

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

<p>Wayne Murphy Dodge Correctional Institution P.O. Box 611 Waupun, WI 53963</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Woodman's Food Market 3817 Milwaukee Street Madison, WI 53704</p> <p>Rodney Kellahue 3817 Milwaukee Street Madison, WI 53704</p> <p style="text-align: center;">Respondent</p>	<p><b>DECISION AND ORDER</b></p> <p>Case No. 21688</p>
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On October 14, 1993, the Madison Equal Opportunities Commission (Commission) met to consider the Complainant's appeal of the administrative dismissal of his complaint of discrimination. Participating in the Commission's deliberations were: Commissioners Anderson, Greenberg, Houlihan, Johnson, Verridan, Wallner and Wilberg.

### **BACKGROUND**

On March 31, 1992, the Complainant, Wayne Murphy, filed a complaint of discrimination against the Respondents, Woodman's Food Markets and Rodney Kellahue. The complaint alleged that the Complainant had been terminated from his employment on the basis of his race in violation of the Madison Equal Opportunities Ordinance, MGO Sec. 3.23 et seq. The allegations of the complaint were investigated by a Commission Investigator/Conciliator. On September 23, 1992, the Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that discrimination had occurred. The parties were offered the opportunity to conciliate the complaint. Efforts at conciliation either failed or were rejected.

The complaint was transferred to the Hearing Examiner for the holding of a public hearing on the allegations of the complaint. The Hearing Examiner issued a Notice of Pre-Hearing Conference on January 5, 1993. The Notice was received at the address provided by the Complainant on January 7, 1993 as evidenced by a return receipt signed by Ora L. Murphy. The Pre-Hearing Conference was scheduled for January 19, 1993. The Complainant failed to appear at the scheduled time or within thirty (30) minutes of the scheduled time. The Complainant had not contacted the Commission to request rescheduling of the Pre-Hearing Conference or to indicate that he would not be able to attend

the Pre-Hearing Conference. The Respondent appeared at the time of the Pre-Hearing Conference and waited for the full thirty (30) minutes allowed by the Hearing Examiner.

On February 8, 1993, the Acting Executive Director of the Commission administratively dismissed the complaint for the Complainant's failure to appear at the Pre-Hearing Conference. The Notice of Dismissal allowed for a period of twenty (20) days for the Complainant to appeal the dismissal of his complaint. On May 8, 1993, the Complainant requested that his complaint be reinstated.

### **DECISION**

In his May 8, 1993 letter to the Acting Executive Director, the Complainant indicates that he did not appear at the Pre-Hearing Conference because he was in jail at the time. He offers as his explanation for his failure to request rescheduling of the conference that he did not know of the conference because his mail was being received by his mother and she failed or neglected to inform him of the conference.

Rule 6.14 of the Commission requires a Complainant to keep the Commission apprised of his address at all times during the complaint process. This is so that the Commission will know how to contact the Complainant with information necessary to the processing of the complaint. The Commission used the address provided by the Complainant in sending the Notice of Pre-Hearing Conference. It was received by someone at that address. The failure of the person who received the Notice on behalf of the Complainant to notify the Complainant of the conference is not a circumstance within the control or responsibility of the Commission.

Had the Complainant wished to be sure of the receipt of documents relating to his complaint he could have and should have provided the Commission with the information that he was in jail and that documents should be sent to him at the jail address. The Commission has had numerous Complainants in various jails or institutions throughout the State of Wisconsin. Where the Commission has been provided with the proper address of the jail or institution, there has been little trouble with mailing documents to the incarcerated party. The Complainant makes no demonstration of conditions or circumstances that would have made this impossible or impractical in his case.

It is the Complainant's responsibility to assure that the Commission can contact him. He failed to do this in this case. His failure to maintain contact with the Commission resulted in the dismissal of his complaint. He provides no explanation for his failure. Under these circumstances, the Commission will not relieve the Complainant of his responsibility by ordering the reinstatement of his complaint.

### **ORDER**

The Complainant's appeal of the administrative dismissal of his complaint is dismissed. The complaint is hereby dismissed. The following Commissioners join in this Order: Anderson, Greenberg, Johnson, Wallner and Wilberg..

Signed and dated this 26th day of October, 1993.

EQUAL OPPORTUNITIES COMMISSION

Booker Gardner  
President