

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

<p>Dwight Williams Dane County Jail 210 Martin Luther King, Jr. Blvd. Madison, WI 53709</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Foot Locker 6 West Towne Mall Madison, WI 53719</p> <p style="text-align: center;">Respondent</p>	<p>DECISION AND FINAL ORDER OF THE MADISON EQUAL OPPORTUNITIES COMMISSION ON COMPLAINANT'S APPEAL OF ADMINISTRATIVE DISMISSAL</p> <p>Case No. 3375</p>
--	--

BACKGROUND

On September 13, 1996, the Complainant, Dwight A. Williams, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Foot Locker, denied him the benefits of a public place of accommodation or amusement on the basis of his race by treating him with deliberate indifference. If proven, this might constitute a violation of Section 5(a) of the Madison Equal Opportunities Ordinance, Mad. Gen. Ord. Sec. 3.23 et seq. (ordinance).

The complaint was assigned to a Commission Investigator/Conciliator for completion of an investigation and issuance of an Initial Determination of whether there is probable cause to believe that discrimination has occurred or not. As part of the investigation process, the Investigator/Conciliator asked each party questions in writing. On October 4, 1996, the Investigator/Conciliator sent a letter requesting information from the Complainant in the Dane County Jail where he was then resident. The letter was returned without having been opened. Upon receipt of the returned letter, the Investigator/Conciliator contacted officials at the Dane County Jail to determine the status of the Complainant. She was told that the Complainant was no longer at the facility. Because the Commission had no other means of communicating with the Complainant, the Investigator/Conciliator held the letter and waited for the Complainant to contact the Commission with a new address. The Complainant did not contact the Commission and the Investigator/Conciliator recommended the administrative dismissal of the complaint. On November 6, 1996, the Commission's Executive Director signed the administrative dismissal.

The dismissal provided for a right of review if a request for review was received within twenty (20) days of the issuance of the dismissal. The dismissal was sent to the Complainant's last known address, that being the Dane County Jail. On November 13, 1996, the Commission received the Complainant's appeal of the dismissal of his complaint. The Commission considered the Complainant's appeal on June 19, 1997. Participating in the Commission's consideration were Commissioners: Fieber, Hands, Katsuma, Thomas, Turner, Vedder and Washington.

DECISION

The Commission is reluctant to dismiss a complaint unless there is evidence that a complainant has failed to comply with the Commission's legitimate requirements for the further processing of a complaint. In general, these requirements are set forth in Rules 3.16 and 3.4 of the Rules of the Madison Equal Opportunities Commission (the Rules).

In the present case, it appears to the Commission that the Complainant has attempted to meet the Commission's requirements but that he was thwarted by some confusion in the administrative staff of the Dane County Jail. It is clear that despite the information given to the Investigator/Conciliator by an official at the jail, that the Complainant was, in fact, still a resident at the time in question. The fact that the Complainant received the Notice of Dismissal sent to him at the Dane County Jail demonstrates that he was still actually a resident. There is no indication that the Complainant was responsible for whatever problem resulted in the return of his mail and provision of erroneous information concerning his whereabouts.

Subsequent to the Complainant's receipt of the Notice of Dismissal, the Complainant has responsibly kept in touch with the Commission. He has provided timely notices of changes in his address and has filed other documents with the Commission. These actions on the part of the Complainant demonstrate an interest in the Commission's process and a willingness to follow that process within the limits of his circumstances.

The Commission believes that not to reopen this matter would work a substantial injustice on the Complainant. The Complainant has convincingly demonstrated that his failure to respond to the Commission's inquiries resulted from circumstances beyond his control. Given these circumstances, the Commission will order that the complaint be reopened.

The Complainant has also filed motions seeking a default judgment against the Respondent. It appears that the basis of these motions is the Respondent's decision not to file material in opposition to the Complainant's appeal. The Respondent is under no obligation to make such a filing. Granting of the Complainant's motion would impose an obligation that does not exist. The Complainant's motions cannot be granted.

ORDER

The above-captioned complaint is hereby reopened. Further, it is remanded to the Investigator/Conciliator for completion of her investigation and issuance of an Initial Determination.

Joining in the Commission's decision are Commissioners: Fieber, Hands, Katsuma, Thomas, Turner, Vedder and Washington.

Signed and dated this 29th day of August, 1997 for the Madison Equal Opportunities Commission.

Vicki Washington
President

**210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

<p>Dwight Williams #329760 PO Box 19033 Green Bay WI 54307-9033</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Foot Locker 6 West Towne Mall Madison WI 53719</p> <p style="text-align: center;">Respondent</p>	<p>COMMISSION'S DECISION AND FINAL ORDER</p> <p>Case No. 03375</p>
---	--

BACKGROUND

On September 13, 1996, the Complainant, Dwight Williams, filed a complaint with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Footlocker, discriminated against him on the basis of race by treating him less favorably than those not of his race in a public place of accommodation or amusement. The Respondent denied the allegations of the complaint.

On or about November 7, 1996, the complaint was dismissed because the Complainant failed to respond to correspondence from the Investigator/Conciliator. The Complainant asserted that he had not received the correspondence and requested that his complaint be reopened. After consideration of the Complainant's request, the Commission, on September 3, 1997, ordered that the complaint be reopened and remanded it to the Investigator/Conciliator for further investigation and issuance of an Initial Determination.

On April 7, 1998, the Investigator issued an Initial Determination concluding that there was no probable cause to believe that the Respondent had discriminated against the Complainant on the basis of his race in provision of a public place of accommodation or amusement. Essentially, the Investigator/Conciliator determined that the Complainant was alleging differential treatment not a total denial of service. The ordinance did not proscribe differential treatment as opposed to total denial of service until March of 1998, well after the filing of the Complainant's complaint.

The Complainant timely appealed the Initial Determination's conclusion that there was no probable cause to the Hearing Examiner. On June 16, 1999, the Hearing Examiner issued a Decision and Order on the Complainant's appeal affirming the Initial Determination's finding of no probable cause.

The Complainant timely appealed the Hearing Examiner's Decision and Order. After providing the parties with the opportunity to submit additional written argument, the Commission considered the Complainant's appeal on January 13, 2000. Participating in the Commission's deliberations were Commissioners Hicks, Morrison, Poulson, Rahman, Sentmanat, Tomlinson and Zipperer.

DECISION

After consideration of the record as a whole, the Commission adopts by reference as if fully set forth herein, the Decision and Order of the Hearing Examiner dated June 16, 1999. The Commission finds that the Hearing Examiner's Decision and Order is fully supported in this record.

ORDER

The complaint is hereby dismissed.

Concurring in the Commission's decision are Commissioners Hicks, Morrison, Poulson, Rahman, Sentmanat, Tomlinson and Zipperer. No Commissioners opposed the Commission's action or abstained from it.

Signed and dated this 24th day of January, 2000.

EQUAL OPPORTUNITIES COMMISSION

Bert G. Zipperer
President