



In the Matter of:

PAUL T. PRYBYS,

ARB CASE NO. 96-064

COMPLAINANT,

ALJ CASE NO. 95-CAA-15

v.

DATE: November 27, 1996

SEMINOLE TRIBE OF FLORIDA,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

DECISION AND ORDER

This case arises under the employee protection provisions of the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i)(1988), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610 (1988), the Federal Water Pollution Control Act, 33 U.S.C. § 1367 (1988)(the environmental acts).^{2/} Before this Board for review is the Recommended Decision and Order (R. D. and O.) of the Administrative Law Judge (ALJ) issued on January 18, 1996. Prior to a hearing being held in the case, the Respondent, Seminole Tribe of Florida (the Tribe) moved for

^{1/} On April 17, 1996, the Secretary of Labor delegated authority to issue final agency decisions under the employee protection provisions of, *inter alia*, the environmental statutes involved in the instant complaint, and the implementing regulations at 29 C.F.R. Part 24, to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Board now issues final agency decisions.

^{2/} The docket number assigned to this case while before the Office of Administrative Law Judges apparently refers to the Clean Air Act, 42 U.S.C. § 7622. That statute was not referred to in the complaint filed in this case, however, and has not otherwise been relied on by the Complainant in pursuing this cause of action. In rendering his determination regarding the timeliness issue, the ALJ relied on the Safe Drinking Water Act and noted that all the statutes cited by the Complainant contained similar provisions regarding the time within which a complaint must be filed. R. D. and O. at 1 n. 1.

dismissal of the complaint filed by Paul T. Prybys (Prybys) as untimely. Relying on an affidavit from Prybys concerning the sequence of pertinent events, the ALJ agreed with the Tribe that the complaint had not been timely filed. The ALJ therefore recommended that the complaint be dismissed. Prybys challenges the ALJ's summary dismissal of the case, urging that genuine material issues of fact exist regarding the timeliness issue, and that a hearing in the case is thus warranted. As discussed herein, we find Prybys' argument to be unpersuasive and we adopt the recommendation of the ALJ that the complaint be dismissed.

BACKGROUND

The ALJ's decision accurately recounts the facts that are most pertinent to the timeliness issue, as taken from Prybys' July 14, 1995 affidavit. R. D. and O. at 1-3. We note the following points that are relevant to our discussion of the timeliness issue.

Prybys was employed by the Tribe as an Environmental Health Officer on May 8, 1992. Prybys affidavit at 1. His duties included monitoring the quality of the drinking water for the Tribe, as well as hazardous materials management. *Id.* In June 1992, Prybys, acting on a report from a backhoe operator who was excavating scrap material at the Big Cypress reservation, discovered what he determined to be a source of ground water contamination, including leaking drums and petroleum storage tanks. *Id.* After that time, and continuing into March 1994, Prybys, in his capacity as Environmental Health Officer within the Health Administrator's office for the Tribe, engaged in a course of action to address levels of lead contamination in the ground water at the Big Cypress Reservation. *Id.* at 1-4. This course of action included various communications with officials of the United States Environmental Protection Agency (EPA) concerning the question of whether water sampling data had not been maintained and reported by the Tribe in compliance with EPA requirements. *Id.* at 2-4. A specific question arose concerning the role of Craig Tepper, the Director of Water Resource Management for the Tribe, in ensuring compliance with pertinent EPA reporting requirements. *Id.* A conflict developed between Prybys and Tepper over the issue of an EPA violation. *Id.* at 3-4.

In March 1994, Prybys was transferred from the Health Administration to the Water Resource Management office and appointed to the new position of Technical Director. *Id.* at 4. He was responsible for creating and staffing an organization "to more closely monitor, among other things, water quality." *Id.* The friction between Prybys and Tepper continued. *Id.* at 4-5. On September 6, 1994, Tepper recommended to the Tribe's General Counsel that Prybys be terminated from employment with the Tribe. *Id.* at 5; R. D. and O. at 2. Various communications between Tepper and other Tribe officials, and between Prybys and other Tribe officials and a Tribal board member regarding the issue of whether Prybys would be terminated followed. Prybys affidavit at 5-6; R. D. and O. at 2.

On October 17, 1994, Prybys was advised by the Personnel Director for the Tribe that he was being terminated effective October 18, 1994, and that the personnel action that had been processed indicated that Prybys had resigned in order to seek other employment opportunities. Prybys affidavit at 5-6; R. D. and O. at 2. On October 17, 1994, Prybys wrote a memorandum to the Tribe's General

Counsel, indicating that he did not wish to resign and stating that he wished to continue his work with “assessing and abating the Tribe[’]s environmental problems, in a cost effective manner.” Prybys memorandum of 10/17/94, attached to affidavit. The memorandum also indicates Prybys’ interest in completing the “on-going assessment” at the Big Cypress maintenance facility where “nine new monitor wells” had been installed. *Id.*

Prybys received no response from the Tribe’s General Counsel and wrote the Tribal Council to request review of the termination action. Prybys affidavit at 6. By letter dated February 1, 1995, the Tribe’s Personnel Director advised Prybys that his letter requesting Tribal Council review had been received “on or about December 1, 1994” and was thus not timely filed within the thirty days allowed following the termination action of October 18, 1994. Dixon letter of 2/1/95, attached to Prybys affidavit; R. D. and O. at 2. Immediately following receipt of the February 1, 1995 letter, Prybys sought legal assistance. Prybys affidavit at 6; R. D. and O. at 3. Prybys was advised by one attorney that he had at least one year in which to commence legal action concerning his termination by the Tribe. Prybys affidavit at 6; R. D. and O. at 3. On April 13, 1995, Prybys consulted with his current attorney, who filed the instant complaint on April 14, 1995. *Id.*

DISCUSSION

Each of the environmental acts here at issue provides a thirty-day period following the alleged violation in which employee complaints may be filed. 33 U.S.C. § 1367(b)(1988); 42 U.S.C. § 300j-9(i)(2)(A) (1988); 42 U.S.C. § 9610(b)(1988). As the ALJ relied on the affidavit submitted by Prybys in granting the Tribe’s motion for dismissal, his determination is tantamount to a recommendation for summary judgment. *See* 29 C.F.R. § 18.40(d); *Eisner v. United States Environmental Protection Agency*, Case No. 90-SDW-2, Sec. Dec., Dec. 8, 1992, slip op. at 4-5. Section 18.40(d) is derived from Rule 56 of the Federal Rules of Civil Procedure and provides summary decision for a party if no material facts are in dispute and the moving party is entitled to prevail as a matter of law. *See Gillilan v. Tennessee Valley Authority*, Case Nos. 91-ERA-31, 91-ERA-34, Sec. Dec., Aug. 28, 1995, slip op. at 4. In the instant case, only facts pertinent to the timeliness issue are germane to the summary judgment determination. In deciding whether a genuine issue of fact exists regarding the timeliness question, the evidence and any factual inferences to be drawn from that evidence must be viewed in the light most favorable to Prybys. *See Gillilan*, slip op. at 5.

In challenging the decision of the ALJ, Prybys urges that his pursuit of an appeal to the Tribal Council should toll the statutory filing period. Complainant’s Brief at 10-11. Prybys also urges that the doctrine of equitable tolling, including the principle of equitable estoppel, should apply to the thirty-day statutory limitations period and that a hearing is required to resolve factual issues pertinent to the applicability of the equitable tolling doctrine. Complainant’s Brief at 7-17. In response, the Tribe urges that summary dismissal was appropriate.^{3/} The Secretary has held that the limitations

^{3/} In support of its motion to dismiss filed before the ALJ, the Tribe also contended that the doctrine of sovereign immunity applies to the Tribe in this cause of action. Motion to Dismiss for Untimeliness and for Lack of Subject Matter Jurisdiction at 8-21. In disposing of the complaint on
(continued...)

periods provided by the environmental acts and analogous employee protection legislation are subject to equitable modification. *See, e.g., Eisner*, slip op. at 7-9; *Tracy v. Consolidated Edison Co. of New York*, Case No. 89-CAA-1, Sec. Dec., July 8, 1992, slip op. at 3-8 and cases cited therein; *Doyle v. Alabama Power Co.*, Case No. 87-ERA-43, Sec. Dec., Sept. 29, 1989, *aff'd sub nom. Doyle v. Sec'y of Labor*, 949 F.2d 1161 (11th Cir. 1991)(table).

In *School District of City of Allentown v. Marshall*, 657 F.2d 16 (3d Cir. 1981), a case involving the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the court summarized the situations in which equitable tolling is applicable. The following three situations were presented by the court as the “principal situations where tolling is appropriate”:

- (1) the defendant has actively misled the plaintiff respecting the cause of action,
- (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or
- (3) the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.

657 F.2d at 19-20 (quoting *Smith v. American President Lines, Ltd.*, 571 F.2d 102, 109 (2d Cir. 1978)). In *Rose v. Dole*, 945 F.2d 1331 (6th Cir. 1991), a case involving the Energy Reorganization Act of 1974, 42 U.S.C. § 5851, the court delineated five factors to be considered in determining whether equitable tolling of a limitations period was appropriate. Those factors are:

- (1) whether the plaintiff lacked actual notice of the filing requirements;
- (2) whether the plaintiff lacked constructive notice, *i.e.*, his attorney should have known;
- (3) the diligence with which the plaintiff pursued his rights;
- (4) whether there would be prejudice to the defendant if the statute were tolled; and
- (5) the reasonableness of the plaintiff remaining ignorant of his rights.

^{3/}(...continued)

the basis of the timeliness issue, the ALJ did not reach the question of whether sovereign immunity applies to deprive the Secretary of Labor of jurisdiction in this matter. R. D. and O. at 5 n.2. Although Prybys urges that the sovereign immunity question should be addressed in this review of the case, Complainant’s Brief at 3, the Tribe acknowledges that the issue need not be reached if the dismissal by the ALJ is upheld, Respondent’s Brief at 4.

945 F.2d at 1335 (citing *Wright v. State of Tenn.*, 628 F.2d 949, 953 (6th Cir. 1980)(*en banc*)). As previously noted by the Secretary, the doctrine of equitable tolling focuses on the question of whether a duly diligent complainant was excusably ignorant of his rights, whereas the principle of equitable estoppel focuses on the issue of whether the employer misled the complainant and thus caused the delay in filing the complaint. *Tracy*, slip op. at 7; see *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-52 (7th Cir. 1990).

For purposes of the following analysis, it is helpful to distinguish between two periods of time, *viz.*, the period from October 17, 1994 -- when Prybys first received notice of his impending termination by the Tribe -- until February 1, 1995 -- the date of the letter notifying Prybys that his appeal to the Tribal Council was being denied as untimely, and the period from February 1, 1995 until April 14, 1995, the date the instant complaint was filed. Prybys' contention that his appeal to the Tribal Council should toll the limitations period is relevant to the period of time prior to February 1, 1995. Also relevant to the first period of time, Prybys urges that the Tribe's actions require that it be estopped from challenging the timeliness of the instant complaint. Complainant's Brief at 9-10. Regarding the period of time after February 1, Prybys urges that he acted reasonably and with due diligence. Complainant's Brief at 11-17. He also challenges the ALJ's reliance on case law concerning the effect of consulting with an attorney under the equitable tolling doctrine. Complainant's Brief at 15-17. For the reasons that follow, we conclude that the ALJ properly determined that Prybys' complaint was not timely filed.

Initially, we reject, as did the ALJ, R. D. and O. at 3-4, Prybys' contention that his pursuit of a remedy within the tribal organization tolls the statute of limitations, Complainant's Brief at 10-11. In holding that the pursuit of other remedies does not toll the filing periods provided by employee protection provisions, the Secretary has followed the decision of the United States Supreme Court in *International Union of Electrical, Radio & Machine Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 236-40 (1976). See *Tracy*, slip op. at 7; *Ackison v. Detroit Edison Co.*, Case No. 90-ERA-0038, Sec. Dec., Aug. 2, 1990, slip op. at 2; *In re Carl W. Rady*, Case No. WPCA-3, Sec. Dec., Aug. 26, 1977, slip op. at 2-3.

In *Robbins & Myers*, the Court held that the statute of limitations for filings under Title VII of the Civil Rights Act of 1964 was not tolled by a complainant's initiation of the grievance procedure provided by a collective bargaining agreement. Specifically, the Court rejected the argument that the conclusion of grievance proceedings constituted a "final occurrence" that triggered the running of the statute of limitations, reasoning that the statute and the grievance procedure provide independent remedies that can be pursued concurrently. 429 U.S. at 233-38. Most pertinent to the facts at issue in the instant case, the Court rejected the contention that the negotiated grievance proceeding in *Robbins & Myers* did not constitute an appeal of a final adverse decision but "a method of obtaining the judgment of higher management on whether the employee should be retained." 429 U.S. at 234 n.4 (quoting from briefs before the Court). In *Delaware State College v. Ricks*, 449 U.S. 250 (1980), the Court reiterated its focus on the employer's decision as the event that commences the statutory filing period, and in so doing, reversed the decision of the Court of Appeals, which had relied on the last day of employment to commence the filing period. In disposing of the issue of when a final decision was communicated to the complainant in *Ricks*, the Court noted its decision in *Robbins & Myers* as precluding reliance not only on a grievance

proceeding to toll the filing period but also on “some other method of collateral review of an employment decision.” 449 U.S. at 506. The decision of the Court of Appeals in *Greenwald v. The City of North Miami Beach*, 587 F.2d 779 (5th Cir. 1979), which involved a complaint filed under the Safe Drinking Water Act, provides further guidance for our analysis.

As noted by the ALJ, R. D. and O. at 3-4, the *Greenwald* court held that a terminated city employee’s appeal to the local Civil Service Board did not toll the statute of limitations provided for employee complaints under the Safe Drinking Water Act. 587 F.2d at 781. The *Greenwald* court specifically noted that the Safe Drinking Water Act employee protection provision, 42 U.S.C. § 300j-9(i)(1) does not require exhaustion of state or local remedies prior to the filing of a complaint with the Secretary. *Id.* (citing *Robbins & Myers*). The foregoing reasoning is equally applicable to the other environmental protection acts relied on by Prybys in this complaint, none of which requires exhaustion of other remedies prior to the filing of an employee complaint. *See* the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610 (1988); the Federal Water Pollution Control Act, 33 U.S.C. § 1367 (1988). Furthermore, as the ALJ concluded, R. D. and O. at 4, Prybys’ reliance on *Hill v. Georgia Power Co.*, 786 F.2d 1071 (11th Cir. 1986), which involves a wholly inapposite statutory provision, is clearly misplaced.^{4/} We therefore reject Prybys’ contention that his pursuit of a hearing before the Tribal Council tolled the statutory filing period in this case.

We conclude that Prybys’ cause of action under the environmental protection statutes accrued no later than October 18, 1994. On October 17, Prybys was advised by the Personnel Director for the Tribe that he would be terminated effective the following day, for the purpose of “seeking other opportunities.” Prybys affidavit at 5-6. At the time Prybys received such notice, “facts that would support a discrimination complaint were apparent or should have been apparent to a person with a reasonably prudent regard for his rights,” *Gabbrielli v. Enertech*, Case No. 92-ERA-51, Sec. Dec., July 13, 1993, slip op. at 4 (quoting from *In Re Kent*, Case No. 84-WPC-2, Sec. Dec., Apr. 6, 1987, slip op. at 11).

Relevant to the foregoing conclusion, we note the apparent confusion attendant to the termination notice given Prybys, *i.e.*, the Personnel Director suggested that the termination was based on Prybys’ purported resignation, and Prybys immediately sent a memorandum to the General

^{4/} The cause of action before the court in *Georgia Power* arose under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and was characterized by the court as a “hybrid” suit, *i.e.*, filed against both an employer, for allegedly unfair discharge, and a union, for allegedly breaching its duty of fair representation. 786 F.2d at 1074. The *Georgia Power* court explained that a Section 301 claim involves “separate, yet interdependent” allegations against an employer and a union and that thus the court had determined, in *Proudfoot v. Seafarer’s International Union*, 779 F.2d 1558 (11th Cir. 1986), *vacating in part* 767 F.2d 1538 (11th Cir. 1985), that these separate causes of action, for statute of limitations purposes, “accrue simultaneously.” 786 F.2d at 1074. Within this context, the court, quoting from its *Proudfoot* decision, stated, “By final action we mean the point where the grievance procedure was exhausted or otherwise broke down to the employee’s disadvantage.” 786 F.2d at 1075. The foregoing reasoning is thus inextricably linked to the unique character of the “hybrid” complaint involved in *Georgia Power*.

Counsel for the Tribe indicating that he had not previously stated to Tepper that he would resign. Prybys affidavit at 5-6. Nonetheless, any doubt in Prybys' mind regarding whether the termination decision was "final and unequivocal," *English*, 858 F.2d at 961, was clearly resolved on the following day, October 18, 1994, when the termination took effect. Nothing in Prybys' affidavit or the parties' briefs suggests that there was any alteration in the course of events of which Prybys had been advised on October 17, including removal of Prybys from the Tribe's payroll effective October 18, 1994. *Cf. Eisner*, slip op. at 6-7, and *Kang v. Dept. of Veterans Affairs Medical Center*, Case No. 92-ERA-31, Sec. Dec., Feb. 14, 1994, slip op. at 3-4 (holding that employer's willingness to accept a resignation letter to replace termination notice did not toll the complaint filing period).

Similarly, Prybys' contention that the doctrine of equitable estoppel is applicable must fail. As previously stated by the Secretary in *Tracy, supra*, a defendant may be equitably estopped from relying on the statute of limitations if that party has "induced or deliberately misled an employee into neglecting to file promptly." *Tracy*, slip op. at 5-6 and n.5 (citing *English*, 858 F.2d at 963; *Clark v. Resistoflex Co.*, 854 F.2d 762, 769 n.4 (5th Cir. 1988); *Felty v. Graves-Humphreys Co.*, 785 F.2d 516, 519 (4th Cir. 1986); *Larry v. The Detroit Edison Co.*, Case No. 86-ERA-32, Sec. Dec., June 28, 1991, slip op. at 12-19, *aff'd sub nom. The Detroit Edison Co. v. Sec'y, United States Dept. Of Labor*, No. 91-3737 (6th Cir. Apr. 17, 1992)). As summarized by the Secretary within the context of employee protection legislation, the inquiry under the equitable estoppel issue concerns whether the employer "misrepresented or fraudulently concealed from [complainant] facts necessary to support his complaint(s) or induce[d] him to delay filing" a complaint. *In Re Kent*, slip op. at 11.

In the instant case, Prybys has alleged no facts that would support the conclusion that he was induced or misled by the Tribe into delaying pursuit of a complaint under the environmental protection acts. Although Prybys' affidavit indicates that Tepper misrepresented to tribal management that Prybys had stated he was prepared to resign *prior* to the termination decision being made, Prybys has not alleged that any statements by Tepper or other tribal officials misled him regarding the fact that he had been terminated, effective October 18, 1994. Prybys affidavit at 5-6. Similarly, although Prybys' affidavit states that he "believed, based upon what I was told by other tribal officials, that my termination would be reviewed at the next meeting of the tribal council," *id.* at 6, Prybys does not allege that tribal officials suggested that his termination decision would be reversed if he refrained from filing a complaint under the Federal statutes here invoked. *Cf. Larry*, slip op. at 15-18 (concluding that the failure of a "mediator" to disclose to the complainant her status as the employer's representative constituted basis for equitable estoppel). In sum, no later than October 18, 1994 Prybys knew of the termination action taken against him and he had reason to believe that it had been retaliatorily motivated in violation of the environmental protection acts. *See Kang*, slip op. at 3; *cf. Gabbrielli*, slip op. at 2-5 (following lay-off, complainant was repeatedly advised that he would be welcome to return when work load permitted; upon discovering "sufficient information to question" the lay-off, complainant should have diligently pursued the issue); *see generally Cada*, 920 F.2d at 450 (discussing role of "discovery rule" in equitable tolling context).

We thus hold that the thirty days provided for filing under the environmental protection acts invoked in this case commenced no later than October 18, 1994. Furthermore, Prybys has shown no basis for extending the filing period based on excusable ignorance of his rights under those statutes. Rather than alleging facts that would support a conclusion that Prybys was duly diligent

in asserting his rights after October 18, the affidavit submitted by Prybys indicates an all but complete lack of action on his part during that time. Prybys affidavit at 6.

We accordingly conclude that the statutory filing period expired no later than November 17, 1994. In view of our disposition of the timeliness issue on the foregoing basis, we need not reach Prybys' arguments in support of equitable tolling for the period from February 1, 1995 until April 14, 1995.^{5/}

We thus reject Prybys' argument that the facts alleged support a basis for equitable tolling of the statutory filing period. Further, Prybys' contentions do not demonstrate that there exist factual issues pertinent to the timeliness issue that require resolution following a hearing.

In rejecting the foregoing contentions advanced by Prybys, we nonetheless note the following factors. First, we recognize that a thirty-day statutory limitations period provides an extremely brief deadline for the filing of employee actions. *Cf.* 42 U.S.C. § 5851(b)(1)(1994)(statute of limitations for filing an employee complaint under the Energy Reorganization Act of 1974, as amended by Section 2902(b) of the Comprehensive National Energy Policy Act, Pub. L. No. 102-486, 106 Stat. 2776, which enlarged the period in which employee complaints could be filed from 30 days to 180 days, effective Oct. 24, 1992). We also note, however, that the statutory limitations period is the mandate of Congress, arrived at "after weighing the various interests at stake." *City of Allentown*, 657 F.2d at 20. As also stated by the court in *City of Allentown*, the equitable tolling doctrine does not permit "disregard [of the] limitations periods simply because they bar what may be an otherwise meritorious cause." *Id.*; *accord Rose*, 945 F.2d at 1336. Finally, and as also stated by the *City of Allentown* court, "The restrictions on equitable tolling . . . must be scrupulously observed." *Id.*

^{5/} We note, however, that several court decisions support Prybys' contention that preliminary consultation with an attorney does not provide a proper basis for imputing that counsel's presumptive knowledge of a statute of limitations to the prospective client, Complainant's Brief at 16-17. As indicated *supra*, the affidavit submitted by Prybys states that he immediately sought legal assistance following receipt of the February 1, 1995 letter from the Tribe, and that prior to engaging his current representative Prybys was advised by one attorney that he had at least one year in which to commence legal action against the Tribe. Prybys affidavit at 6; *see* R. D. and O. at 3. In challenging the ALJ's conclusion, Prybys asserts that merely consulting with an attorney is distinguishable, for purposes of the equitable tolling analysis, from the act of actually retaining an attorney. Complainant's Brief at 16-17. Although one of the decisions cited by the ALJ, *Mitchell v. EG&G (Idaho)*, Case No. 87-ERA-22, Sec. Dec., July 22, 1993, contains *dicta* to the contrary, slip op. at 9-10, both *Mitchell* and *Kent v. Barton Protective Services*, 84-WPC-2, Sec. Dec., Sept. 28, 1990, *aff'd* 946 F.2d 904 (11th Cir. 1991), *cert. denied*, 112 S.Ct. 1284 (1992), involve facts indicating that more than a preliminary contact with an attorney was engaged in by the respective complainant in those cases. *Mitchell*, slip op. at 8-11; *Kent*, slip op. at 8. The holdings in *Mitchell* and *Kent* are thus consistent with the principle that "not all contacts with an attorney are sufficient to impute constructive knowledge." *Bass v. Burleigh and Associates*, 727 F.Supp. 1030, 1032 and n.5 (M.D. La. 1989)(imputation of constructive knowledge appropriate "only when the attorney-client relationship is of some significant duration." [citing *Jacobson v. Pitman-Moore, Inc.*, 573 F.Supp. 565, 569 (D. Minn. 1983)]).

We thus conclude that the ALJ's determination that equitable tolling does not apply to render this complaint timely under the pertinent statutory provisions is in accord with pertinent law. We therefore adopt the conclusion of the ALJ that the complaint filed on April 14, 1995 must be summarily dismissed because not timely filed.

ORDER

Accordingly, the complaint in this case is **DISMISSED**.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member