.*, 839 F. Supp. 583, 597 (E.D. Wis. 1993). But *Harper* recognizes the exception to that rule when the discriminatory conduct occurred prior to the filing of the complaint. *Id.* Citing *Witherspoon v. Roadway Express*, 782 F. Supp. 567, 571-572 (D. Kan. 1992).) A complainant should not have to refile each time a discriminatory act occurs after the initial complaint is filed but the federal courts hold that the complaint should reasonably include those prohibited practices which occurred prior to the filing. *Id.* at 598. Here the failure to rehire preceded, by months, the filing of the complaint.

We further agree with the trial court that any refusal by the defendants here "to recall or rehire plaintiff is a separate act of discrimination for which plaintiff must file a separate charge."

By reason of the foregoing, we hold that appellant was late in filing her complaint of discrimination and that the trial court had no subject matter jurisdiction. *Lynch v. City of Des Moines*, 454 N.W.2d 827, 831 (Iowa 1990). The record is barren of any tolling that would extend the 300-day time filing limitation found in the federal statutes.

The petition filed in district court by the appellant raised charges of sexual harassment and retaliation. The filed complaint however indicated she was discriminated against only because of her sex and not the grounds proffered in her petition raising the issues of harassment and retaliation. These claims, too, were not filed with the respective commissions, and consequently were not properly before the trial court.

Based upon the foregoing, we affirm the decision of the trial court and assess court costs to the appellant.

AFFIRMED.