

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

Tanya Lawler
PO Box 14131
Madison WI 53708

Complainant

vs.

Madison Metropolitan School District
545 W Dayton St
Madison WI 53703

Respondent

HEARING EXAMINER'S DECISION
AND ORDER ON RESPONDENT'S
MOTION TO DISMISS

CASE NO. 20102194

EEOC CASE NO. 26B201100006

BACKGROUND

On October 29, 2010, the Complainant, Tanya Lawler, filed a complaint of discrimination with the City of Madison Department of Civil Rights (DCR), Equal Opportunities Division (EOD). The complaint charged that the Respondent, the Madison Metropolitan School District (MMSD), discriminated against her in terms and conditions of employment. The Respondent denied that it discriminated against the Complainant in any regard.

The complaint was assigned to a Division Investigator/Conciliator for investigation and the issuance of an Initial Determination. On February 22, 2011, the Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant with regard to some of her allegations of discrimination and no probable cause to believe that the Respondent had discriminated with regard to other allegations of the complaint. The Complainant did not appeal the findings of no probable cause. Efforts at conciliation of those allegations for which there was a finding of

probable cause were unsuccessful. Those allegations were transferred to the Hearing Examiner for further proceedings.

On April 8, 2011, the Hearing Examiner issued a Notice of Pre-Hearing Conference. The Notice set the date for the Pre-Hearing Conference for April 29, 2011.

The Notice of Pre-Hearing Conference was sent "delivery confirmation," which means that the U.S. Post Office tracks efforts to deliver such a piece of mail. It appears that the Post Office attempted to deliver the Notice of Pre-Hearing Conference on April 11, 2011 and again on April 18, 2011, before returning it to the Equal Opportunities Division as "unclaimed" on May 2, 2011.

The Complainant did not appear at the Pre-Hearing Conference or within 30 minutes of the time set for the Pre-Hearing Conference. The Respondent moved for dismissal of the complaint for the Complainant's failure to appear. The Hearing Examiner took the Respondent's motion under advisement and indicated that he would issue an Order to Show Cause why the complaint should not be dismissed for the Complainant's failure to appear.

On May 2, 2011, the Hearing Examiner issued the Order to Show Cause why the complaint should not be dismissed. The Order gave the Complainant until May 13, 2011 to provide an explanation for her failure to appear at the Pre-Hearing Conference. On May 12, 2011, the Complainant filed a letter requesting that the complaint not be dismissed and explaining that she had not received the Notice of Pre-Hearing Conference. On May 12, 2011, the Hearing Examiner sent the Respondent a copy of the Complainant's response by facsimile transmission because the Complainant had failed to copy the Respondent with her submission.

On May 19, 2011, the Respondent filed its opposition to the Complainant's request not to dismiss the complaint.

DECISION

Ordinarily, the Complainant's indication that she did not receive the Notice of Pre-Hearing Conference would be sufficient to support a request to either reopen a complaint or not to dismiss a pending complaint. Notice is an essential element of due process. However, the circumstances in the present matter do not so clearly dictate a continuation of the complaint.

As in the case of Williams v. Millans Treasure Chest, the DCR mailed the document in question to the Complainant's address as provided by the Complainant. MEOC Case No. 3374 (Comm. Dec. 8/29/97). In Williams, the document was returned as "undeliverable addressee unknown." The return of the document was the result of an error by the Dane County Sheriff's Office. The Sheriff's Office asserted that the Complainant was not in custody when, in fact, he was. The fact that Williams did not receive the document in question was not as a result of any fault on Williams' part. The Commission reopened the complaint because the lack of receipt was not a result of the Complainant's conduct.

In the present matter, the DCR mailed the Notice of Pre-Hearing Conference to the Complainant's address as provided by the Complainant. The Notice was returned after the Complainant failed to take steps to retrieve the mail after two attempts to deliver it, and despite two notices of attempted delivery.

Unlike the Williams case, the Complainant's own conduct appears to have caused non-receipt of the Notice of Pre-Hearing Conference. In this regard, the circumstances of the present matter are more similar to Velazquez-Aguilu v. Abercrombie & Fitch, in which the Complainant actually received the Notice of Pre-Hearing Conference, but due to a lack of communication in the household failed to attend. MEOC Case No. 03398 (Comm. Dec. 7/20/99, Ex. Dec. 3/30/99). While, in Velazquez-Aguilu, there was actual receipt of the Notice of Pre-Hearing Conference, the fact that the Complainant individually did not receive the Notice was outweighed by the fact that the family failed to communicate with each other about the receipt of the document. In other words, the Complainant's failure to receive notice of the Pre-Hearing Conference could be laid at her own feet.

The Commission has set a high bar for the conduct of Complainants to remain in contact with the Commission and has generally not reopened claims where the failure to appear is either directly or primarily connected to the Complainant's dereliction. See generally Ruiz v. Attic Correctional Services, Inc., MEOC Case No. 22104 (Comm. Dec. 6/5/95); Hohlstein v. Shopko, MEOC Case No. 22381 (Ex. Dec. 11/26/96).

Given the Complainant's failure to make any apparent attempt to retrieve the Notice of Pre-Hearing Conference after the Postal Service's attempted delivery on at least two occasions and the Complainant's inability to explain her failure to retrieve the document from the Postal Service, the Hearing Examiner determines that the Respondent's motion to dismiss is granted. The failure of notice in the present matter resulted from the actions of the Complainant.

The Complainant may seek review of this Decision and Order by filing a written request with the Department of Civil Rights requesting review within twenty (20) days of the undersigned date.

Signed and dated this 20th day of July, 2011.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Dylan Pauly