

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PATRICIA WILLIAMS,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF  
WORKFORCE DEVELOPMENT,

Defendant.  
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ORDER

13-cv-794-bbc

In an order entered on December 20, 2013, plaintiff Patricia Williams was granted leave to proceed on her claim that defendant Department of Workforce Development violated her rights under the Equal Pay Act, 29 U.S.C. § 206(d) by not paying her the same rate of pay as a male employee performing the same tasks. Dkt. #4. A pretrial conference was held before the United States Magistrate Judge on March 24, 2014 and a jury trial was set for June 1, 2015.

Defendant filed an answer and affirmative defenses to plaintiff's complaint on April 29, 2014, denying that plaintiff had been an employee of defendant and alleging that she had been a contractor from July 2010 until her contract was terminated in July 2012. Dkt. #10 at 1-2. Defendant contended that plaintiff had failed to state a claim under the Equal Pay Act because she was not an employee within the meaning of the Act, that the actions defendant took against her were for legitimate, nondiscriminatory business reasons and that

plaintiff had failed to mitigate her damages.

In response to defendant's answer, plaintiff filed what appears to be a determination by an adjudicator, dated May 16, 2014, that all of the services she performed for the employer were as an employee. Dkt. #11. Plaintiff does not explain how this determination affects her claim in this court, if at all.

On June 9, 2014, plaintiff filed a "motion to dismiss & win lawsuit," dkt #12, in which she alleged she was entitled to entry of judgment in her favor because defendant had failed to file and serve an answer in the case before April 29, 2014. This motion and a motion to compel filed by plaintiff were denied in an order entered on August 1, 2014 because defendant's answer was not late and plaintiff's motion to compel violated the Federal Rules of Civil Procedure. Dkt. #23. (Defendant had waived service of plaintiff's complaint at the March 20, 2014 pretrial conference before the magistrate judge. As a result of the waiver, it was entitled to 60 days from that date in which to serve and file its answer, which it did on April 29, 2014, well within its 60 days.) I explained to plaintiff in the order that her motion to compel certain discovery had to be denied because she had not followed the Federal Rules of Civil Procedure and because her requests for discovery did not seem to be related to her Equal Pay Act claim. At the time, I suggested to plaintiff that she should identify the exact claim or claims she was asserting.

Plaintiff then filed a motion to amend her complaint and another motion to compel, both of which I denied in an order entered on September 3, 2014. Dkt. #33. The motion to amend was denied because the proposed amendments were too late, futile and unfairly

prejudicial to defendant. The motion to compel was denied because plaintiff had not made a good faith effort to confer with defendant's counsel about the discovery she wanted before seeking help from the court.

Now plaintiff has filed a motion for reconsideration of the September 3 order, saying that she had just found out "from the court" that she could amend her initial complaint. Her motion was accompanied by the same May 16, 2014 determination she had filed earlier as dkt. #11, saying that she was an employee, eligible for unemployment insurance compensation benefits. Dkt. #34. The court set a briefing schedule on the motion. When defendant did not respond, plaintiff moved the court to "apply whatever, it has the Power and Authority to do in a matter like this." Dkt. #36.

Although this case has been pending almost a year, it is still not clear whether plaintiff's claim is that she was not paid as much as a male employee (Leslie Mirkin) for doing the same work or that she was treated erroneously as a contractor and not as an employee although she was doing the same work as an employee. It may be that she is pursuing both claims. It is not at all clear what effect her May 16, 2014 determination has on her claim. I believe that it would be helpful to hold a telephone conference with plaintiff and with defendant's counsel, John Sweeney, to try to determine the exact nature of plaintiff's claims and how this suit can be made ready for trial by June 1, 2015.

#### ORDER

IT IS ORDERED that a telephone conference will be held in this case on Thursday,

October 9, 2014 at 2:30 pm. No later than October 6, 2014, plaintiff and Mr. Sweeney are to advise the court of the telephone numbers at which they can be reached at that time.

Entered this 30th day of September, 2014.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge