



STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
<b>LARRY E. DUNKLIN,</b>	)	
	)	
Complainant,	)	CHARGE NO: 2006SF2044
	)	EEOC NO: N/A
and	)	ALS NO: S08-0032
	)	
<b>CITY OF DUQUOIN, IL.,</b>	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On January 15, 2008, Complainant filed a motion for hearing with the Human Rights Commission. On January 23, 2008, Respondent filed a reply to the motion for hearing urging that matter be dismissed for lack of jurisdiction. While Complainant's motion was not accompanied by a separate Complaint, Complainant's motion and Respondent's reply were treated as a new case that was served on the parties on March 3, 2008. On March 27, 2008, an Order was entered, which stayed consideration of the matter, after noting that Complainant's motion and Respondent's reply had also been filed in a pending matter that concerned the same Charge of Discrimination number, i.e., *Dunklin v. City of DuQuoin, Illinois*, ALS No. 07-044 (hereinafter referred to as *Dunklin044*). At the time Complainant had filed his motion for a hearing, a Recommended Order and Decision had been entered in *Dunklin044* on December 13, 2007, recommending that *Dunklin044* be dismissed without prejudice to further processing by the Department of Human Rights because Complainant had filed a premature complaint.

On January 8, 2009, an Order was entered, which noted that the Commission on July 7, 2008 had issued a notice of no exceptions in *Dunklin044* and directed the parties to file a report

indicating what, if any, issues remained in the instant case. Respondent filed a report, which again asserted that the instant matter should be dismissed as untimely since the applicable limitations period had expired. Complainant also filed a report, which essentially challenged the earlier recommended order in *Dunklin044* finding that dismissal of Complainant's complaint was warranted because the complaint in that case had been filed too early. Counsel for Complainant also contended that: (1) the notices sent out by the Department that explained the process of filing complaints directly with the Commission and led to Complainant filing a premature complaint in *Dunklin044* were too confusing for *pro se* litigants; and (2) due process required that the Commission take jurisdiction of the case and resolve the allegations contained in Complainant's Charge of Discrimination under the unusual circumstances of the instant case.

#### **Findings of Fact**

Based on the record in this matter, as well as the finding of facts contained in *Dunklin044*, I make the following findings of fact:

1. On January 26, 2006, Complainant filed with the Department of Human Rights an unperfected Charge of Discrimination, No. 2006SF2044, on his own behalf alleging that Respondent failed to hire him on account of his race. Complainant subsequently perfected his Charge of Discrimination on February 6, 2006.

2. On January 24, 2007, Complainant filed with the Commission a *pro se* Complaint of Discrimination in *Dunklin044* on his own behalf alleging that Respondent failed to hire him on account of his race.

3. On February 7, 2007, the Department mailed to Complainant a notice indicating that the Department had failed to complete its investigation of Complainant's Charge of Discrimination within the applicable period for conducting its investigation, and that Complainant had from February 7, 2007 to March 8, 2007 to file his own complaint with the Commission. The letter also informed Complainant that he risked dismissal of his complaint if he filed his complaint outside the relevant 30-day period for filing complaints with the Commission.

4. On February 20, 2007, Respondent filed a motion to dismiss the instant Complaint in *Dunklin044*, because it had been filed prior to the time for filing complaints with the Commission.

5. On March 12, 2007, an Order was entered in *Dunklin044*, directing the Department to file a response to the pending motion to dismiss to discuss the issue as to whether the instant Complaint was timely, as well as the issue as to whether any dismissal should be with or without prejudice.

6. On April 2, 2007, the Department filed a response to the motion to dismiss in *Dunklin044*, indicating that the matter should be dismissed without prejudice to further processing of Complainant's Charge of Discrimination by the Department.

7. On December 13, 2007, a Recommended Order and Decision in *Dunklin044* was entered, which recommended that the Complaint be dismissed as premature, and that the matter be remanded back to the Department of Human Rights for further investigation on the Complaint.

8. On January 15, 2008, Complainant filed with the Commission a motion for a hearing with the Human Rights Commission. Complainant's motion was also filed in *Dunklin044*.

9. On January 23, 2008, Respondent filed with the Commission a reply to Complainant's motion for a hearing with the Commission urging that the matter be dismissed for lack of jurisdiction. Respondent's reply was also filed in *Dunklin044*.

10. On March 3, 2008, the instant "Complaint" was filed under the title *Dunklin v. City of DuQuoin, II*. (hereinafter referred to as *Dunklin032*). The "Complaint" consisted of Complainant's motion for a hearing with the Human Rights Commission, as well as Respondent's reply to Complainant's motion.

11. On March 27, 2008, an Order was entered in *Dunklin032*, which noted that Complainant's motion for hearing, as well as Respondent's reply, were the same documents

filed in *Dunklin044*. The matter in *Dunklin032* was thereafter stayed pending resolution of Complainant's motion in *Dunklin044*.

12. On July 7, 2008, the Commission issued a notice indicating that it had not received any timely exceptions to the Recommended Order and Decision in *Dunklin044*, and that the Recommended Order and Decision in *Dunklin044* was now the Order and Decision of the Commission. The notice made no mention of Complainant's motion for a hearing.

13. On September 22, 2008, the Commission sent the file in *Dunklin044* back to the Department of Human Rights.

14. There is no indication in the Department of Human Rights' case status report for Charge No. 2006SF2044 that the Department conducted any proceedings in *Dunklin044* following the Commission's sending of the file back to the Department of Human Rights other than to send the file to its record center on November 17, 2008 and October 26, 2009.

#### **Conclusions of Law**

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.).

2. The Human Rights Commission has authority to determine whether it has jurisdiction over the instant Complaint.

#### **Determination**

The Commission lacks jurisdiction to proceed on the instant case since it is based on a prior matter that was dismissed without prejudice to further proceedings conducted by the Department of Human Rights, and Complainant has not established that he can proceed on any complaint at this time.

#### **Discussion**

Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)(2)) authorizes a complainant to file a complaint on his own behalf with the Commission within 30 days after the expiration of 365 days from the filing of his charge of discrimination, or 30 days after such longer

period agreed to by the parties in writing, if the Department has not sooner ordered that no complaint be issued. The Commission has considered instances where complainants have filed their own complaints outside the thirty-day window and have found these filings to be jurisdictionally deficient. See, *Quigley and Peoria Civic Center*, IHRC, ALS No. S9042, January 26, 1996.

Here, the record shows that Complainant's time period for filing a complaint directly with the Commission began on February 7, 2007, and that the instant Complaint is untimely since Complainant filed it prior to said date. In the Recommended Order and Decision in *Dunklin044*, an issue arose as to whether the dismissal should be with prejudice because the Department's 365-day period for investigating Complainant's Charge of Discrimination appeared to have expired in March of 2007, and there was no evidence that Complainant had filed a timely Complaint during the subsequent 30-day period for filing complaints directly with the Commission. During the proceedings in *Dunklin044*, the Department of Human Rights was specifically asked whether the dismissal should be with or without prejudice, and counsel for the Department asserted without explanation that the dismissal should be without prejudice to further investigation by the Department. Accordingly, it was recommended in *Dunklin044* that Complainant's discrimination claim be dismissed without prejudice to the matter proceeding in the Department of Human Rights. That recommendation became the Order and Decision of the Commission on July 7, 2008, when the Commission issued its notice of no exceptions.

With respect to his motion for hearing that forms the substance of his case in the instant action, Complainant again states that he should not be faulted for filing a premature Complaint, although he recognizes now that that his thirty-day window for filing his Complaint with the Commission has expired. Moreover, he urges the Commission to equitably toll the Department's 365-day investigation period for the time period between January 24, 2007 (when he first filed his premature Complaint) to December 18, 2007 (when he first received notice of the Recommended Order and Decision in *Dunklin044*). However, as mentioned in the

recommended order in *Dunklin044*, the concept of tolling the Department's 365-day investigational period is a difficult position for Complainant to take where the Commission in *Tomino and Northwestern University*, IHRC, ALS No. 11996, December 22, 2003, observed that a premature complaint is a legal nullity, such that jurisdiction over the underlying charge of discrimination (and presumably the power to continue its investigation thereof) never left the Department. *Tomino* slip op at 2.

Additionally, even if I could apply the concept of equitable tolling, the dates selected by Complainant are inappropriate because: (1) the recommended order in *Dunklin044* did not become the final order of the Commission until July 7, 2008; and (2) the thrust of the final order in *Dunklin044* put off any filing of a complaint until after the completion of the Department's investigation or the completion of the Department's 365-day investigation period, whichever came first. Thus, the appropriate vehicle for proceeding on any discrimination claim would be the filing of a timely complaint, as opposed to filing a "motion for hearing" seeking to proceed on a premature complaint. Therefore, because I have no timely complaint, I cannot act on anything, and thus the only appropriate thing to do is to dismiss this case in favor of any subsequent complaint (assuming that that is now possible), which complies with the dictates of the final Order and Decision in *Dunklin044*.

One more observation, and then we are done. As noted above, the final Order and Decision in *Dunklin044* contemplated that there would be more investigation on Complainant's Charge of Discrimination after the matter had been remanded to the Department. Indeed, the Department's counsel asserted in *Dunklin044* that a remand for further investigation was the proper way to handle Complainant's premature complaint (as opposed to a dismissal with prejudice). However, a review of the Department's case status report in *Dunklin044* arguably indicates that nothing (except the Department's sending of the file to its record center on November 17, 2008 and on October 26, 2009) has happened on the remanded file in spite of the assurances by the Department's counsel that a remand for further proceedings was the

proper method to dispose the case. While the Department's subsequent treatment of *Dunklin044* is unexplained, it is enough to say that this case must be dismissed because I cannot proceed on anything other than a timely complaint.

**Recommendation**

For all of the above reasons, it is recommended that the motion for a hearing on Complainant's discrimination claim be denied in favor of Complainant proceeding on any remedy he might have in *Dunklin and City of DuQuoin, Illinois*, IHRC, ALS No. 07-044.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 3RD DAY OF FEBRUARY, 2010