

P.E.R.C. NO. 2014-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
DEPARTMENT OF TRANSPORTATION,

Respondent,

-and-

Docket No. CI-2007-065

JANE LYONS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms a Hearing Examiner's decision granting a motion to dismiss filed by the State of New Jersey Department of Transportation (DOT) in an unfair practice case filed by Jane Lyons against the DOT. The Commission holds that the Hearing Examiner's findings of fact and conclusions of law regarding Lyons' charge being untimely under N.J.S.A. 34:13A-5.4(c) are supported by sufficient, credible evidence in the record.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2014-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
DEPARTMENT OF TRANSPORTATION,

Respondent,

-and-

Docket No. CI-2007-065

JANE LYONS,

Charging Party.

Appearances:

For the Respondent, John Jay Hoffman, Acting Attorney  
general (Brady Montalbano Connaughton, Deputy Attorney  
General)

For the Charging Party, Jane Lyons, Pro Se

DECISION

This case comes to us by way of exceptions to a Hearing  
Examiner's recommended decision on a motion to dismiss. H.E. No  
2014-6, 40 NJPER 393 (¶136 2014). On May 25, 2007, an unfair  
practice charge was filed by Jane Lyons. The charge was amended  
on June 11, 2007 and October 28, 2008. As amended, the charge  
alleges that the State of New Jersey, Department of  
Transportation (DOT) violated 5.4(1), (2), (3), (4), (5), (6) and  
(7) of the New Jersey Employer-Employee Relations Act, N.J.S.A.  
34:13A-1 et seq. when it reassigned Lyons from a resident  
engineer position in the field to an administrative assignment in  
the regional field office, in retaliation for issues that

occurred when she was on a field job. She further alleged that she continued to file grievances about the reassignment and management refused to accept some of her grievances. We affirm the Hearing Examiner's report and recommended decision.

The procedural history is complex and outlined in the Hearing Examiner's decision. Ultimately, however, the Director of Unfair Practices issued a Complaint on the 5.4a(1) and a(3) allegations. On August 12, 2009, the DOT filed an Answer generally denying the allegations of the Complaint and asserting separate defenses. Hearings were conducted on May 4, 6 and September 28 and 29, 2010 and August 5, 2011.

On June 4, 2011, a scheduled hearing date, Lyons did not appear without prior explanation. The DOT made a Motion to Dismiss the case for lack of prosecution. The Hearing Examiner reserved decision on the motion to give Lyons an opportunity to explain her failure to appear, and gave her until June 29 to provide a written explanation. On June 24, Lyons responded via email that she did not appear because she had taken a sick day. The Hearing was rescheduled, and upon Lyons resting her case, the DOT made a Motion to Dismiss, asserting Lyon's charge was untimely and for failure to establish a violation of the Act.

On February 18, 2014, the Hearing Examiner issued a Recommended Decision on the DOT's motion to dismiss. H.E. No 2014-6. She granted the DOT's motion, finding that the unfair

practice charge was untimely, that Lyons has failed to establish a prima facie case of a violation under the Act, and that Lyons had deliberately failed to appear for the June 14, 2011 hearing date.

On March 16, 2014, Lyons filed exceptions, asserting that her charge was timely filed, that she did not lie with regard to her failure to appear at the June 14 hearing, and makes various statements generally asserting she was not given a full and fair opportunity to present her case.

We adopt and incorporate the Hearing Examiner's findings of fact. H.E. No. 2014-6, 7 - 37. In deciding a motion to dismiss after the charging party presents its case, the Hearing Examiner must accept as true all of the evidence supporting the charging party's allegations and afford the charging party the benefit of all inferences that can reasonably be deduced from that evidence. Dolson v. Anastasia, 55 N.J. 2 (1969); New Jersey Turnpike Auth., P.E.R.C. No 79-81, 5 NJPER 197 (¶10112 1979). Dismissal of a claim is appropriate when a rational fact-finder could not conclude from the evidence that each essential element of that claim is present. Pitts v. Newark Bd. Of Ed., 337 N.J. Super. 331 (App. Div. 2001).

We first address the issue of whether Lyon's charge was timely. The Act requires that an unfair practice charge be filed within six months of the date that the unfair practice occurred.

Charges filed later than six months after the date of the unfair practice are untimely unless the charging party was prevented from filing within the statutory period. N.J.S.A. 34:13A-5.4

(c). Lyons, in her exceptions, asserts that her charge was timely. The Hearing Examiner found as a fact that the operative date on which the limitations period began to run was June 26, 2006. The Hearing Examiner found that Lyons testified multiple times that she knew at a June 26, 2006 grievance hearing that her assignment was considered permanent, and also stated to her supervisor in a July 12, 2007 email that she knew her assignment was permanent at the grievance hearing. The Hearing Examiner also found that Lyons's allegations that the DOT refused to accept her grievances was also untimely. She found that emails exchanged between Lyons and the Human Resources Director on October 23, 2006 showed that further grievances on her reassignment would not be processed because they were repetitive of issues which had already been decided. Given the operative dates of June 26, 2006 and October 23, 2006, Lyons May 25, 2007 filing was found to be untimely. The Hearing Examiner made this conclusion based on both documentary evidence as well as credibility determinations. We may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or

unreasonable or are not supported by sufficient, competent , and credible evidence in the record. N.J.S.A. 52:14B-10(c). We find that the Hearing Examiner's findings of fact and conclusions of law with regard Lyons charge being untimely are supported by sufficient, credible evidence in the record. Given this finding, Lyons second exception which refutes the Hearing Examiner's dismissal of the case for lack of prosecution is rendered moot. Finally, we note that there were five days of hearing and Lyons produced several witnesses on her behalf. We do not find any support in the record for the general assertions made by Lyons that she was not given a full and fair opportunity to be heard.

ORDER

The complaint is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: June 26, 2014

Trenton, New Jersey