

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

Scott Wollschlager
Post Office Box 900
Sturtevant WI 53177-0900

Complainant

vs.

Hy Vee
3801 E Washington Ave
Madison WI 53704

Respondent

HEARING EXAMINER'S RECOMMENDED
FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

CASE NO. 20142022

On March 9, 2017, the Commission Hearing Examiner, Clifford E. Blackwell, III, conducted a hearing on the merits of the above captioned complaint. The hearing was held at the Racine Correctional Institute. The Complainant, Scott M. Wollschlager, appeared in person and without counsel. The Respondent, Hy-Vee, Inc., appeared by its corporate representative, Roxie Cox, and by its counsel, Lori Lubinsky, of Axley Brynelson.

Based upon the record of the proceedings, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant is an individual with a conviction record. He was convicted of possession of child pornography on June 15, 2012.
2. The Respondent is a grocery store with two locations within the City of Madison. The stores are located at 3801 East Washington Avenue and 675 South Whitney Way, both within the City of Madison. The Respondent employs more than 15 individuals.
3. On December 5, 2013, the Complainant applied for an open position as a Service Meat Clerk in the Respondent's east side location on the night shift. The Complainant was qualified for the position by virtue of years of meat cutting experience at a previous job.
4. The Respondent's application is completed online. The application inquires if the applicant has any arrests or convictions for offenses other than traffic violations. The Complainant acknowledged such convictions by indicating, "DUI, Felony." The Complainant states that he did not think there was sufficient space to elaborate, though the application requested an explanation of any listed arrests or convictions.

5. Based upon the Complainant's application, the Respondent's Human Resources Director, Roxie Cox, arranged to interview the Complainant on December 6, 2013. At the time of the interview, Cox understood that the Complainant's disclosure of his convictions identified a DUI that was serious enough to be a felony. She did not understand that the Complainant was disclosing more than a single conviction. Cox asked the Complainant if his conviction would pose any problem with his employment. The Complainant indicated that it would not.
6. The Complainant's answer was not forthcoming about the limitations related to his conviction for possession of child pornography. On neither December 5 nor December 6, 2013, did the Complainant clearly inform the Respondent of the exact convictions he had or the limitations placed upon him by the court or the Department of Corrections.
7. After the Complainant's interview with Roxie Cox on December 6, 2013, Cox offered the position of Service Meat Clerk to the Complainant. The Complainant accepted the position.
8. On or about December 10, 2013, the Complainant called his Probation Officer/Agent, Jessica Dietel (now Davis) to inform her that he'd accepted the Service Meat Clerk position with the Respondent. The rules of the Department of Corrections (DOC), the agency with responsibility for individuals on parole/probation, indicate that the Complainant should have obtained the permission of Davis prior to interviewing for the position.
9. On December 11, 2013, Davis called Roxie Cox in the Respondent's Human Resources Department to discuss the Complainant's application and possible employment. During this conversation, it became clear that the Complainant had not disclosed to Cox the fact of his conviction for possession of child pornography nor any of the requirements of his conviction and probation. The rules of the DOC require such disclosures to potential employers.
10. Most importantly, the Complainant did not disclose that he was not to be unsupervised at work, nor could he have any contact with minor or juvenile individuals without prior approval of his agent.
11. As the position for which the Complainant had applied involved work, at least in part, during hours where he might be the only employee in the Meat Department and that the Complainant might have unsupervised interactions with minor/juvenile individuals either coworkers or customers, Cox was concerned that the position might not fit within the restrictions of the Complainant's probation. Cox told Davis that Cox would have to discuss the Complainant's employment with the Store Manager, Ross Grunwald.
12. Cox and Grunwald determined that due to the likelihood of unsupervised contact with minors/juveniles and the lack of general supervision due to the hours to be worked, the Respondent would have to retract its offer of employment to the Complainant.
13. On December 12, 2013, the Complainant came to the store for training. Cox met with the Complainant and told him that the offer of employment was withdrawn and that he would not be employed by the Respondent.

CONCLUSIONS OF LAW

1. As an individual with a conviction record, the Complainant is covered by the protections of the Equal Opportunities Ordinance.
2. The Respondent is an employer located within the City of Madison and is subject to the requirements of the Equal Opportunities Ordinance.
3. The Respondent's decision to withdraw its offer of employment was not due to the Complainant's conviction record.
4. The Respondent's withdrawal of its offer of employment did not violate the Equal Opportunities Ordinance.

ORDER

The complaint is dismissed. The parties shall bear their own costs and fees.

MEMORANDUM DECISION

The facts of this case demonstrate the difficulties and perceived difficulties facing those charged or convicted of sexual offenses to find employment. It also demonstrates the difficulties facing employers that might be willing to employ such individuals.

In the present matter, the Complainant applied for a position as a Service Meat Clerk at the Respondent's east side grocery store location. This was a position for which the Complainant was well qualified by virtue of his past employment experience. This experience was seen as a positive by the Respondent's Human Resources Manager, Roxy Cox, who reviewed the Complainant's online application on or about December 5, 2013. After reviewing the Complainant's application herself, Cox reviewed the Complainant's application with the Manager of the Meat Market, Patrick Tender. Tender confirmed that the Complainant's past experience working for a meat packer would be potentially valuable to the Respondent.

Based upon her own review and her discussion with Tender, Cox interviewed the Complainant for the open Service Meat Clerk position on December 6, 2013. The fact that Cox decided to interview the Complainant reveals an interesting circumstance relevant to this claim of discrimination.

The Respondent's application asks applicants if he or she has been convicted of a crime other than a traffic violation. The application further asks the applicant to provide details or an explanation if the applicant discloses such a conviction.

The Complainant disclosed on his application that he'd been convicted as follows, "DUI, Felony." The Complainant testified that he believed this was sufficient to place the Respondent on notice that he had both a conviction for DUI and a felony conviction for an otherwise undisclosed felony. The Complainant states that he did not believe that the application provided sufficient space to explain further. Individuals with convictions are also often counseled to make

a disclosure of an arrest or a conviction in general terms that permit discussion of the circumstances in person at an interview.

Cox understood that the Complainant was disclosing a conviction for a DUI that was serious enough to have resulted in a felony conviction. Cox did not understand that the Complainant was attempting to disclose separate convictions for a charge of DUI and some other felony.

Despite her understanding that the Complainant had at least a felony conviction for DUI, Cox invited the Complainant for an interview on December 6, 2013. During the interview, Cox questioned the Complainant further with respect to his disclosure on the application. Cox specifically asked the Complainant if there were any circumstance surrounding his conviction that would affect his ability to perform the duties of the position for which he had applied. The Complainant stated that there were none.

At the end of the interview, Cox offered the Service Meat Clerk position to the Complainant and he accepted the offered position. The Complainant was to return for training and to begin work on December 12, 2013.

Subsequent to the interview and his acceptance of the offered position, the Complainant contacted his Probation Officer Jessica Dietel, now Jessica Davis, and informed her of his application and acceptance of the position. This concerned Davis because the rules by which the Complainant was supposed to abide during his probation required him to obtain permission from his Probation Officer prior to engaging in a job search. Such prior notice to his Probation Officer is important because there are various requirements and restrictions applying to a sex offender's employment.

Davis, after having been informed by the Complainant of the situation, contacted Cox to see exactly what had occurred during the Complainant's application and interview process. Davis specifically inquired if the Complainant had disclosed the nature of his conviction record to Cox. Cox indicated that she was aware of the Complainant's DUI. Davis asked if the Complainant had informed Cox of his conviction for possession of child pornography or the restrictions under which the Complainant's employment might be possible. Cox stated that she was unaware of the Complainant's conviction for possession of child pornography or any of the restrictions that might apply to the Complainant's probation.

After Davis explained the possible restrictions applying to the Complainant's employment, Cox indicated that she would need to consult the Store Manager, Ross Grunwald, and consider whether the Respondent would be able to accommodate the Complainant's restrictions. The restrictions of the greatest concern to the Respondent were the limitation that the Complainant was not to be unsupervised and not to have contact with minors/juveniles in an unsupervised circumstance. The duties of the Service Meat Clerk position for which the Complainant was to be employed occurred, to a great extent, in the evening or at night when the Complainant would likely be the only Meat Counter employee and his duties in the Meat Market and elsewhere in the store might well bring the Complainant into unsupervised contact with minors/juveniles as coworkers or store customers.

After discussing the requirements of the Service Meat Clerk position and the Complainant's restrictions with Grunwald, Cox and Grunwald determined that they could not

meet the restrictions under which the Complainant could be employed. Cox called Davis back and informed her that the Respondent had decided to rescind the offer of employment to the Complainant. When the Complainant arrived at the Respondent's store on December 12, 2013 to begin his employment, Cox informed him of the Respondent's decision to rescind the offer of employment.

In order to analyze the facts and law applicable to this complaint, the Hearing Examiner will utilize the indirect method of proof as set forth in the McDonnell Douglas/Burdine framework. In this approach, the Complainant must first present facts through testimony and evidence sufficient to establish a *prima facie* claim of discrimination on the basis of conviction record. Assuming that the Complainant carries these burdens of production and proof, the analysis shifts to determine whether the Respondent can produce a legitimate, nondiscriminatory explanation for its actions. This is a burden of production, not one of proof. Should the Respondent meet its burden, the analysis shifts back to the Complainant to see if he can produce facts or evidence to show that the reason presented by the Respondent is either not credible or represents an otherwise discriminatory reason for the Respondent's actions.

Generally speaking, the *prima facie* claim of discrimination consists of three or four elements. First the Complainant must demonstrate that he is a member of a protected class. In this instance, there is no dispute that the Complainant as an individual with a conviction record is a member of the protected class, "conviction record." Second, the Complainant must demonstrate that he experienced an adverse employment action. Again, there is no dispute that the Respondent's decision to rescind its offer of employment represented such an adverse employment action. The third element of the *prima facie* claim is sometimes not necessary depending upon the claim involved. In the present matter, the third element, which is not truly in controversy, is that the Complainant was otherwise qualified for the position in question. Since the Respondent initially offered the position of Service Meat Clerk to the Complainant, there seems no doubt that he was qualified for the position.

The final and often most critical element in the *prima facie* claim is a causal connection between the Complainant's membership in a protected class and the adverse employment action he experienced. In other words, did the Respondent rescind its offer of employment because of the Complainant's conviction record?

In order to reach this conclusion, the Hearing Examiner must first determine the scope of the term "conviction record." More specifically, does that term apply merely to the status of having a conviction record or does it or can it apply to an individual's conviction record for specific crimes.

In the present matter, this question is important because if "conviction record" applies simply to the status of having such a record, the fact that the Respondent offered the Complainant employment despite his disclosure of a DUI which the Respondent understood to be serious enough to carry a felony conviction would require finding that the Respondent had not rescinded its offer of employment because of the Complainant's conviction record. However, if the term "conviction record" includes consideration of the specific crimes for which an individual was convicted, then this matter requires further analysis.

The language of the Ordinance's prohibition seems to indicate that it is the status of having a conviction record that is protected rather than having a conviction record of specific

offenses. The Ordinance's protection does not specify that consideration of any individual or group of offenses receives protection while others do not. On the other hand, the Ordinance's exceptions found at Mad. Gen Ord. 39.03(8)(i)(3)(b) contemplate an individualized analysis of a particular offense and how that offense might be substantially related to a particular position. The substantial relation test indicates that the Common Council must have wanted the protection to apply not to just the status of having a conviction record but to the individual offenses make up a that conviction record. In other words, if an employer is motivated by a specific category of crime to refuse to hire an individual, that is sufficient to fall within the scope of the Ordinance's protections.

In the present matter, the Complainant's best argument that there was a causal connection between his conviction record and the rescinding of the offer of employment is that there was an offer of employment when the Respondent knew of one type of conviction and a rescission of that offer of employment once the Respondent became aware of a different type of offense involving a conviction.

It was only after the Respondent became aware of the Complainant's conviction for possession of child pornography that it decided that it should/had to rescind its offer of employment. In this context, there is a credible inference that it was the specific offense of possession of child pornography that triggered the Respondent's action. This inference is sufficiently strong, given the circumstances of this case, for the Hearing Examiner to conclude that the Complainant has carried his burden to present a *prima facie* claim of discrimination.

The Complainant having demonstrated a *prima facie* claim of discrimination on the basis of conviction record, the burden shifts to the Respondent to produce a legitimate, nondiscriminatory explanation for its actions. This is a burden of production not one of proof.

The Respondent states that based upon the conversation between the Complainant's Parole Officer and Cox in which Davis outlined the restrictions placed upon the Complainant by the court at the time of his conviction and by the Department of Corrections when the Complainant entered its jurisdiction and after discussing these restrictions with the Store Manager, Grunwald, the Respondent determined that it could not offer the Complainant employment within the limits of his restrictions. At hearing, Cox explained that the Respondent's specific concerns were that the Complainant's position would likely bring him into contact with minors or juveniles in unsupervised settings both at his workstation and in the store in general. The Complainant's position would have required his presence in the store during hours when there would be no supervision of his position and he would be required to stock coolers in other portions of the store.

Additionally, the stock room was located behind the Meat Market and other coworkers under 18 years of age would be likely to cross paths with the Complainant in an area not readily visible to the public. Finally, the area set aside for employee breaks was in a location that was not and could not be supervised during the Complainant's work hours. Given the setting of the Complainant's proposed employment and the restrictions facing the Complainant, it was not unreasonable for the Respondent to conclude that the Service Meat Clerk position could not be performed within the Complainant's restrictions. The Hearing Examiner concludes that the Respondent's proffered explanation represents a legitimate, nondiscriminatory explanation for the decision to rescind its offer of employment to the Complainant.

The Respondent having presented its explanation of its reason for rescinding the offer of employment to the Complainant, the Complainant may still prevail if he can demonstrate that the Respondent's explanation is either not credible or otherwise represents a pretext for a discriminatory motive.

The Complainant's first argument is that it is not the responsibility of the employer to ensure compliance with the Complainant's restrictions. The Complainant contends that his compliance with his restrictions is a matter for him and his Parole Officer to be concerned about. While this is generally true, the Equal Rights Division (ERD) of the Wisconsin Department of Workforce Development has addressed this issue in Schmid-Long v. Hartzellmanuf, ERD Case No. 199701693 (LIRC). In that case, the ERD concluded that compliance with an employee's restrictions is a legitimate concern of an employer. While the Schmid-Long case interprets the Wisconsin Fair Employment Act and not the Equal Opportunities Ordinance, the ERD's analysis is persuasive and the Hearing Examiner accepts its guidance in the present matter.

The Hearing Examiner is further convinced that the Respondent had a legitimate interest in the Complainant's restrictions given the Complainant's failure to be forthcoming about his conviction in the first place and his apparent attempt to evade discussion of his restrictions during his interview with Cox. At that time, Cox asked the Complainant if there were any issues surrounding his conviction that might affect his employment. Despite knowing of his restrictions, the Complainant told Cox that there were no issues that might affect his employment. The Complainant's less than forthcoming approach to this question demonstrates why an employer might, in fact, have an interest in knowing and monitoring an employee's restrictions.

The Complainant also argues that his restrictions, especially those in connection with unsupervised contact with minors/juveniles were not absolutes and were applied with an understanding that incidental contact with a minor/juvenile was acceptable. While Davis tentatively agreed with the Complainant's characterization, she indicated that the Complainant's failure to inform her prior to applying and interviewing for the Service Meat Clerk position prevented her from exploring the possible parameters of potential contact with minors/juveniles. While the Complainant's view might be correct, the Hearing Examiner is reluctant to credit them too strongly given the Complainant's apparently intentional efforts to avoid the supervision contemplated by the rules regulating his access to employment and members of the public.

While the Hearing Examiner is cognizant of the public's reaction to individuals with a history of offenses involving sex and adolescents and the difficulties of individuals with that history have in obtaining employment and housing, the Hearing Examiner found Cox's testimony and demeanor to be credible and delivered in an open and forthright manner. The hearing Examiner believed Cox when she stated that they had examined, not the Complainant's conviction but the limitations on how he might be permitted to do his job. In concluding that Cox was credible and the explanation of how the Respondent came to its decision to rescind the Complainant's offer of employment is believable, the Hearing Examiner finds that the Complainant has not carried his burden to demonstrate that the Respondent's explanation is either not credible or represents a pretext for an otherwise discriminatory explanation.

In reaching the conclusion that the Complainant has failed to prove that the Respondent had discriminated against him on the basis of his conviction record for possession of child pornography, the Hearing Examiner need not address the Respondent's further defense that the Complainant's conviction record for possession of child pornography was substantially related to

the Complainant's potential employment. While the Hearing Examiner will not extensively address this defense, it is appropriate to make a couple of points.

The Complainant emphasizes that the offense of which he was convicted was not a contact crime. There was never an accusation that he had assaulted any person or attempted to do so. While this is an important consideration in the present matter, it is not conclusive on behalf of the Complainant. The Respondent cites to the experience of the ERD and its appellate body, the Labor and Industry Review Commission's (LIRC) experience. Holze v. Secure Link, LIRC (09/23/2005). In addressing whether an individual convicted of the substantially similar crime as the Complainant employment was substantially related to the offense of possession of child pornography, it determined that the essential nature of the crime of possession of child pornography was the gross objectification of adolescents. In deciding that a conviction for the crime of possession of child pornography was substantially related to Holze's job as a Clerk in a retail store, LIRC determined that any position that permitted regular contact with adolescents was substantially related to the underlying conviction.

In the present matter, as described by the Respondent, the Complainant could reasonably expect to be in contact with members of the public and coworkers including minors/juveniles against which the Complainant's restrictions prohibited unsupervised contact.

The Complainant contends that such contact would be merely incidentally to his usual duties. However, the Respondent's explanation of the physical layout of the store and various areas within the store indicate that there was the possibility of more than incidental contact with a protected individual. It is impossible to know, at this stage, for sure, what the level of contact might be, but the Respondent is not required to guess if it has a good faith belief that the Complainant's job duties might require him to violate the restrictions of his release.

Though the Respondent did not seek to defend its position by arguing that it rescinded its offer of employment because of the Complainant's attempts to obscure the nature of his conviction record, the Hearing Examiner finds that it substantially limits the credibility of the Complainant's testimony and beliefs in the minimal contact that his position might provide with minors/juveniles. The Hearing Examiner does not wish to convey any belief that the Complainant sought this position as a mechanism for making such contact, but the Hearing Examiner does believe that the Complainant likely minimized the possible contacts in his own mind in order to obtain the position.

The Respondent as part of its argument concerning whether the Complainant's conviction record cites to the Hearing Examiner's decision in Rogers v. New Horizons, MEOC Case No. 19982232 (Ex. Dec. 08/10/1999). In that case, the Complainant intentionally misled the employer about the nature of his conviction record when he first disclosed a record for homicide. Rogers first told the Respondent in that case that the death of his girlfriend was caused by a drug dealer. In fact, Rogers had killed his girlfriend and stole drugs and her property to feed his own drug habit. The Hearing Examiner found that there was nothing in the record to indicate that the Complainant's conviction was substantially related to the position of Receptionist for which he'd applied, but that the Complainant's action had interfered with the process of analysis of whether Rogers' conviction might be substantially related to the position of Receptionist. The Hearing Examiner concluded that the Respondent had discriminated against the Complainant because of his conviction record, but as a sanction for the

Complainant's misconduct determined that the Complainant was stopped from receiving any damages for the Respondent's violation of the Ordinance.

Since the Hearing Examiner finds that the Complainant has not established that the Respondent discriminated against him on the basis of his conviction record, the Rogers case is not precisely applicable to the present matter. However, the Complainant's conduct in not informing Davis of his application or interview and his evasion of the Respondent's questions about the impact of his conviction record on his employment present the same type of impediment to the analysis of substantial relationship that even if there were a finding of discrimination, the Hearing Examiner would not award the Complainant any damages.

The complaint is dismissed.

Signed and dated this 16th day of June, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Lori M Lubinsky

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

Scott Wollschlager
Inmate # 596588
Dodge Correctional Institute
Waupun WI 53963

Complainant

vs.

Hy Vee
3801 E Washington Ave
Madison WI 53704

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON RESPONDENT'S MOTION
TO LIFT STAY

CASE NO. 20142022

BACKGROUND

This is a Decision and Order stemming from a complaint of discrimination filed with the Department of Civil Rights Equal Opportunities Division (EOD) by Scott Wollschlager. The complaint was filed with the EOD on February 13, 2014. The complaint alleged that the Respondent, Hy-Vee, discriminated against the Complainant on the basis of his conviction record when it failed to hire him or rescinded a previously made job offer. The Respondent denied the allegations of the complaint.

Subsequent to an investigation by a Division Investigator/Conciliator, the Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant in employment on the basis of conviction record. Efforts at conciliation were unsuccessful. The complaint was transferred to the Hearing Examiner for further proceedings.

On July 24, 2014, the Hearing Examiner held a Pre-Hearing Conference to set a date for hearing, establish the issues for hearing and to set various interim dates, including those for the completion of discovery. On July 29, 2014, the Hearing Examiner issued a Notice of Hearing and Scheduling Order setting forth the information discussed at the Pre-Hearing Conference. The date for the public hearing on the complaint was to be November 12, 2014.

The parties pursued their respective interests which included, on the part of the Respondent, efforts to conduct discovery. The Complainant objected to the Respondent's discovery requests. The Hearing Examiner was asked to intervene. The Hearing Examiner, on September 19, 2014, issued an order limiting discovery in some respects, but directing the Complainant to either provide more specific information about how the discovery was objectionable or to complete the discovery.

On October 25, 2014, the Complainant notified the Hearing Examiner and Respondent that he'd been unable to complete discovery because he'd been incarcerated. The Complainant further requested a postponement of the hearing stating that he anticipated being released from incarceration around November 19, 2014. On October 31, the Hearing Examiner stayed further proceedings in this matter with an eye towards rescheduling as soon as the Complainant was released. The Hearing Examiner directed the Complainant to inform him within seven (7) days of his release of that fact.

The Hearing Examiner heard nothing further until he received a letter from the Respondent dated March 20, 2015, requesting that the stay of proceedings be lifted and the Complainant be directed to proceed with his complaint. The Respondent's letter further notified the Hearing Examiner that the Complainant had been sentenced on February 6, 2015 for unspecified crimes to four years additional incarceration.

On March 26, 2015, the Hearing Examiner directed the Complainant to indicate why the complaint should not go forward and to provide information concerning how the Complainant might be able to proceed. On March 31, 2015, the Complainant indicated that the Respondent's letter of March 20, 2015 misstated the actual length of his likely incarceration, explained the difficulties in his proceeding while incarcerated and asked that the stay be maintained pending his release from incarceration.

On May 12, 2015, the Respondent replied to the Complainant's submission indicating that despite the Complainant's attempt to point out reductions in his sentence that his release date was still unknown and that it was fundamentally unfair to expect the Respondent to wait for an as yet unknown period to have its date in court.

DECISION

While the Hearing Examiner is sympathetic to the difficulties presented by the Complainant's incarceration, the Equal Opportunities Commission has made it clear that incarceration is not a legitimate reason for a Complainant not to meet the responsibilities of pursuing a complaint. Murphy v. Woodman's and Kellahue, MEOC Case No. 21688 (Comm. Dec. 10/26/93). The circumstances of the present matter and the Murphy complaint are not identical, but the failure to meet the requirements of the complaint process are sufficiently similar that the Hearing Examiner finds that the complaint process should move forward.

The parties in this matter, even prior to the Complainant's latest incarceration, were involved in substantial disputes concerning the processing of the complaint and the rights and responsibilities of the parties. Given the correspondence in the record since the Complainant's incarceration in October of 2014, the Hearing Examiner has no doubts that both sides will vigorously represent their respective interests. It is the Hearing Examiner's duty to assure a process that is fair and responsive to the needs of both parties and to the needs of the Commission.

The Complainant points out that there has been time passage from the date of the alleged discrimination to the projected date of the hearing and that further delay will not act to prejudice the Respondent's interests further. The Complainant asserts, on the other hand, that he will be prejudiced by a lack of access to his documents and necessary materials. In short,

the Complainant contends that to require the complaint to go forward will be tantamount to requiring dismissal of the complaint.

As noted above, the Hearing Examiner understands the difficulties the Complainant's incarceration creates for him. However, neither the Commission nor the Respondent are responsible for the circumstances facing the Complainant. The Respondent notes that prisoners routinely pursue civil and other complaints while incarcerated. The Hearing Examiner has heard several complaints involving persons who were incarcerated at the time of hearing.

There are circumstances in which the law requires the Hearing Examiner to accommodate the needs of the parties. However, there is nothing to indicate that incarceration is such a circumstance.

There has been considerable opportunity for the Complainant to inform the Hearing Examiner and the Respondent of the circumstances of his confinement. It must be noted that it was the Respondent not the Complainant who notified the Hearing Examiner of the Complainant's sentencing in February of 2015. Three months have passed since the Complainant's explanation of possibly mitigating factors that would shorten the period of the Complainant's incarceration. However, there has been no indication from the Complainant that these conditions or factors have come into play.

The Hearing Examiner will direct the complaint to move forward. In consideration of the administrative difficulties facing the Complainant, the Hearing Examiner will endeavor to build in additional time limits for exchange of information and documents. At the end of the discovery period, the Hearing Examiner will then address timing of a public hearing.

ORDER

The Hearing Examiner hereby lifts the stay which currently holds further proceedings in abeyance. The Hearing Examiner enters the following schedule for completion of discovery.

1. The parties may serve discovery upon each other on or before August 28, 2015. The Respondent shall serve again on the Complainant any outstanding discovery which it deems to currently be unanswered.
2. The parties shall have sixty (60) days to respond to any discovery served pursuant to 1., above.
3. Once the period for responding to discovery has lapsed, the Hearing Examiner will hold additional proceedings to schedule the hearing.

Signed and dated this 28th day of July, 2015.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Lori M Lubinsky