

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Louis E White 1806 Cameron Dr Madison WI 53711 <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> Work Bench Inc PO Box 97 Rocky Hill CT 06067 <p style="text-align: center;">Respondent</p>	HEARING EXAMINER'S DECISION AND ORDER ON JURISDICTION Case No. 19982018
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BACKGROUND

On January 20, 1998, the Complainant, Louis E. White, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint alleges that the Respondent, Work Bench, Inc., terminated his employment at least in part because of his race and thereby violated Section 7 of the Madison Equal Opportunities Ordinance, MGO 3.23(7).

On February 27, 1998, the Respondent moved the Commission for an order dismissing the complaint for lack of geographic jurisdiction. The complaint was transferred to the Hearing Examiner to make a jurisdictional determination. The parties were given the opportunity to submit argument in support of their respective positions. Based upon the record in this matter the Hearing Examiner determines that the Commission is without jurisdiction.

DECISION

Determinations of geographic jurisdiction are fact intensive. While the facts in this record are to some extent in dispute, the essential facts are sufficiently clear to permit a determination of jurisdiction.

The Complainant began his employment with the Respondent in August, 1996 in Downers Grove, Illinois. The Complainant began work as a salesperson and was eventually promoted to the position of Store Manager. Around or about April 1, 1997, the Complainant was further promoted by being made Store Manager of the Respondent's location in Madison, Wisconsin. It is at this point that the record becomes somewhat murky.

In August or September of 1997, the Complainant and Respondent apparently discussed transfer of the Complainant to a site in Illinois in order to train to become a Delivery Manager. There is a dispute as to whether this decision was made to further the Complainant's employment or to punish the Complainant for violations of company policy. It appears, based upon materials submitted by the Respondent, that the actual transfer of the Complainant occurred on September 22, 1997. It was this same date that the Respondent hired Julie Eastmead to replace the Complainant as manager of the Madison location. It was a romantic relationship between the Complainant, an African American, and Eastmead, a White, that the Complainant alleges led to his termination. The Complainant asserts that he was employed at the Madison location until October 1, 1997. The Complainant was terminated by the Respondent on November 18, 1997.

The Complainant asserts that his transfer to Illinois was intended to prepare him to become the Delivery Manager for the State of Wisconsin. The Complainant contends that he continued to work primarily out of the Madison store and that the Respondent continued to communicate with him through the Madison store through his last two months of employment.

The key legal considerations in determining whether the Commission has geographic jurisdiction are what was the site of employment and where did the adverse employment action occur? As the Respondent points out, the location of the Complainant's residence is irrelevant in this context. It does not matter if the Complainant lived in Madison if his employment was located in Illinois. Equally, it would be irrelevant that the Complainant lived in Illinois if his employment was located in Madison, Wisconsin. In this case, the dispute between the parties about where the Complainant actually lived, plays no part in this determination.

Despite the irrelevancy of the Complainant's residence to the ultimate issue of jurisdiction, it does play some role in limiting the Complainant's credibility. Had the Complainant truly been expecting to start a position as Delivery Manager for the State of Wisconsin out of the Madison store, it would be reasonable to expect to find some indicia of his residence in Wisconsin if not Madison. The record is devoid of such evidence. The only support along these lines is the Complainant's uncorroborated statements. It seems to the Hearing Examiner that submission of some documentary evidence to support this allegation would have been easy. The fact that no such evidence was submitted, creates doubt in the mind of the Hearing Examiner over the Complainant's credibility.

It seems clear that at the time of his termination, November 18, 1997, the Complainant was not the Store Manager in Madison. Eastmead had replaced him. The Complainant recognizes that he was being trained out of a location in Illinois.

Despite the fact that the Complainant was assigned to a location in Illinois, he contends that he was working out of the Madison store, receiving communications from the Respondent through the Madison store and was preparing to become the Delivery Manager for the State of Wisconsin based out of the Madison location. There is nothing in the record to support the Complainant's position other than his affidavit. The claim that the Complainant was preparing for a future position as Delivery Manager is irrelevant to this determination. Speculation about the future location of employment is not a sound basis for determining where an adverse employment action occurred.

The allegations that the Complainant actually performed work out of the Madison store despite being trained out of a location in Addison, Illinois and that the Complainant received communications from the Respondent through the Madison store from October 1, 1997 until his termination on November 18, 1997 lack credibility or any documentary support in this record. Had these allegations been more than an attempt to establish jurisdiction, the Hearing Examiner would have expected the Complainant to produce statements of persons verifying these allegations or the provision of other documentary evidence such as time records or copies of the alleged communications. The record lacks any of these supporting documents.

While during the Initial Determination phase of a complaint, the Fact Finder is obligated to resolve conflicts in the evidence in favor of the Complainant, the conflict must be genuine and have some support in the record. It may be sufficient for a Complainant to rely merely upon his own statements in filing a complaint, but he must be able to point to credible evidence in the record supporting his claim at the Initial Determination stage. Further, where there is a challenge to the jurisdiction of the Commission, the burden of demonstrating jurisdiction falls upon the Complainant. Here the Complainant hints at facts that if proven might support jurisdiction. However, he fails to present evidence sufficient to support a finding of jurisdiction.

ORDER

The Hearing Examiner finds that the Commission is without geographic jurisdiction over the above captioned complaint. The record supports a finding that at the time of the termination of his employment, the Complainant was employed and located in the Respondent's facility in Illinois outside of the City of Madison. The complaint is hereby dismissed.

Signed and dated this 15th day of December, 1998.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner