

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

<p>Thomas P Carey 2004 Main St Cross Plains WI 53528</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>U W Health 600 Highland Ave Madison WI 53792</p> <p style="text-align: center;">Respondent</p>	<p>HEARING EXAMINER'S DECISION AND ORDER ON RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION</p> <p>Case No. 19992097</p>
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BACKGROUND

On June 10, 1999, the Complainant, Thomas P. Carey, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, University of Wisconsin Health, discriminated against him in employment on the bases of his religion, political beliefs and sexual orientation by disciplining him, failing or refusing to promote him to the position of Lead Worker and creating a work environment that is hostile to his religious and political beliefs and his sexuality. The Respondent denies having discriminated against the Complainant on any basis and asserts that the Commission lacks personal or geographic jurisdiction over the allegations of the complaint.

The Respondent filed a motion to dismiss while the complaint was pending before the Investigator/Conciliator. The complaint was then transferred to the Hearing Examiner for resolution of the jurisdictional issues.

DECISION

The Respondent presents two grounds for its contention that the Commission is without jurisdiction over this complaint. First, the Respondent asserts that the Complainant is a state employee and is therefore beyond the jurisdiction of the Commission. The second argument is that the University of Wisconsin Hospital physically lies both in the Village of Shorewood Hills and the City of Madison. To the extent that the Complainant's job duties were performed in the portion of the hospital that lies in Shorewood Hills or the actions that are the subject of the complaint took place in Shorewood Hills, the Commission is without jurisdiction over the complaint.

The Complainant submitted an argument in opposition to the Respondent's motion and brief. The Complainant addressed only the contention that the Commission is without geographic jurisdiction. Apparently it is the Complainant's belief that as long as his job duties brought him within the City of Madison, the Commission must take jurisdiction over the allegations of the complaint. He contends that his duties take him throughout the hospital and his duties are not restricted to those portions of the hospital falling within Shorewood Hills.

The Respondent asserts that all decisions and actions of which the Complainant complains occurred in the portion of the hospital lying within Shorewood Hills. Also, the Respondent asserts that the Complainant only occasionally works within the portion of the hospital that is located within the City of Madison.

At this stage, the Hearing Examiner must resolve factual disputes in favor of the Complainant. There is such a dispute as to where the Complainant's duties are performed. Given the Complainant's position with the Respondent, that of Diagnostic Radiologic Technician, it does not seem unreasonable that the Complainant would perform some portion of his job duties in various areas of the hospital. As to where the decisions were made or actions of which the Complainant complains occurred, the record is not sufficient for the Hearing Examiner to determine with any specificity whether they occurred outside of the City of Madison. On this record the Hearing Examiner must conclude that the Complainant performs at least some significant portions of his

duties within the City of Madison and to that extent, the Commission has geographic jurisdiction over the allegations of this complaint. It should be understood that at hearing, the Complainant would not be entitled to the same inference of credibility from which he benefits at this stage.

While the Complainant's argument on geographic jurisdiction is convincing, for this stage alone, it is not, by itself, sufficient to maintain jurisdiction over this complaint. The Complainant presents no argument or information to dispute the Respondent's contention that he is not an employee of the "Authority" and is therefore not an employee of the State of Wisconsin. Despite the Complainant's failure to present any position on the issue of his status as an employee of the State of Wisconsin, the Hearing Examiner will examine the record independently to make a jurisdictional determination. The Hearing Examiner cannot find under these circumstances that the Complainant's failure to address this contention represents a waiver of the argument.

Prior to 1995, the University of Wisconsin Hospital and Clinics was wholly owned, funded and operated by the State of Wisconsin through the University of Wisconsin. As an agency of the State of Wisconsin, the Respondent was entirely excluded from the Commission's jurisdiction because jurisdiction was exclusively granted to the State of Wisconsin Personnel Commission. In 1995, the legislature reorganized the University Hospital and Clinics into two different entities, the University Hospital and Clinics Board and the University Hospital and Clinics Authority. It appears that employees of the Board have remained state employees where employees of the Authority have become employees of a private employer.

The record indicates that positions such as that held by the Complainant, Diagnostic Radiologic Technician, are among the positions that were grouped with the Board not the Authority. As such, the Complainant's position essentially remains one controlled by the State of Wisconsin. To the extent that the legislature has given the Personnel Commission the exclusive jurisdiction with a comprehensive scheme of regulation, the Madison Equal Opportunities Commission is precluded from exercising jurisdiction over the complaint. Anchor Savings and Loan v. MEOC, 120 Wis. 2d 391, 355 N.W.2d 234 (1984).

The Complainant's belief that the Commission may exercise jurisdiction over all complaints dealing with violations of the ordinance occurring within the City of Madison is misplaced. There are many employees who though they work within the City of Madison are excluded from the coverage of the ordinance, Federal employees, employees of the Madison Area Technical College State, ex. rel. Area Vocational Technical and Adult Education District No. 4 v. Equal Opportunities Commission of the City of Madison, et al., Dane County Circuit Court Case No. 91 CV 1537 (07/29/91), state employees, county employees and certain other employees whose employment is regulated by other state or federal laws Pagel v. Elder Care of Dane County, MEOC Case No. 22442 (Ex. Dec. 10/31/96). Under the present circumstances, the Complainant may maintain his action elsewhere, it is only that he cannot maintain it before the Commission.

ORDER

The complaint is hereby dismissed.

Signed and dated this 17th day of August, 1999.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner