

**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Hy-Vee, discriminated against the Complainant on the basis of his conviction record when it failed to hire him or rescinded a previously made job offer.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