

D.U.P. No. 2011-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2010-017

LBB,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by LBB against his former employer, the University of Medicine and Dentistry of New Jersey (UMDNJ). The charge alleged that UMDNJ violated sections 5.4a(1), (3), and (7) of the Act when it terminated his employment on June 1, 2009 in retaliation for grieving his performance review on April 17, 2008. The Director finds the charge untimely because LBB filed it more than six months after receiving notice of his termination, and he did not allege any facts which suggested he was prevented from filing a timely charge.

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Appearances:

For the Respondent,
Paula T. Dow, Attorney General
(Michael J. Gonnella, Deputy Attorney General)

For the Charging Party,
Law Office of James P. Madden, attorney
(James P. Madden, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 7 and 30, 2009, LBB^{1/} filed an unfair practice charge and amended charge against his former employer, the University of Medicine and Dentistry of New Jersey (UMDNJ). The charge, as amended, alleges that UMDNJ violated sections 5.4a(1),(3), and (7)^{2/} of the New Jersey Employer-

1/ "LBB" signifies the initials of a named individual collective negotiations unit employee.

2/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when it terminated his employment on June 1, 2009 in retaliation for grieving his performance review on April 17, 2008.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated September 1, 2010, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

LBB was employed by UMDNJ in the title of user support specialist III in its Information Systems and Technology

2/ (...continued)
restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

Department. On April 17, 2008, LBB filed a grievance regarding his performance review. On June 4 or 5, 2009, he received notice from UMDNJ that he had been terminated effective June 1, 2009.

ANALYSIS

The Act includes a 6-month statute of limitations for unfair practice charges in order to prevent the litigation of stale claims. N.J.S.A. 34:13A-5.4(c) provides:

. . . no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer so prevented.

In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), our Supreme Court explained that the statute of limitations was intended to stimulate litigants to prevent the litigation of stale claims, and cautioned that it would consider the circumstances of individual cases. Id. at 337-338. The Court noted that it would look to equitable considerations in deciding whether a charging party slept on its rights.

LBB received notice of his termination on June 4 or 5, 2009. He filed the charge on December 7, 2010, more than six months later. He has not alleged any facts which suggest he was prevented from filing a timely charge. Therefore, I dismiss the charge as untimely.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

/s/ Arnold H. Zudick
Arnold H. Zudick, Director

DATED: September 29, 2010
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.

Any appeal is due by October 12, 2010.