

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

Jeffrey Bagneski
PO Box 271
Waterloo WI 53594

Complainant

vs.

America's Best Value Inn Madison
3438 Highway 12-18 West
Madison WI 53718

Respondent

**COMMISSION'S DECISION AND FINAL
ORDER ON APPEAL OF
HEARING EXAMINER'S DECISION AND
ORDER ON RESPONDENT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION**

CASE NO. 20203062

BACKGROUND

On May 27, 2020, the Complainant, Jeffrey Bagneski, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division. Bagneski charged that the Respondent, America's Best Value Inn Madison, discriminated against him when it denied him access to a public place of accommodation or amusement on the bases of his arrest record and conviction record.

The Respondent filed a motion to dismiss based on lack of jurisdiction, asserting that the Department of Civil Rights lacked jurisdiction because its establishment was located in the Town of Blooming Grove, and not within the City of Madison.

The matter was scheduled for mediation and the Mediator transferred the complaint to the Hearing Examiner to make a determination on the question of jurisdiction. The Hearing Examiner ordered the parties to submit arguments and evidence supportive of their respective positions. Neither party submitted any materials outlining their arguments, nor any evidence, so the Hearing Examiner subsequently scheduled a hearing on the question of jurisdiction. On August 20, 2020, the parties appeared for that hearing and were able to be heard on the issue.

Based on the record established at that hearing, the Hearing Examiner issued his Decision and Order on the Respondent's Motion to Dismiss for Lack of Jurisdiction on August 24, 2020, finding that the Complainant failed to meet his burden to establish the Department of Civil Rights had jurisdiction over the complaint, and the complaint was dismissed.

The Complainant appealed the Hearing Examiner's Decision and Order to the Equal Opportunities Commission. The appeal was assigned to the Appeals Committee. The parties were given the opportunity to submit additional written argument in support of their respective positions.

On June 17, 2021, the Appeals Committee of the Equal Opportunities Commission met to consider the Complainant's appeal. Participating in the Committee's deliberations were Commissioners Ramey, Wallace and Andrae.

DECISION

After review of the record and the Hearing Examiner's Decision and Order dismissing the complaint, the Appeals Committee finds that the Hearing Examiner's Decision issued on August 24, 2020 is fully supported by the record. The Committee adopts and incorporates by reference as if fully set forth herein, the Hearing Examiner's Decision and Order.

ORDER

The complaint is dismissed.

Joining in the Committee's action are Commissioners Ramey, Wallace and Andrae. No Commissioner opposed this action.

Signed and dated this _____ day of August, 2021.

On behalf of the Equal Opportunities Commission and the Appeals Committee,

Melanie Ramey
Appeals Committee Chair

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BACKGROUND

On May 27, 2020, the Complainant, Jeffrey Bagneski, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division (EOD). The complaint charged that the Respondent, America's Best Value Inn, discriminated against him on the bases of his arrest record and conviction record when it denied him access to a public place of accommodation or amusement. The Complainant alleges that he paid for a room at the Respondent's hotel/motel and went to his room. Upon entering his room, he was informed that a criminal background check had been made and he was no longer welcome at the Respondent's establishment. The location of the Respondent's hotel is indicated by its mailing address as follows 3438 U.S. Highway 12 & 18 West, Madison, Wisconsin 53718.

The Respondent asserted that the Department was without geographic jurisdiction as, despite its mailing address, its establishment was located in the Town of Blooming Grove.

The matter was scheduled for mediation, but in conversation with the Mediator, the Respondent renewed its objection to the Department's jurisdiction. In further discussion between the Mediator and the Complainant, the Complainant asserted that the Department should maintain jurisdiction over the complaint.

Faced with the conflict between the parties, the Mediator transferred the complaint to the Hearing Examiner for a determination of the Department's jurisdiction. Upon receiving the complaint, the Hearing Examiner, on June 29, 2020, issued an order directing the parties to submit their arguments as to the jurisdiction of the Department along with any documentary evidence in support of their respective positions. The Hearing Examiner indicated that if either party believed that discovery was necessary to determine jurisdiction, he would consider establishing a schedule for discovery and rescheduling the submission of argument.

Neither party submitted any materials during the period provided by the Hearing Examiner. This lack of documentation of the Respondent's claim or the Complainant's claim of jurisdiction left the Hearing Examiner without a record on which to base a reasoned decision as to the Department's jurisdiction. Accordingly, on August 6, 2020, the Hearing Examiner issued a Notice of Hearing scheduling a hearing on the issue of jurisdiction for August 20, 2020 at 2:00 p.m. Along with the Notice of Hearing, the Hearing Examiner provided a page from the database the Department uses to determine whether any given address is within the geographic limits of the City of Madison.

On August 20, 2020, the Complainant appeared in person and without counsel. The Respondent appeared by its corporate representative, Carl Welter, and without counsel. The Hearing Examiner administered an oath or affirmation to both the Complainant and Mr. Welter.

DECISION

As a municipal agency, the Department of Civil Rights (the Department) is limited to regulation of activities occurring solely within the geographic limits of the City of Madison. The Department has no extra-geographic powers or authority. Over time, the Department has been called upon to make determinations of its jurisdiction over complaints for reasons of geographic jurisdiction, time limits or the subject matter of a given complaint. As the Hearing Examiner explained to the parties at the hearing on August 20, 2020, what was at question in the current matter was the geographic jurisdiction of the Department over the present complaint.

The Hearing Examiner summarized his understanding of the Respondent's position. Essentially, the Respondent stated that despite a postal address of Madison, the Respondent's facility was entirely located within the Town of Blooming Grove. Over the period of the hearing, the Hearing Examiner gathered that the Respondent paid room tax to the town of Blooming Grove and that the premises were subject to the jurisdiction of the Dane County Sheriff's Department and not to the City of Madison Police Department. Additionally, review of the material submitted by the Hearing Examiner for the consideration of the parties from the database used by the Department to determine the geographic location of addresses indicated the Respondent's address falls in the Town of Blooming Grove, not the City of Madison.

The Complainant in support of his claim of jurisdiction, pointed to the Respondent's postal address and to his unsubstantiated assertion that the City of Madison Police Department patrolled the Respondent's location. The Complainant also reviewed several past jurisdictional determinations of the Department. Given the record as a whole, the Hearing Examiner concludes and finds that the Department is without geographic jurisdiction over this complaint. The evidence of the City of Madison's own database of addresses along with the testimony of Welter convincingly demonstrate that the Respondent's facility falls outside of the Department's geographic jurisdiction. As in the cases of Rappe v. Soderholm Wholesale Foods, Inc., MEOC Case No. 21811 (Ex. Dec. 12/13/93) and Osuocha v. Badger Bowl, MEOC Case No. 20143151 (Ex. Dec. re: jurisdic. 08/11/2015), postal addresses alone are not determinative of the Department's geographic jurisdiction. In both Rappe and Osuocha (supra), the Respondents possessed Madison postal addresses but were conclusively physically located outside of the City of Madison. The situation is the same in the present matter.

As for the Complainant's contention that the Respondent's property is patrolled by the City of Madison Police Department, the Respondent refutes that allegation. While at some stages of the complaint process a reasonably disputed fact must be resolved in favor of the

Complainant, such is not the case where the jurisdiction of the Department is at question. The Complainant must conclusively demonstrate the geographic jurisdiction of the Department and may not rely upon inference. Jurisdiction is a foundational basis for any complaint and it always is the burden of the Complainant to establish the jurisdiction of the Department. Without jurisdiction, the Department simply lacks authority to proceed.

The Complainant has failed to meet his burden to establish the geographic jurisdiction of the Department over this complaint. Accordingly, the complaint must be dismissed.

ORDER

The complaint is dismissed without prejudice as to any other appropriate jurisdiction.

Signed and dated this 24th day of August 2020.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner