

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

Jesse Lassiter
7534 Red Fox Trail
Madison, WI 53717

Complainant

v.

Epic Systems
1979 Milky Way
Verona, WI 53593

Respondent

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

CASE NO. 2021-0395

BACKGROUND

On October 22, 2021, the Complainant, Jesse Lassiter, filed a complaint of discrimination with the Department of Civil Rights Equal Opportunities Division. The complaint charged that the Respondent, Epic Systems, discriminated against him on the basis of disability and retaliated against him for his exercise of a right protected by the ordinance in violation of Madison General Ordinance 39.03(8) and (9). The Respondent denied that it discriminated against the Complainant and asserts that the Equal Opportunities Division is without jurisdiction over this complaint due to a lack of geographic jurisdiction.

The Respondent asserts that the actions and decisions underlying the allegations of discrimination occurred in or were transmitted from Verona, Wisconsin, the location of the Respondent's principle place of business, and therefore the Equal Opportunities Commission has no geographic jurisdiction over the complaint.

The Complainant asserts that the facts underlying his allegations of discrimination against the respondent occurred while the Complainant was physically located within the City of Madison working remotely from home. The Complainant asserts that this physical nexus bestows the Department of Civil Rights Equal Opportunities Commission with geographic jurisdiction over the complaint because the effect of the allegations of discrimination fall within the City of Madison.

DECISION

Before the COVID-19 pandemic lockdowns started in March of 2020, the Complainant worked from the Respondent's offices in Verona, Wisconsin full time. When the lockdowns started, many of the Respondent's employees, including the Complainant, began full-time work from home until July 2020, when a hybrid schedule of two days working in Verona, Wisconsin and three days working at home was introduced. The Complainant was on this hybrid work schedule when the facts underlying the allegations of discrimination occurred.

The earliest mention of the Complainant's disability occurred in January 2021 when the Complainant alleges that he informed his manager, Julie Book, of his anxiety and stress. Later in March of 2021, the Complainant further alleges that Julie Book suggested he see a psychologist. It is not clear where the Complainant and Respondent were when these conversations happened, nor is it clear what specifically was said during these conversations.

The alleged incidents of discrimination began in April 2021. According to the affidavits of both parties and the complaint, there are three general allegations of discrimination. The first incident is alleged to have happened on April 14, 2021. During this incident, Complainant asserts that he documented and requested needing help reducing stress with Julie Book, but that she refused to give the Complainant the requested accommodations. The Complainant does not specify where either party was located during this incident. The Respondent contends that the incident occurred in Verona, Wisconsin at the Respondent's principle place of business, citing the affidavits of Beth Henry and Jennifer Peterson, which state that Julie Book only worked from Verona, Wisconsin in April 2021, and that Respondent's records indicate that both the Complainant and Julie Book were not working from home on that day.

The second incident occurred on June 23, 2021. During this incident, the Complainant alleges he again asked for accommodations for his disability, but in retaliation for his request, was demoted one level without a commensurate reduction in work load. In the same conversation, the Complainant asserts he asked for a transfer to his choice of a different department (which the Complainant alleges is a normal practice) but was instead given an "undesirable" departmental transfer. Both parties agree that this meeting occurred in Verona, Wisconsin at the Respondent's place of business.

The third allegation of discrimination happened on June 24, 2021, the day after the previous incident. During this incident, the Complainant contends that while he was working at home in Madison, Wisconsin, he received a phone call from Julie Book's replacement, Alex Dressler, who demoted the Complainant an additional three management levels and gave a mandatory transfer to the Ambulatory department.

Since July 5, 2021, the Complainant has been on FMLA. The Complainant alleges that on July 28, 2021 he made an additional accommodation request to HR, with a doctor's note, to be moved back to client systems. The request was allegedly denied. On August 11, 2021, the Complainant contends his doctor made an accommodation request on the Complainant's behalf. Finally, on August 28, 2021, the Complainant asserts he submitted yet another accommodation request. It is not clear if the complainant needed to submit these requests virtually or in person. The Respondent states that Beth Henry and Jennifer Peterson, through their own affidavits, were working in Verona, Wisconsin on that day.

The above facts are presented as part of this Decision and Order only and are not to be construed as being found true and correct for any other purpose.

Jurisdiction is one of the key underpinnings of due process. Without jurisdiction, be it personal or subject matter, a body wishing to exercise judicial or quasi-judicial powers will be unable to do so.

In the present matter, the Respondent asserts that the Equal Opportunities Commission and the Department of Civil Rights lack one specific form of jurisdiction over the complaint; that of geographic jurisdiction. As a municipal administrative agency, the geographic jurisdiction of the

Department of Civil Rights is limited to events that either occur within the geographical limits of the City of Madison or have some meaningful impact within the geographic limits of the City of Madison. For examples of actions that did not take place within the City of Madison, and did not have an impact on commerce or an individual within the City of Madison, see Rappe v. Soderholm Wholesale Foods, Inc., MEOC Case No. 21811 (Ex. Dec. 12/15/93); White v. Work Bench, Inc., MEOC Case No. 19982018 (Ex. Dec. 12/15/98); Osuocha v. Badger Bowl, MEOC Case No. 20143151 (Ex. Dec. 8/11/15). For examples of complaints involving allegations of actions that may have occurred outside of the City of Madison, but that affected the rights and privileges of someone within the City of Madison, see Severson v Kaplan, Inc., MEOC Case No. 20112122 (Ex. Dec. 12/22/11); Williams (f/k/a Stevenson) v. Copps Food Center, MEOC Case No. 20042113 (Ex. Dec. 2/9/05).

As noted above, the Complainant was employed by a corporation whose principle place of business is located in Verona, Wisconsin, outside of the geographic limits of the City of Madison. Had the COVID-19 pandemic not occurred, it is likely that all transactions and affects relating to the allegations of this complaint would have taken place outside of the geographic limits of the City of Madison, and would not have affected the Complainant's rights within the City of Madison, depriving the Department of jurisdiction over this complaint. From the limited record available to the Hearing Examiner at this stage of the proceedings, it is clear that pre-pandemic, the Complainant's work took place entirely within the Respondent's facilities in Verona, and that work had no connection with the City of Madison other than the tangential affect related to the Complainant's place of residence. In other words, the Respondent expected the Complainant to perform his duties at its primary place of business and not in any location within the City of Madison.

However, when the COVID-19 pandemic occurred, companies and employers across the state took steps to reduce the effect of the pandemic on their operations by allowing, if not requiring, employees to work remotely, generally from workspaces established in the employee's home.

The Respondent initially assigned most, if not all, employees to work exclusively from home, but eventually established a hybrid work schedule for its employees, including the Complainant. Under this system, the employee would work from a remote location such as their house three days per week, while the employee would work in the Verona offices two days per week. It is presumed that employees might be required to attend meetings at the Verona site even on days when the employee was scheduled to be working remotely. It is this factual setting that forms the backdrop for the Respondent's motion to dismiss for lack of geographic jurisdiction.

The Respondent's argument rests upon the assertion that all of the decisions relating to the Complainant's employment were made, at a minimum, outside of the City of Madison if not exclusively at the Respondent's workplace in Verona. Those decisions were communicated to the Complainant by an employee of the Respondent who was working outside of the City of Madison. When these decisions were communicated, on one occasion the Complainant was present at the Respondent's facility in Verona (June 23, 2021 conversation with Julie Book) and on one occasion the Complainant was working from his home in Madison (June 24, 2021 conversation with Alex Dressler).

The Complainant's position in its purest form is that the June 24, 2021 conversation with Dressler occurred while the Complainant was working from home with the permission of the Respondent. The Complainant asserts that the fact of the Complainant's presence in Madison

is a fact sufficient in itself to confer jurisdiction on the Department. The Complainant hints at, but does not fully develop a corollary argument, that the Complainant's continued work schedule that permitted him to work from his home establishes the link of tangible activity necessary to create jurisdiction for the Department.

The Respondent cites the decision in Hawkins v. Volkmann Railroad Builders, Inc., MEOC Case No. 22451 (Ex. Dec. 2/17/00), for the principle that the location where a decision is made controls whether there is jurisdiction or not. In this case, the decisions were alleged to have all been made at the Respondent's facility in Verona. As the Complainant notes in his brief in opposition, determinations of jurisdiction are heavily fact specific. Jurisdiction can turn on the specific address of a Respondent or the physical location of the Respondent's place of business despite its address. See Rappe v. Soderholm Wholesale Foods, Inc., MEOC Case No. 21811 (Ex. Dec. 12/15/93); Bagneski v. America's Best Value Inn, MEOD Case No. 20203062 (Ex. Dec. 8/24/20).

The decision in Volkmann turned on facts that were specific to that case. Under the circumstances of Volkmann, the decision for job assignments was made in Middleton, outside of the City of Madison, all subsequent actions occurred outside of the City of Madison, and did not affect the work or employment of the Complainant while he was working within the City of Madison. Subsequent decisions of the Department have somewhat refined the decision in Volkmann by more clearly setting forth the principle that regardless of where a decision is made, if the decision affects one's rights within the City of Madison, it is where the impacts of an employment decision are felt that will control the Department's jurisdiction. Severson, *supra*, Williams, *supra*.

In the present matter, the Complainant alleges several decisions of the Respondent concerning demotions from one management level to lower management levels, reassignment to a different work group, and denial of requests for accommodation of a disability. The question for the Hearing Examiner is less about where these decisions were made or where the Complainant was when he received these employment actions, but is rather where were the effects of these decisions felt, and did these decisions affect the Complainant's work when working from home as permitted by the Respondent.

Given the record in this case at this point, the Hearing Examiner concludes that the adverse employment decisions and actions allegedly experienced by the Complainant were of a type and character that had an adverse effect upon the Complainant's work hours spent within the City of Madison. Though the record will undoubtedly be clarified further, there is nothing to suggest that the work performed by the Complainant while at home within the City of Madison differed from that which occurred while he was at the Respondent's facility in Verona. The work assignments and management responsibilities appear to be the same whether the Complainant was working in either location.

The fact that the Complainant was performing work for the benefit of the Respondent while within the City of Madison establishes a commercial link greater than that in Kavanaugh Restaurant Supply, Inc. v. M.C.M. Stainless Fabricating, Inc., 2006 WI App 236, Wis. 2d 532, 724 N.W.2d 893. While it may not have been the Respondent's preference to have employees, such as the Complainant, working from locations within the City of Madison, the Hearing Examiner cannot escape the conclusion that the circumstances brought the Respondent's commercial activities into meaningful linkage with the City of Madison, giving the Department

jurisdiction over the allegations of the complaint for at least the period of time during which the Complainant was required to work from his home location within the City of Madison. That the Complainant's employment may have been returned to fully within the Respondent's facility within Verona does not eliminate jurisdiction for those actions which occurred where there was a commercial, tangible connection with the City of Madison. However, once the Complainant's authority to work from home was revoked, the Department would lose jurisdiction as of that date and damages, if any, would be limited to the time where the Complainant was required or permitted to work from the City of Madison.

In summary, the Respondent is alleged to have taken several adverse actions with respect to the Complainant's employment during a time when the Complainant, in substantial part, was working for the benefit of the Respondent from his home in the City of Madison. The Respondent knew that the Complainant was working from a location within the City of Madison and expected him to carry out the full responsibilities of his employment for the Respondent's benefit while the Complainant was substantially located within the City of Madison. It is the Respondent's knowledge and acceptance of the economic benefits of the Complainant's work within the City of Madison that confer jurisdiction over this complaint.

ORDER

The Hearing Examiner finds that the Department of Civil Rights has jurisdiction over the complaint in this matter for the period of time during which the Complainant was required or permitted to work for the Respondent from within the City of Madison. The complaint is remanded to Mediation and if not resolved, thence to Investigation.

Signed and dated this 29th day of August, 2022.

EQUAL OPPORTUNITIES COMMISSION

A handwritten signature in black ink, appearing to read "Clifford E. Blackwell, III", written over a horizontal line.

Clifford E. Blackwell, III
Hearing Examiner

Cc: Attorney Douglas Phebus
Attorney Victor Arellano
Attorney Amy Bruchs