STATE OF WISCONSIN
CIRCUIT COURT
DANE COUNTY

REYNOLDS TRANSFER & STORAGE, INC., Plaintiff, v. CITY OF MADISON DEPARTMENT OF CIVIL RIGHTS, EQUAL OPPORTUNITIES COMMISSION, and KAY CRONK Defendants.	Case No. 2007CV1100

DECISION AND ORDER

Reynolds Transfer and Storage, Inc. seeks review of a decision of the Madison Equal Opportunities Commission, which determined that Reynolds Transfer violated the Madison General Ordinances by discharging Kay Cronk because of her age. Reynolds Transfer raises numerous issues in support of its argument that the decision should be reversed. I reject each of these arguments and therefore affirm MEOC's decision.

BACKGROUND

Reynolds Transfer is located in Madison, Wisconsin and provides household moving services, office relocation, and storage. Reynolds Transfer hired Cronk as Move Coordinator on February 8, 1999. As Move Coordinator, Cronk maintained contact with shippers and drivers, tracked long-distance moves, and completed paperwork. On March 29, 2002, Cronk was terminated. On that date Cronk was 62 years old.

On April 22, 2002, Cronk filed a complaint with the Madison Equal Opportunities Commission[1], charging that Reynolds Transfer treated Cronk less favorably than other employees not of her age, eventually terminating her employment and thereby discriminating against her with regard to her employment on the basis of her age. Reynolds Transfer denied treating Cronk less favorably than other employees, and asserted that it terminated her because of her inability to perform her duties to the standards expected of all employees at Reynolds Transfer.

A hearing was held before a Hearing Examiner on October 22, 2003. On September 13, 2004, the Hearing Examiner issued his Recommended Findings of Fact, Conclusions of Law and Order, concluding that the Reynolds Transfer had discriminated against Cronk on the basis of her age when it terminated her employment. The Hearing Examiner also made various recommendations for the payment of damages including back pay, no recommendation as to front pay, and the amount of $5,000 in damages for emotional distress.

Reynolds Transfer appealed the Hearing Examiner's finding of liability and the award of damages to MEOC. In a February 28, 2005 Decision and Interim Order, MEOC affirmed the Hearing Examiner's finding that discrimination had occurred, but remanded the remedy portion to the Hearing Examiner for further findings. Specifically, MEOC directed the Hearing Examiner to consider whether and what amount of pre judgment interest should be awarded, clarify the findings surrounding the calculation of back pay, the requirements of mitigation and the relationship and appropriateness of front pay, and finally, whether the Hearing Examiner should/could adjust his award of emotional distress damages.

On August 29, 2006, the Hearing Examiner issued a Decision and Order on the Commission's Remand. The Hearing Examiner adopted the parties' stipulation to the rate at which an award of pre judgment interest should be calculated. The Hearing Examiner also found that Cronk had attempted to find work until early September of 2003, and that back pay was due from her termination until she stopped seeking comparable employment, less amounts actually earned. The Hearing Examiner additionally determined that Cronk repay other forms of income to the extent that such repayment was required by law. The Hearing Examiner concluded that no award of front pay was appropriate because of Cronk's withdrawal from seeking employment. Finally, the Hearing Examiner concluded that he was without authority to adjust the award of damages for emotional distress given the record as a whole.

Reynolds Transfer appealed the Hearing Examiner's Decision and Order on Remand, and Cronk cross-appealed the decision. On March 5, 2007, MEOC affirmed the Hearing Examiner's decision. Reynolds Transfer then filed a petition for certiorari review of MEOC's decision, and the case is presently before this court.

DISCUSSION

Because this is a certiorari review of MEOC's Decision and Final Order, this court is limited to determining whether: (1) MEOC kept within its jurisdiction; (2) MEOC acted according to law; (3) MEOC acted in an arbitrary manner that represented its will and not its reasoned judgment; and (4) the record contains evidence such that MEOC might reasonably make the Decision and Final Order. *See Klinger v. Oneida County,* 149 Wis. 2d 838, 843, 440 N.W.2d 348 (1989).

Under the *McDonnell Douglas* burden-shifting method for proving discrimination by indirect evidence, the plaintiff must first establish a *prima facie* case of discrimination.

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Once the plaintiff establishes a *prima facie* case, the burden shifts to the employer to produce a legitimate, nondiscriminatory reason for the action it took. *See id.* If the employer meets its burden the plaintiff must then have the opportunity to demonstrate that the legitimate reason offered by the employer was merely a pretext for discrimination. *See id.* at 804.

To establish a *prima facie* case of age discrimination, the plaintiff must demonstrate that: (1) he or she belongs to a protected class; (2) he or she was performing his or her job satisfactorily; (3) he or she suffered an adverse employment action; and (4) he or she was either replaced by someone not within the protected class or the employer treated a similarly-situated employee not in the protected class more favorably. *See Greenslade v. Chicago Sun-Times, Inc.,* 112 F.3d 853, 863 (7th Cir. 1997); *Puetz Motor Sales, Inc. v. LIRC,* 126 Wis. 2d 168, 173, 376 N.W.2d 372 (Ct. App. 1985).

Satisfactorily performing her job

Reynolds Transfer challenges the second and fourth prongs of the *prima facie* case. It first argues that the evidence does not support the Hearing Examiner's and MEOC's findings that Cronk was satisfactorily performing her job when she was terminated.

The sufficiency of the evidence on certiorari review is identical to the substantial evidence test used for the review of administrative determinations under chapter 227 of the statutes. *Gehin v. Wisconsin Group Ins. Bd.,* 2005 WI 16, ¶6, 278 Wis. 2d 111, 692 N.W.2d 572. Wisconsin Stat. § 227.57(6) provides that "the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency's action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence." Substantial evidence is "that quantity and quality of evidence which a reasonable man could accept as adequate to support a conclusion." *Gehin,* 278 Wis. 2d 111, ¶48. Substantial evidence is more than "a mere scintilla" of evidence and more than "conjecture and speculation." *Id.* "Substantial evidence does not mean a preponderance of the evidence." *Hilton ex rel. Pages Homeowners' Association v. DNR,* 2006 WI 84; ¶16, 293 Wis. 2d 1, 717 N.W.2d 166 (quotation omitted). Instead, the test is whether, after considering all the evidence of record, reasonable minds could arrive at the same conclusion. *Id.*

The Hearing Examiner. relied on various findings to support the finding that Cronk was adequately performing her job:

(1) Cronk received regular pay raises;

(2) Jeff Coatta, Cronk's supervisor from February 1999 to May 2000, rated her performance as excellent and stated that customers gave Cronk "extremely high marks across the board";

(3) Cronk was twice named runner up "Agent of the Month" by United Van Lines while Coatta supervised her;

(4) Reynolds Transfer did not have an employee manual, did not utilize progressive discipline, and did not formally evaluate personnel. Cronk was not evaluated during her tenure as Move Coordinator, was never disciplined, and was never informed that her performance was such that her continued employment was in jeopardy. Approximately two weeks before she was terminated, her supervisor, Shane Prichard, did inform her that her inattention to detail had cost . Reynolds Transfer money, but this occurred after Pritchard had already contacted Movers Search Group about finding a replacement. Unlike Cronk, other Reynolds employees were disciplined and given warnings for poor performance. Coatta warned Scott Krenz, in writing, that Krenz was not adequately performing his managerial duties. Similarly, Mark-Reynolds, president of Reynolds Transfer, warned Nancy Vorderman in writing that additional mistakes would result in termination of her employment;

(5) Reynolds Transfer uses several computer programs for communications and documentation-Group Wise for internal communications and Memo Pad for tracking individual moves, documenting events, and connecting with United Van Lines agents across the country. Shane Prichard frequently spoke with Cronk about using these programs more fully. Cronk typically offered some resistance, being more comfortable making hand-written notes, and stating her concern that making detailed computer entries would necessitate overtime, as Prichard and Reynolds indicated that Cronk should not work overtime. Although Prichard initially testified that he had daily conversations with Cronk about things she needed to improve, such as making detailed computer entries, Prichard later testified that Cronk frequently initiated these conversations. The Hearing Examiner concluded that Pritchard undercut his own credibility by testifying inconsistently about whether and how often he initiated conversations with Cronk about using Group Wise and Memo Pad.

Reynolds Transfer argues that some of this evidence was inappropriately used to find that Cronk adequately performed her job. Reynolds Transfer argues that Coatta's testimony regarding Cronk's job performance is irrelevant given that Coatta ceased being Cronk's supervisor two years before her termination. Courts have pointed out that this type of evidence indeed loses relevance as time elapses:

The rationality, hence fairness, of this inference [of unlawful discrimination] obviously decreases as the time gap between last proven satisfactory performance and challenged employment action lengthens. Here, the time lag was almost two years. As common experience in such matters teaches, and as the full record reveals the case here to have been, a great deal can happen to alter things in such a time.

Lovelace v. Sherwin-Williams Co., 681 F.2d 230, 244 (4th Cir. 1982). Reynolds Transfer further argues that the lack of formal personnel evaluations and progressive discipline cannot be used as evidence regarding Cronk's job performance because the absence of an evaluation or discipline system “is not evidence of anything.”

While I find Reynolds Transfer's arguments on these points persuasive, I conclude that given the remainder of the evidence in the record, reasonable minds could conclude that Cronk performed her job satisfactorily. Despite the absence of formal evaluations and progressive discipline, other Reynolds employees were disciplined and given warnings for poor performance, yet Cronk was never disciplined, given warnings for poor performance, or informed that her continued employment was in jeopardy. In addition, Cronk continued to receive pay raises over her time of employment with Reynolds Transfer. Reynolds Transfer argues that Cronk's own testimony as well as Pritchard's testimony indicated Cronk's deficiencies in using Group Wise and Memo Pad and showed that Cronk was not performing her job satisfactorily. However, the Hearing Examiner chose not to give weight to Pritchard's testimony regarding the computer programs as well as the idea that Pritchard was responsible for terminating Cronk, stating:

[T]he proffered nondiscriminatory explanation—that she was terminated solely because she could not handle the responsibilities associated with her position—is not entirely credible. The Respondent's attempts to characterize the Complainant's work as inadequate are directly supported only by the testimony of her supervisor, Shane Prichard, who undercut his own credibility by testifying inconsistently about whether and how often he initiated conversations with the Complainant about using Group Wise and Memo Pad, and whether terminating the Complainant was his decision or "beyond his control." These inconsistencies call into

question not only whether Prichard actually made or even could have made the decision to terminate the Complainant, but also, by implication, the stated reason for that decision. Additionally, Prichard qualified almost every statement with "probably." Prichard was either unwilling or unable to testify about anything with certainty.

It is the function of the hearing examiner, not the reviewing court, to determine the credibility of witnesses and the weight of the evidence. *Eastex Packaging Co. v. DILHR,* 89 Wis: 2d 739, 745, 279 N.W.2d 248 (1979). Given that other employees were disciplined, the lack of disciplinary action taken against Cronk for her performance. with these programs, and the Hearing Examiner's decision to give little weight to Pritchard's testimony, the evidence in the record is sufficient to sustain the finding of fact that Cronk was satisfactorily performing her job. *Age as a motivating factor.*

Reynolds Transfer next argues that there is not sufficient evidence to support the finding that age was a motivating factor in Cronk's termination. The Hearing Examiner based this finding on evidence such as (1) Cronk being replaced by a woman thirty-one years younger; (2) a remark by Reynolds calling Cronk an "old beetle" when she ate; (3) other derogatory remarks regarding Cronk's appearance, odor, and weight that the Hearing Examiner inferred to be in some way related to Cronk's age; and (4) remarks made by a non-management-level employee that Cronk should be replaced by someone younger and more attractive—"someone who could wear short skirts." In its briefs Reynolds Transfer examines these specific pieces of evidence listed in the decision and attempts to explain why that evidence is not relevant to Cronk's *prima facie* case. However, even assuming that the "old beetle" remark and other derogatory remarks are not relevant, I conclude there is substantial evidence supporting the finding that age was a motivating factor in Cronk's termination because Cronk shows that she was replaced by someone thirty-one years younger.

A significant age disparity is highly probative of discriminatory animus and can be used to state a *prima facie* case under the McDonnell Douglas methodology. See *Robin v. Espo Engineering Corp.,* 200 F.3d 1081, 1090 (7th Cir. 2000) ("Accordingly, we require that Robin present the following ... Espo hired someone else who was substantially younger or other such evidence that indicates that it is more likely than not that his age or disability was the reason for the discharge."); *Coco v. Elmwood Care, Inc.,* 128 F.3d 1177, 1178-79 (7th Cir. 1997) ("To stave off summary judgment, Coco had to show that he was performing up to the employer's legitimate expectations, and that he was replaced by a much younger person." (citations omitted)). Reynolds Transfer responds by arguing that the record shows that it did not seek out someone younger than Cronk but instead hired a recruiter to refer candidates to it. However, the record indicates that Reynolds Transfer still retained the final hiring decisions over the people referred to it by the recruiter, and ultimately hired someone thirty-one years younger that Cronk. Based on this evidence, I conclude there is sufficient evidence to sustain the finding of fact that age was a motivating factor in Cronk's termination.

Pretext

Even though I have concluded above that Cronk made a *prima facie* case of age discrimination, Reynolds Transfer produced a legitimate, nondiscriminatory reason for the action it took by putting forth evidence indicating that Cronk was terminated because she did not perform her job satisfactorily. If the employer meets its burden the plaintiff must then have the opportunity to demonstrate that the legitimate reason offered by the employer was merely a pretext for discrimination. As discussed above regarding the *prima facie* case made by Cronk, it is clear that the Hearing Examiner simply did not consider Pritchard's testimony to be credible. In *St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 511 (1993), the court stated:

The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the *prima facie* case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.

The Hearing Examiner concluded, based on credibility determinations beyond the purview of this court, that the explanation produced by Reynolds Transfer was "not entirely credible." The *prima facie* case made by Cronk combined with the disbelief of the stated rationale for termination provide ample basis for the Hearing Examiner's ultimate fording of intentional discrimination. While Reynolds Transfer argues that this finding, while contrasted with the fact that it continues to employ several women aged 50 and above "defies logic," it is not for this court to substitute its own weight of the various pieces of evidence in this case where, as here, there is sufficient evidence for the Hearing Examiner's findings of fact.

Reynolds Transfer further argues that even where an adverse employment action was based in part on a protected status, a complainant would not be entitled to a remedy where the employer could show it would have taken the same action anyway.[2] However, even assuming this theory is correct, the Hearing Examiner considered the stated reason for termination to be "not entirely credible," and therefore Reynolds Transfer has not shown that Cronk would have been terminated for non-discriminatory reasons.

Rebuttal testimony

Reynolds Transfer next argues that 1VIEOC acted arbitrarily and unreasonably when it denied Reynolds Transfer's request to have Pritchard testify following Coatta's rebuttal testimony. Coatta's testimony rebutted testimony of Pritchard stating that he was displeased with Cronk's job performance and that it was his decision to terminate Cronk. Coatta testified that Pritchard told him Cronk's termination "was beyond his control" and "he did everything he could to try to avoid her being fired." The Hearing Examiner refused to allow Pritchard to rebut Coatta's rebuttal testimony. Evidentiary decisions such as whether to receive additional evidence are discretionary in nature. *See Lacey v. Lacey,* 61 Wis. 2d 604, 613, 213 N.W.2d 80 (1973); *Ritt v. Dental Care Associates, S.C.,* 199 Wis. 2d 48, 72, 543 N.W.2d 852; 861 (Ct. App. 1995). Here Pritchard had already testified that it was his decision to terminate Cronk and that he did not remember having a discussion with Coatta about the reasons for Cronk being terminated. Allowing further testimony would only have reinforced the idea that Pritchard was inconsistent in his testimony and unable to testify with certainty. Therefore I conclude the Hearing Examiner did not act arbitrarily in refusing to hear rebuttal testimony from Pritchard.

Compensatory damages/public policy

Finally, Reynolds Transfer argues that the award of compensatory damages is contrary to statewide public policy. Reynolds Transfer points out that "where the state has entered the field of regulation, municipalities may not make regulation inconsistent therewith because a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required, or authorize what the legislature has expressly forbidden." *DeRosso Landfill Co. Inc. v. City of Oak Creek,* 200 Wis. 2d 642, 651, 547 N.W.2d 770 (1996). However, Reynolds Transfer does not suggest that the legislature has expressly forbidden compensatory damages, only that "[t]he state legislature's failure to create such remedies in the intervening 26 years is a clear expression of public policy." Furthermore, courts have set out a test to determine when a when a state statute invalidates a local ordinance:

A municipal ordinance is preempted if (1) the legislature has expressly withdrawn the power of municipalities to act; (2) it logically conflicts with state legislation; (3) it defeats the purpose of state legislation; or (4) it violates the spirit of state legislation.

Id. at 651-52. Reynolds Transfer does not address this test. This court need not address undeveloped arguments. *See Clean Wisconsin, Inc. v.PSC,* 2005 WI 93, ¶ 180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768. I therefore reject Reynolds Transfer's argument regarding compensatory damages.

CONCLUSION

Because I reject each of the arguments raised by Reynolds Transfer, I affirm MEOC'.s decision.

Dated: October 19, 2007

By the Court:
Angela B. Bartell
Circuit Court Judge

cc:

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1In 2006 the City of Madison restructured MEOC and renamed it the Equal Opportunities Division within the Department of Civil Rights. I continue to refer to the commission as MEOC in this decision, keeping with the terminology used at the time of the decision.

2Cronk argues that Reynolds Transfer has waived this claim. I need not address the argument because I conclude that Reynolds Transfer's argument fails even assuming it did not waive the issue.

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

Kay Cronk 5781 Chapel Valley Rd Apt 220 Fitchburg WI 53711-7404 Complainant vs. Reynolds Transfer & Storage 725 E Mifflin St Madison, WI 53703-2391 Respondent	COMMISSION'S DECISION AND FINAL ORDER ON APPEAL FROM REMAND ON DAMAGES Case No. 20022063 EEOC Case No. 26BA200053

BACKGROUND

This matter is before the Equal Opportunities Commission (Commission) on Respondent's appeal and the Complainant's cross-appeal from the Hearing Examiner's Decision and Order on Remand from the Commission after its consideration of the Respondent's appeal of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order.

The Complainant filed a complaint of discrimination with the Commission on April 22, 2002. The complaint alleged that the Respondent, Reynolds Storage and Transfer, discriminated against the Complainant on the basis of her age when it terminated her employment on March 29, 2002. After the usual procedural steps, a hearing was held before the Hearing Examiner on October 22, 2003. On September 13, 2004, after the opportunity for post-hearing briefs and argument, the Hearing Examiner issued his Recommended Findings of Fact, Conclusions of Law and Order.

The Hearing Examiner found that the Respondent had discriminated against the Complainant on the basis of her age when it terminated her employment. The Hearing Examiner also made various recommendations for the payment of damages including back pay, no recommendation as to front pay, and the amount of $5,000.00 in damages for emotional distress. The Hearing Examiner concluded that the Complainant had initially mitigated her damages by attempting to find other employment. However, the Hearing Examiner also determined that subsequent to obtaining employment at Swim West in December, 2002, the Complainant appeared to give up her search for employment comparable to the position she had held with the Respondent.

The Respondent appealed the Hearing Examiner's finding of liability and the award of damages to the Commission. The Complainant did not cross-appeal the Hearing Examiner's findings.

The Commission met in February, 2005 to address the Respondent's appeal. The Commission in a Decision and Interim Order affirmed the Hearing Examiner's finding that discrimination had occurred, but remanded the remedy portion to the Hearing Examiner for further findings. Specifically, the Commission directed the Hearing Examiner to consider whether and what amount of pre-judgment interest should be awarded, clarify the findings surrounding the calculation of back pay, the requirements of mitigation and the relationship and appropriateness of front pay, and finally, whether the Hearing Examiner should/could adjust his award of emotional distress damages.

After the opportunity for briefing and after considerable reflection, the Hearing Examiner, on August 29, 2006, issued a Decision and Order on the Commission's Remand. The parties had stipulated to the rate at which an award of pre-judgment interest should be calculated. The Hearing Examiner adopted the parties' stipulation. The Hearing Examiner additionally found that the Complainant had attempted to find work until early September of 2003, and that back pay was due from her termination until she stopped seeking comparable employment, less amounts actually earned. The Hearing Examiner also determined that the Complainant must repay other forms of income to the extent that such repayment was required by law. The Hearing Examiner concluded that no award of front pay was appropriate because of the Complainant's withdrawal from seeking employment. Finally, the Hearing Examiner concluded that he was without authority to adjust the award of damages for emotional distress given the record as a whole.

The Respondent timely appealed the Hearing Examiner's Decision and Order on Remand. The Complainant then cross-appealed the Hearing Examiner's Decision and Order. On February 8, 2007, the Commission met to consider the appeals in this matter. Participating in the Commission's deliberations were Commissioners Bayrd, Enemuoh-Trammell, Holmes-Hope, Howe, McDonell, Morrison, Selkowe, Solomon, Walsh, Woods and Zipperer.

DECISION

After review of the record as a whole and considering the arguments of the parties, the Commission concludes that the Hearing Examiner's Decision and Order on Remand dated August 29, 2006 is supported by the record. Accordingly, the Commission adopts and incorporates by reference as if fully set forth herein the Hearing Examiner's Decision and Order on Remand.

The parties are reminded that all other provisions of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order dated September 13, 2004, and affirmed by the Commission's Decision and Interim Order dated February 28, 2005 remain in effect.

ORDER

The Hearing Examiner's Decision and Order on Remand dated August 29, 2006 is affirmed. The appeals are dismissed.

Joining in the Commission's decision are Commissioners Bayrd, Enemuoh-Trammell, Holmes-Hope, Howe, McDonell, Morrison, Selkowe, Solomon, Walsh, Woods and Zipperer. No Commissioners opposed the Commission action.

Signed and dated this 5th day of March, 2007.

EQUAL OPPORTUNITIES COMMISSION

Bert G. Zipperer
President

cc: Lori M Lubinsky
Thomas R Crone

EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
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MADISON, WISCONSIN

Kay Cronk 5781 Chapel Valley Rd Apt 220 Fitchburg WI 53711-7404 Complainant vs. Reynolds Transfer & Storage 725 E Mifflin St Madison, WI 53703-2391 Respondent	HEARING EXAMINER'S DECISION AND ORDER ON REMAND Case No. 20022063

BACKGROUND

On April 22, 2002, the Complainant, Kay Cronk, filed a complaint with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Reynolds Transfer and Storage, treated the Complainant less favorably than other employees not of her age, eventually terminating her employment and thereby discriminating against the Complainant with regard to her employment on the basis of her age. The Respondent denied treating the Complainant less favorably than other employees, and asserted that it had terminated the Complainant because of her inability to perform her duties to the standards expected by the Respondent of all employees.

Subsequent to an investigation, a Commission Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant with regard to employment on the basis of her age. Efforts to conciliate the complaint failed and the complaint was transferred to the Hearing Examiner for a hearing on the merits of the allegations.

On November 10 and 20, 2003, the Hearing Examiner conducted a public hearing on the allegations of the complaint. After the close of the record and submission of post-hearing briefs, on September 13, 2004, the Hearing Examiner issued Recommended Findings of Fact, Conclusions of Law and Order. The Hearing Examiner concluded that the Respondent had discriminated against the Complainant in her employment on the basis of her age and proposed a remedy including back pay, damages for emotional distress, and an award of costs in bringing the complaint including a reasonable attorney's fee.

The Respondent appealed the Hearing Examiner's recommended decision to the Commission. Subsequent to the opportunity to submit written argument, on February 28, 2005, the Commission issued a Decision and Interim Order affirming the Hearing Examiner's finding of discrimination, but remanded the complaint to the Hearing Examiner for further proceeding/findings on the issue of damages.

The Commission specifically wished the Hearing Examiner to make a finding regarding whether pre-judgment interest was appropriate, and if so, what rate of interest should be applied to the award. Also, the Commission believed that the record supported a higher award for emotional distress damages than that made by the Hearing Examiner. The Commission wished the Hearing Examiner and parties to examine and be given the opportunity to submit additional argument with respect to the amount of the emotional distress damage award. Finally, the Commission wished the Hearing Examiner to clarify his findings with regard to back pay, front pay, and the Complainant's efforts to mitigate her damages.

On remand, the Hearing Examiner submitted the questions presented by the Commission to the parties. It was generally agreed that further hearings were not necessary, and both parties took the opportunity to submit additional written argument. Additionally, the parties were able to stipulate to the rate of interest to be applied

for pre-judgment interest. The Respondent specifically reserved its right to appeal the Commission's Interim Order once it becomes final.

DECISION

As noted above, the parties have agreed to the rate of pre-judgment interest to be applied to the wage portion of the award in this matter. It is agreed that simple interest of 4% per annum shall be applied from the date of the Complainant's termination until the judgment is paid.

The Hearing Examiner has reviewed the record in this matter with respect to the award of $5,000.00 for the emotional damages suffered by the Complainant. Based upon this review and much additional contemplation, the Hearing Examiner cannot recommend any award other than that set forth in his Recommended Findings of Fact, Conclusions of Law and Order dated September 13, 2004.

The Hearing Examiner made some effort to distinguish the present case from other decisions of the Commission such as those in Leatherberry v. GTE Directory Sales Corp., MEOC Case No. 21124 (Comm. Dec. 04/14/1993, 01/05/1993) and Morgan v. Hazelton Labs, MEOC Case No. 21805 (Ex. Dec 04/02/1993). While some injury from the emotional distress of discrimination can be inferred from the circumstances, it is still incumbent upon the Complainant to demonstrate the level of these damages or injuries by the preponderance of the evidence. The record in this case was admittedly somewhat sketchy. Most striking is that the complainant fixed the amount of her own emotional injuries at $5,000.00. Given the small amount of evidence in the record from which the Hearing Examiner might find a more significant injury, the Complainant's own statement seems the best measure of her injuries. For the Hearing Examiner to replace his own impressions for those of the Complainant, the Hearing Examiner would likely be guilty of impermissible speculation.

For the Commission to find a greater level of damages for emotional distress on this record also runs the risk of engaging in speculation or seeking to punish the Respondent for conduct that the Commission may find offensive, but is not necessarily causally related to the Complainant's actual injuries. While the Respondent's comments and actions towards the Complainant seem to be puerile and nasty, it would be impermissible to award the Complainant damages for the Respondent's conduct if the record lacks a causal link to commensurate injuries suffered by the Complainant.

On remand, the Complainant urges a damage award in the area of $20,000.00. The Hearing Examiner can find nothing in the record to support this level of award. The Complainant's own testimony was meager and she provided no witness to corroborate the extent of her emotional distress. While a party's own testimony can provide the basis for the amount of an award of emotional distress, the testimony must demonstrate some link between the injury suffered and the level of the award sought. This record fails to demonstrate the necessary link between the Complainant's injuries and an award of $20,000.00.

The Respondent, on the other hand, seeks to argue that the amount proposed by the Hearing Examiner is too high, if legally supportable at all. The Respondent uses Morgan, supra and Gardner v. Walmart Vision Center, MEOC Case No. 22637 (Ex. Dec. 06/03/01) to contend that the Complainant's proof falls short of that required to support the Hearing Examiner's recommended award. While those cases more closely approximate facts analogous to those in the present case, they lack the same level of personal attack and personal conduct involved in the present matter. While that factor supports a somewhat higher award, the testimony lacks the compelling quality of that in Leatherberry, supra or that in Carver-Thomas v. Genesis Behavioral Services, Inc., MEOC Case Nos. 19992224 and 20002185 (Ex. Dec. 01/25/06) or that of Laitinen-Schultz v. The Laser Center (TLC), MEOC Case No. 19982001 (Ex. Dec. 07/01/03).

In reviewing the record and the Recommended Findings of Fact, Conclusions of Law and Order dated September 13, 2004, the Hearing Examiner understands the confusion described by the Commission over the issues of back pay, front pay and mitigation of damages. The Hearing Examiner will attempt to clarify and correct his earlier determination.

The Complainant was terminated from employment on March 29, 2002. She was paid $12.24 per hour by the Respondent at the time of her termination. She made a variety of efforts to obtain employment including responding to and following up on advertisements for similar employment and other positions. She also

attended seminars and other employment related classes required for her receipt of unemployment compensation.

In December of 2002, the Complainant took a position as a part-time Receptionist and Water Aerobics Instructor at Swim West Family Fitness Center. She worked between 18 and 20 hours per week at a pay rate of $8 per hour. As of the date of hearing in November of 2003, the Complainant had not obtained additional employment beyond that at Swim West.

At hearing, the Complainant testified that she had made application for positions at lots of places subsequent to being employed at Swim West, but that she could not remember any of the specifics. The one exception was a position with a moving company called Cartage. Cartage called the Complainant in August or September of 2003 to inquire of her interest. While Cartage seemed to be willing to hire the Complainant, she demurred because her mother's death at about the same time had required her to be out of state for a period of at least two months. There is nothing in the record to indicate that once the Complainant voluntarily removed herself from the job market to attend to her mother's death that she ever returned to seeking any employment beyond that at Swim West.

In the Recommended Findings of Fact, Conclusions of Law and Order dated September 13, 2004, the Hearing Examiner determined that the efforts made by the Complainant subsequent to her termination until she went to work at Swim West represented an adequate mitigation of her damages. As such she should be entitled to the difference in the wage she should have received and the income she actually received during that period of time. From the date of her termination until December of 2002, her actual income came in the form of unemployment compensation and Social Security payments of an unspecified kind.

The problem arising from the Recommended Findings of Fact, Conclusions of Law and Order stems from the determination that the Complainant, after obtaining employment at Swim West, ceased looking for additional employment for reasons unrelated to this complaint. Despite having recognized that the Complainant had stopped seeking employment for reasons unrelated to this complaint, the Hearing Examiner ordered that the Respondent continue to pay the Complainant the difference in her actual wage and that which she would have received had she not been terminated.

What the Hearing Examiner should have actually awarded is payment of the Complainant's wages from March 29, 2002 until December, 2002. The Complainant would then be directed to repay to the Unemployment Compensation Fund any amount required to offset the unemployment compensation received by the Complainant subsequent to her termination by the Respondent. There should also be an offset for any Social Security payments received by the Complainant to which she would not have been entitled absent her termination.

The Complainant should then also receive the difference between the wage she should have received from the Respondent and the wage she actually received from Swim West until she stopped seeking employment. Once she stopped seeking employment, somewhere around September 1, 2003, the Respondent's liability for wages whether they are classified as back wages or front wages would terminate.

The Hearing Examiner notes that there is some confusion about the concepts of back pay and front pay. The Hearing Examiner understands back pay to be accrued from the date of the Complainant's termination until either the date of a final order in this matter or the occurrence of some other event that terminates the Respondent's liability to pay wages, whichever is shorter. Front pay is an equitable remedy to be paid from the issuance of a final order until the Complainant can reasonably be expected to replace income lost as a result of discrimination. Front pay can only be awarded in lieu of an order of reinstatement which is always the preferred remedy. However, where reinstatement is not possible, as the Hearing Examiner found here, front pay is an option to be considered. The Hearing Examiner need not repeat the analysis addressing the issue of front pay as discussed in his Recommended Findings of Fact, Conclusions of Law and Order date September 13, 2004.

The parties, in their briefs on remand, spend much time arguing about the standards for proof of mitigation. It seems to the Hearing Examiner that the Complainant comes closest to the correct standard. It is the responsibility of the Complainant to put forth credible evidence of efforts made in mitigation of damages caused by an act of discrimination. However, once the Complainant puts forth evidence of mitigation, the burden shifts to the Respondent to rebut the evidence supplied by the Complainant. Steinbring v. Oakwood Lutheran Homes, MEOC Case No. 2763 (Comm. Dec. 03/10/83, Ex. Dec. 02/11/82), Harris v. Paragon Restaurant

Group. Inc. et al., MEOC Case No. 20947 (on liability/damages: Comm. Dec. 2/14/90, 5/12/94, Ex. Dec. 6/28/89, 11/8/93).

Given the record as a whole, the Respondent's suggestion that the discussion of back pay is best looked at in the context of three separate periods seems appropriate. These three periods are the time from the Complainant's termination to her employment at Swim West, the period from the beginning of employment at Swim West to when she declined employment with Cartage in September of 2003, and the period subsequent to her declining employment at Cartage. The Hearing Examiner will apply the shifting burdens of proof to each of these periods.

First, the Complainant must establish some record of a reasonable attempt to find work to replace her lost salary once terminated. As noted in Gardner, supra and Laitinen-Schultz, supra, there is a short period of time immediately after termination where a failure to seek employment does not work to create an inference of a lack of mitigation. There is nothing in this record to indicate that the Complainant took a longer than usual time to begin her post-termination job search. The testimony establishes that the Complainant recalls having applied to four specific places of employment along with others that she could not recall at the time of hearing. She also undertook to attend job conferences and seminars as part of her receipt of unemployment compensation. While these may have been a condition of her receipt of such income support, it does not follow that these efforts do not also demonstrate a reasonable effort to replace lost salary.

Though this record is admittedly sketchy, it does evince enough of an effort to find re-employment to shift the burden to the Respondent to demonstrate a lack of mitigation on the part of the Complainant. The Respondent fails in this burden. Wheeler v. Snyder Buick, Inc., 794 F.2d 1228 (7th Cir. 1986). The Respondent does not bring forth a list of jobs for which the Complainant might have applied or otherwise demonstrate that the Complainant was not seeking employment as she testified. Instead, the Respondent offers only nasty comments and unsupported arguments about the job market in Madison. This is hardly sufficient to rebut the presumption of mitigation raised by the Complainant's testimony. In resolving disputes over a Complainant's efforts at mitigation, the Complainant is to be given every benefit of the doubt. EEOC v. Kallir, Phillips, Ross, Inc., 420 F. Supp. 119 (S.D.N.Y. 1976), aff'd without opinion, 559 F.2d 1203 (2nd Cir 1977), cert. denied, 434 U.S. 920 (1977).

The Respondent is correct that the Complainant's back pay award must be reduced or offset by amounts of income she actually received. During this initial period, it appears from the record that the Complainant received unemployment compensation and some payment from the Social Security Administration. Since the amounts of those offsets are not clear from this record, the Complainant should be directed to repay, to the extent required by law, amounts received in the form of those additional payments. The Respondent should not receive a direct offset for those amounts. To allow the Respondent to reduce its obligation to the Complainant represents a windfall to the Respondent and permits the Respondent to escape the full consequences of its discriminatory actions.

The analysis of the period from when the Complainant began her part-time employment at Swim West to when she declined employment with Cartage is similar to the first period. The Complainant testified without corroboration that she had continued to seek employment subsequent to accepting her part-time job at Swim West. The only position that she could specifically identify was the one with Cartage. This position does lend some degree of credibility to the Complainant's testimony.

In challenging this testimony about mitigation, the Respondent again limits itself to negative comments about the Complainant's efforts and does not produce any evidence or testimony in rebuttal. The Respondent once again fails to carry its burden to demonstrate a lack of sufficient effort at mitigation.

Unlike the first period however, the Respondent is entitled to a reduction in its back pay obligation for the second period in an amount equal to the Complainant's wages at Swim West. This reduction would run from the beginning of her employment at Swim West until September 1, 2003, the date the Hearing Examiner will fix as the date upon which the Complainant declined employment with Cartage. The record is somewhat unclear on whether the Complainant was receiving Social Security payments during this period. If she was, the Complainant should be directed to repay those payments to the extent that such repayment is required by law.

The final period from the date upon which the Complainant declined employment with Cartage to the present changes the obligations of the Respondent to the Complainant. The Complainant contends that the

Complainant's withdrawal from the job market to attend to issues arising from the death of her mother should not or does not affect the Respondent's liability for back pay. The Respondent contends that the Complainant's duty to mitigate her damages is a continuing one, and the absence of any testimony indicating that the Complainant has again sought additional employment since the death of her mother operates to eliminate its liability for back pay.

Though the Hearing Examiner finds the Respondent's language in its discussion of this issue to be distasteful, the Hearing Examiner concurs with the outcome suggested by the Respondent. The Complainant's duty to mitigate her damages continues until either reinstatement or termination of the Complainant's efforts to replace lost wages. Harris, supra. On this record, the Complainant was offered employment that would have been substantially equivalent to that at the Respondent's place of employment. She declined to accept that employment for reasons entirely personal to her and outside of the control of the Respondent. Withdrawing oneself from the employment market for personal reasons can work to terminate or at least toll the Respondent's liability for back pay. NLRB v. Rice Lake Creamery Co., 365 F.2d 888 (D.C. Cir. 1966). In Harris v. Paragon Restaurant Group, et al., supra, the Hearing Examiner found that the Rice Lake case was not applicable because the Complainant's reasons for leaving a particular job were not entirely personal, but had a professional basis that was at least as important. In the present case, the Hearing Examiner cannot find such a professional reason. On this record, it appears that the Complainant went to work at Swim West, made some effort to find employment, and then after returning to Wisconsin subsequent to the death of her mother was content with her circumstances of employment. There is nothing in the record from which the Hearing Examiner can find that the Complainant had renewed her job search after September 1, 2003. This failure to renew her efforts works to terminate the Respondent's obligations for back pay and to make the payment of front pays a non-issue.

ORDER

Based upon the Commission's remand in the above-captioned matter and the arguments of the parties, the Hearing Examiner now issues these further Recommended Findings of Fact, Conclusions of Law and Order on the issue of damages.

RECOMMENDED FINDINGS OF FACT

1. The Complainant was terminated from Respondent’s employment on March 29, 2002. At the time of her termination, the Complainant was paid $12.24 per hour.
2. She attempted to find employment to replace her lost wages. She received unemployment compensation payments and payments from the Social Security Administration for an unspecified period of time and in an unspecified amount.
3. On or about December 16, 2002, the Complainant obtained part-time employment at Swim West Family Fitness Center working at the front desk as a Receptionist and eventually conducting water aerobics classes. She worked approximately 19 hours per week (18 to 20) and was paid $8.00 per hour.
4. While working part-time at Swim West, the Complainant no longer received payments of unemployment compensation, but appears to have continued to receive some form of Social Security benefit.
5. Subsequent to beginning employment at Swim West, the Complainant continued to seek additional employment to replace her lost wages from the Respondent. In late summer, probably in August of 2003, the Complainant and a local moving business Cartage had discussions about the Complainant's coming to work for Cartage. This employment would have been substantially similar to that the Complainant had held with the Respondent. The Complainant declined to go to work for Cartage because the recent death of her mother was requiring the Complainant to be out of state.
6. The Complainant did not go to work for Cartage after she returned to Wisconsin after attending to the affairs relating to the death of her mother. She does not appear to have sought employment beyond that with Swim West subsequent to the death of her mother.
7. The employment relationship between the Complainant and the Respondent cannot be successfully reinstituted given the level of animosity demonstrated by the Respondent towards the Complainant.
8. The Complainant experienced shock and disbelief at her termination. She was stunned and embarrassed by the treatment afforded her by the Respondent both during the last months of her employment and at her termination.

CONCLUSIONS OF LAW

1. The Complainant is entitled to be placed in at least as good as position regarding wages and employment as if the Respondent had not discriminated against her.
2. The Complainant may have an obligation to repay the State of Wisconsin and the Social Security Administration payments made to her subsequent to her termination out of wages paid pursuant to any order of the Commission.
3. The Respondent is entitled to an offset for wages actually received by the Complainant subsequent to her termination.
4. The Complainant has a continuing duty to attempt to mitigate her damages. Turning down an equivalent position, albeit for valid personal reasons, may terminate the Respondent's obligation to pay the Complainant back pay and prevent the imposition of front pay.
5. The Complainant may be compensated for non-economic damages for emotional distress.
6. The Complainant, in order to be made whole, is entitled to prejudgment interest on her back pay until that amount is paid.
7. The Complainant, in order to be made whole, is entitled to the cost and expenses of bringing this action including a reasonable actual attorney's fee.

ORDER

It is hereby ordered that:

1. Within 30 days of this order becoming final, the Respondent shall pay to the Complainant back pay calculated as follows:
   a. For the period March 29, 2002 to December 16, 2002 at the rate of $12.24 for 40 hours of work per week.
   b. For the period from December 16, 2002 to September 1, 2003, at the rate of $12.24 per hour for 40 hours per week less an offset for wages received of $8.00 per hour for 19 hours per week.
2. The Respondent's obligation to pay the Complainant back pay terminated on September 1, 2003.
3. The Respondent shall pay prejudgment interest on the Complainant's back pay at the simple rate of 4% per annum until the back pay obligation is discharged completely.
4. The Complainant shall repay from the back pay award any amount required to be repaid to the State of Wisconsin for unemployment compensation paid to the Complainant and to the Social Security Administration for payments received from it. This obligation extends only to those repayments required by applicable law.
5. Within 30 days of this order becoming final, the Respondent shall pay to the Complainant the sum of $5,000.00 to compensate her for the emotional distress caused by the Respondent's act of discrimination.
6. Within 15 days of the order becoming final, the Complainant shall submit a petition to the Hearing Examiner setting forth her costs and fees including a reasonable attorney's fee connected with the bringing of this action. The Respondent may file objections to the petition within 15 days of the receipt of the Complainant's petition.

Signed and dated this 29th day of August, 2006.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner

cc: Lori M Lubinsky
Thomas R Crone

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

Kay Cronk 2221 Post Rd Madison, WI 53713 Complainant vs. Reynolds Transfer & Storage 725 E Mifflin St Madison, WI 53703-2391 Respondent	COMMISSION'S DECISION AND INTERIM ORDER Case No. 20022063

BACKGROUND

On April 22, 2002, the Complainant, Kay Cronk, filed a complaint with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Reynolds Transfer and Storage, treated her less favorably than others not of her age and terminated her employment and thereby discriminated against her with regard to employment on the basis of her age. The allegations assert a violation of the Madison Equal Opportunities Ordinance Sec. 3.23(8) Mad. Gen. Ord. The Respondent denied the allegations of the complaint, contending that the Complainant was not treated less favorably than other employees during her employment. Further, the Respondent states that it terminated the Complainant's employment because of her inability to do her job to the standards of her employer.

Subsequent to an investigation, a Commission Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe the Respondent had discriminated against the Complainant on the basis of her age in her employment. Efforts to conciliate the complaint failed and the complaint was transferred to the Hearing Examiner for a hearing on the merits of the complaint.

On November 10 and 20, 2003, a public hearing was held before the Hearing Examiner. After the hearing and subsequent to the submission of post-hearing briefs, on September 13, 2004, the Hearing Examiner issued Recommended Findings of Fact, Conclusions of Law and a Recommended Order. The Recommended Findings of Fact, Conclusions of Law and Order found that the Respondent had discriminated against the Complainant on the basis of her age and recommended payment of certain sums to redress the discrimination.

The Respondent appealed the Recommended Findings of Fact, Conclusions of Law and Recommended Order to the Commission. The Respondent contends that the Hearing Examiner erroneously found that the Complainant had been discriminated against by the Respondent and that even if the Hearing Examiner was correct, he had failed to properly measure and assess damages given the record in this matter. Subsequent to giving the parties the opportunity to submit written argument, the Commission met on February 10, 2005 to consider the Respondent's appeal. Commissioners Bayrd, Boyd, Enemuoh-Trammell, Hicks, Howe, Markle, Morrison, Natera, Smith, Tellez-Giron, Vaj and Zipperer participated in the deliberations.

DECISION

The Commission's review of this matter proceeded along two separate lines, liability and damages. With respect to the former, the Commission was unanimious. With respect to damages, the Commission was divided and requires additional proceedings and explanation of the Hearing Examiner.

With regard to liability, the Commission affirms the Hearing Examiner's findings and conclusions to the effect that the Respondent discriminated against the Complainant on the basis of her age in terminating her

employment. The Hearing Examiner's findings, conclusions and discussion on the issue of liability are incorporated by reference as if fully set forth herein. See below for the list of Commissioners who supported this finding.

The Commission had questions about the Hearing Examiner's findings and conclusions concerning damages in three respects. First, the Commission is unable to determine whether the Hearing Examiner misapplied the facts, the law or both with regard to his recommended award of back pay and whether the Complainant properly mitigated her damages.

The Hearing Examiner awarded the Complainant back pay running from the date of her termination until the date of the Recommended Findings of Fact, Conclusions of Law and Order. However, the Hearing Examiner made findings relating to the Complainant's efforts to mitigate her damages, including that she had stopped looking for employment after taking a position as an Instructor at the Swim West Family Fitness Center. On one hand, the Commission is unclear whether acceptance of this part-time employment should act to end any liability for back pay or not. On the other hand, if back pay ends with the Complainant's acceptance of the part-time position, should she be entitled to front pay with an appropriate offset for the wages actually received.

In order to have a clearer record on review with respect to these issues, the Commission is remanding this portion of the Recommended Findings of Fact, Conclusions of Law and Order to the Hearing Examiner for whatever further proceedings he deems necessary to clarify his findings and conclusions for review.

The second issue relating to damages is that of interest on the award of damages. While it appears clear that pre-judgement interest on the award of emotional distress damages is not in question, it appears that the Hearing Examiner did not make a finding regarding an award of pre-judgement interest on the award of back pay. Case law under the ordinance indicates that pre-judgement interest on back pay is a customary element of damages. It is not clear whether the record is sufficient to determine an appropriate rate of interest.

The Commission remands this aspect of damages to the Hearing Examiner. Should the Hearing Examiner need to hold additional proceedings to determine an appropriate rate of interest, he is directed to do so. The Commission is cognizant that it is the Complainant's burden to establish by a preponderance of the evidence entitlement to each element of damages as well as to the amount of damages.

The final issue raised by the Hearing Examiner's award of damages involves the award of $5,000 for emotional distress damages. The Commission understands that this is the amount requested by the Complainant. However, the Commission believes that the record may support an award in excess of that requested and awarded. The Commission remands this issue of damages to the Hearing Examiner for further proceedings, including, at a minimum, giving the parties the opportunity to be heard on the level of damages awarded by the Hearing Examiner.

ORDER

The Commission hereby remands the complaint to the Hearing Examiner for proceedings consistent with this decision.

Joining in the Commission's decision on liability are Commissioners Bayrd, Boyd, Enemuoh-Trammell, Hicks, Howe, Markle, Morrison, Natera, Smith, Tellez-Diron, Vaj and Zipperer. There were no Commissioners opposed or abstaining with regard to this issue.

With respect to the remand of the issue relating to back pay and mitigation, the Commission's action is supported by Commissioners Bayrd, Boyd, Enemuoh-Trammell, Hicks, Howe, Markle, Morrison, Natera, Smith, Tellez-Giron, and Vaj. Commissioner Zipperer opposes the remand. There are no Commissioners abstaining.

With respect to the remand of the issue relating to an award of interest, the Commission's action is supported by Commissioners Bayrd, Boyd, Enemuoh-Trammell, Hicks, Howe, Markle, Morrison, Natera, Smith, Tellez-Giron and Zipperer. No Commissioners opposes the remand. Commissioner Vaj abstained.

With respect to the remand of the award of emotional distress damages, the Commission's remand is supported by Commissioners Boyd, Hicks, Howe, Morrison, Natera, Smith, Tellez-Giron, Vaj and Zipperer. Opposing the remand are Commissioners Bayrd and Markle. Commissioner Enemuoh-Trammell abstained.

Signed and dated this 28th day of February, 2005.

EQUAL OPPORTUNITIES COMMISSION

Ramona L. Natera
EOC President

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

Kay Cronk 2221 Post Rd Madison, WI 53713 Complainant vs. Reynolds Transfer & Storage 725 E Mifflin St Madison, WI 53703-2391 Respondent	HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW Case No. 20022063

This matter came before Madison Equal Opportunities Commission Hearing Examiner Clifford E. Blackwell, III on November 10, 2003 and continued on November 20, 2003. The Complainant, Kay Cronk, appeared in person and by Attorney Lori M. Lubinsky of Axley Brynelson, LLP. The Respondent, Reynolds Transfer & Storage, appeared by its corporate representative, Shane Prichard, and by Attorney Thomas R. Crone of Melli, Walker, Pease & Ruhly, S.C. Based upon the evidence presented, the Hearing Examiner now makes his Recommended Findings of Fact, Conclusions of Law and Order, as follows:

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Kay Cronk, is an adult female, born June 15, 1939.

2. The Respondent, Reynolds Transfer & Storage, provides household moving services, office relocation and storage. Respondent employs approximately twenty (20) employees in Madison, Wisconsin. Respondent is an agent of United Van Lines, LLC.

3. Jeff Coatta, former Reynolds shareholder and manager of the United Van Lines Division, interviewed and hired Complainant for the position of Move Coordinator.

4. Complainant was employed full-time as Move Coordinator from February 8, 1999 until March 29, 2002. Complainant was sixty-two (62) years old when Respondent terminated her employment.

5. Complainant was hired for $11.00 per hour. Her wages were raised by 44¢ in 1999, 56¢ in 2000, and 24¢ in 2001. When Complainant was discharged, on March 29, 2002, she was being paid $12.24 per hour.

6. Complainant occasionally received supplementary payments of several hundred dollars, usually around the holidays. Complainant received one such payment—$500—when she took time off without pay for family

medical reasons. Complainant had not accrued any sick leave; this particular “bonus” was not merit-based, but was intended to sustain her through an otherwise unpaid absence.

7. When Complainant began her employment with Respondent, her immediate supervisor was Jeff Coatta. He remained her immediate supervisor until May of 2000. Coatta voluntarily terminated his employment with Respondent when his relationship with company president Mark Reynolds deteriorated.

8. After Coatta departed, Shane Prichard was promoted from Moving Consultant to General Manager. Prichard directly supervised the Complainant for approximately two years, until she was discharged.

9. Coatta rated the Complainant excellent in her performance during the fifteen (15) months they worked together. Coatta further indicated that customers gave the Complainant “extremely high marks across the board.” While Coatta was supervising Complainant, Reynolds Transfer & Storage was twice named runner-up “Agent of the Month” by United Van Lines.

10. As Move Coordinator, Complainant maintained contact with shippers and drivers, tracked long-distance moves, and completed paperwork. Respondent intended for Complainant to be its “single point-of-contact” with customers.

11. Respondent uses several computer programs for communications and documentation—Group Wise for internal communications and Memo Pad for tracking individual moves, documenting events, and connecting with United Van Lines agents across the country. Complainant was required to use each software package extensively. Shane Prichard frequently spoke with Complainant about using these programs more fully. Complainant typically offered some resistance, being more comfortable making hand-written notes. Complainant also expressed her concern that making detailed computer entries would necessitate overtime. At various times, Shane Prichard and Reynolds Transfer & Storage President Mark Reynolds indicated that Complainant should not work overtime.

12. In 1999, Mark Reynolds remarked that Complainant was like an “old beetle.” Jeff Coatta and David Finger heard this particular remark. Reynolds was apparently suggesting that Complainant resembled an old beetle in her eating habits. Finger and Bob Van Rens also made negative remarks about her appearance, odor and weight. Van Rens told Nancy Vorderman and Shane Prichard that someone young and bubbly should replace the Complainant—”someone who could wear short skirts.”

13. Male employees, including Shane Prichard, John Lindauer and Robert Van Rens, occasionally traded lewd e-mails and sexually explicit banter. Complainant and Nancy Vorderman observed male employees viewing pornographic material during the workday, and Prichard allegedly made sexually explicit remarks to Vorderman, specifically.

14. Respondent did not have an employee manual, did not utilize progressive discipline, and did not formally evaluate personnel. Complainant was not evaluated during her tenure as Move Coordinator, was never disciplined, and was never informed that her performance was such that her continued employment was in jeopardy. However, approximately two weeks before Complainant was terminated, Shane Prichard did inform Complainant that her inattention to detail had cost Respondent money.

15. Unlike Complainant, other Reynolds employees were disciplined and given warnings for poor performance. Jeff Coatta warned Scott Krenz, in writing, that Krenz was not adequately performing the managerial duties for which Respondent hired him. Coatta then temporarily reassigned Krenz to assist Complainant. Similarly, Mark Reynolds warned Nancy Vorderman, in writing, that additional mistakes would result in termination of her employment.

16. Although Prichard initially testified that he had daily conversations with Complainant about things she needed to improve—making detailed computer entries, for example—Prichard later testified that Complainant frequently initiated these conversations. Complainant was often actively seeking his assistance.

17. On January 29, 2002, Prichard contacted Cathy Mattan of Movers Search Group (MSG) about finding another Move Coordinator. David Finger had previously contacted MSG, in December of 2001.

18. Mattan referred Lisa Pekorsky to Respondent for an interview. Pekorsky had twenty-one (21) months experience working in the moving industry, and was then employed by another United Van Lines agent, Union Transfer & Storage. Pekorsky was 31 years old, born May 28, 1970. Respondent did not inquire about her age. However, there is no indication that Respondent interviewed anyone else. On March 14, 2002, Respondent offered Pekorsky the position of Move Coordinator.

19. Shane Prichard testified that by late summer, 2001, he had formed the opinion that Complainant could not perform her job. Although Prichard regularly spoke with Complainant about things she needed to improve, Prichard never informed Complainant that she was facing discipline and/or possible termination because she was not performing adequately. Prichard avoided any such confrontation because he thought he could "fix things" himself, and because his leadership style was non-confrontational.

20. Before Complainant was discharged, Prichard told Nancy Vorderman and Jeff Coatta that Mark Reynolds and Business Manager David Finger wanted the Complainant replaced. Prichard said the decision was "beyond [his] control." Subsequently, Prichard stated otherwise, declaring under cross-examination that Reynolds and Finger merely supported his decision to terminate the Complainant. It would appear that Reynolds, Prichard and Finger each played some role in this particular decision.

21. On March 29, 2002, Business Manager David Finger called Complainant into his office, along with Shane Prichard. Finger told Complainant that her employment was being terminated because management did not feel that she could handle her job, especially with the busy season approaching. Finger did not specifically state that Complainant was being terminated because she was underutilizing Group Wise and Memo Pad. When Complainant protested, saying, "you never told me I was not doing my job," Finger repeated, "Well, we just don't feel you can handle it."

22. After Complainant was terminated, she made reasonable efforts to obtain employment. She applied for several positions—mostly in customer service—and attended workshops connected with the unemployment office. After applying for jobs, she followed up with telephone calls and office visits. In December of 2002, she found work staffing the front desk and teaching water aerobics at Swim West Family Fitness Center, where she currently works 18-20 hours/week for $8.00/hour.

23. In addition to these wages, Complainant receives some form of social security payment.

24. The circumstances surrounding her termination, combined with her experience of extended unemployment following her termination, reasonably permit the belief that Complainant suffered some emotional distress.

25. Respondent terminated Complainant, at least in part, because of her age.

RECOMMENDED CONCLUSIONS OF LAW

1. Complainant was sixty-two (62) years old when Respondent terminated her employment. Complainant thus belongs to the protected class "age" under the Madison Equal Opportunities Ordinance.

2. Respondent is an employer within the meaning of the Ordinance.

3. Age was a motivating factor behind the decision to terminate Complainant.

4. Respondent violated Section 3.23(8)(a), Madison General Ordinances, which prohibits employers from discharging and/or otherwise discriminating against employees based upon sex, race, religion, color and several other factors, including age.

RECOMMENDED ORDER

1. Within thirty (30) days of the date upon which this order becomes final, the Respondent shall pay the Complainant back pay in the amount of $489.60 per week from March 29, 2002, until the date upon which the order becomes final.

2. Within thirty (30) days of the date upon which this order becomes final, the Respondent shall pay the Complainant $5,000 in compensatory damages for emotional distress.

3. Within fifteen (15) days of the date upon which this order becomes final, the Complainant shall submit a petition for costs and fees incurred in bringing this action, including reasonable attorney fees. Thereafter, the Respondent shall have thirty (30) days to respond to the petition.

MEMORANDUM DECISION

The Complainant began working for Reynolds Transfer & Storage, which provides household moving services and office relocation, on February 8th, 1999. The Complainant was interviewed and hired for the position of Move Coordinator by Jeff Coatta, who was then managing the United Van Lines Division. Reynolds Transfer & Storage contracts with United Van Lines, LLC. When she began, the Complainant was earning $11.00 per hour.

As Move Coordinator—the first ever employed by Respondent—Complainant maintained contact with shippers and drivers, tracked long-distance moves, and completed paperwork. A formal job description for this position was not created until March 12th, 2002, but Complainant understood that she was to “keep on top of every move.” Respondent intended for the Move Coordinator to be its single point-of-contact with customers, and although Complainant initially testified that her responsibilities did not include relieving the sales staff of any obligation to remain personally, directly involved with ongoing moves, Complainant later acknowledged that sales persons did not always remain directly involved. “That was my job,” she indicated.

To maintain contact with customers and communicate internally, Respondent primarily uses two computer programs—Group Wise for scheduling and electronic mail, and Memo Pad for tracking moves and documenting important events. Memo Pad links approximately 550 United Van Lines agents located across the country. The Complainant received training on Group Wise and Memo Pad.

When the Complainant began her employment with the Respondent, her immediate supervisor was Jeff Coatta. He remained her immediate supervisor until May of 2000. Coatta voluntarily terminated his employment with the Respondent when his relationship with company president Mark Reynolds deteriorated.

According to Coatta, the Complainant exceeded expectations during the fifteen (15) months they worked together. At hearing, Coatta indicated that customers gave the Complainant extremely high marks across the board. Coatta also stated that another Reynolds employee, Moving Consultant Shane Prichard, praised the Complainant for quickly processing folders representing new sales. Prichard reportedly said: “I put the folders on her desk. She cranks them out. We go from there.” After Coatta departed, Prichard became General Manager. Prichard supervised the Complainant for approximately two years, until she was discharged.

During those two years, the Complainant was neither disciplined, nor formally evaluated, nor informed that her performance was such that her continued employment was doubtful. However, Shane Prichard did frequently have casual conversations with the Complainant about using Group Wise and Memo Pad more fully. The Complainant was evidently somewhat uncomfortable making detailed computer entries, preferring instead to make hand-written notes in physical files. Prichard explained that hand-written notes were too inaccessible, and that the Respondent could not protect itself against customer claims unless the Move Coordinator documented important events with sufficient detail. In response, the Complainant warned that she could not use Memo Pad more fully without working overtime, which Mark Reynolds had strictly forbidden.

Unlike the Complainant, other Reynolds employees were disciplined and given warnings for poor performance. Jeff Coatta warned Scott Krenz, in writing, that Krenz was not adequately performing his duties. Coatta then temporarily reassigned Krenz to assist the Complainant. Similarly, Mark Reynolds warned Nancy Vorderman, in writing, that mistakes were jeopardizing her employment.

In 1999, before Jeff Coatta terminated his employment, Mark Reynolds remarked that the Complainant was like an “old beetle.” Reynolds made this comment in the presence of Jeff Coatta and Business Manager David Finger, and was apparently suggesting that the Complainant resembled an old beetle in her eating habits. Finger and Bob Van Rens also made negative remarks about her appearance, odor and weight. Van Rens

reportedly told Nancy Vorderman and Shane Prichard that the Respondent should replace the Complainant with someone younger and more attractive—"someone who could wear short skirts."

On March 29, 2002, Business Manager David Finger called the Complainant into his office, along with Prichard. Finger told the Complainant that her employment was being terminated because management did not feel she could handle her position, especially with the busy season approaching. Finger did not specifically indicate that the Complainant was being terminated because she was underutilizing Group Wise and Memo Pad, but instead, when the Complainant protested, simply repeated that management did not feel she could handle her job.

Previously, before the Complainant was discharged, Prichard told Nancy Vorderman and Jeff Coatta that Mark Reynolds, David Finger and Bob Van Rens each wanted the Complainant replaced. Prichard told Vorderman and Coatta that the decision was "beyond his control." Subsequently, however, under cross-examination, Prichard stated otherwise, declaring that Reynolds, Finger and Van Rens merely supported his decision to terminate the Complainant.

Although the Complainant was not terminated until March 29th, management had been seeking her replacement for several months. On January 29th, 2002, Shane Prichard contacted Cathy Mattan of Movers Search Group (MSG) about finding another Move Coordinator. David Finger had contacted MSG approximately one month earlier. Mattan referred Lisa Pekorsky to the Respondent for an interview. Pekorsky was thirty-one years old and was then employed by another United Van Lines agent. The Respondent did not inquire about her age when Mattan provided the reference. However, the record does not indicate that the Respondent interviewed anyone else. On March 14th, 2002, the Respondent offered Pekorsky the position of Move Coordinator.

Under the burden-shifting process established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981), the initial burden falls on the Complainant to establish a prima facie discrimination claim. In this particular case, a prima facie claim has four elements. The Complainant must show: (1) protected-class status, (2) that she was adequately performing her job, (3) that she suffered an adverse employment action, and (4) that she was discriminated against based upon her protected-class membership. Once the Complainant has made this showing, the Respondent must provide a legitimate, nondiscriminatory explanation for its allegedly discriminatory acts. This burden is one of articulation, not persuasion. If the Respondent articulates any such explanation, the burden shifts back to the Complainant, who must show that the proffered explanation is either not credible or merely conceals an otherwise discriminatory motive. Under the framework used by the Equal Opportunities Commission, the Complainant will succeed in challenging the proffered explanation where she presents evidence that her protected-class status *at least partly* motivated an adverse employment action. In other words, the Complainant need not prove that she was demoted, disciplined, terminated, etc. based solely upon prohibited criteria. In cases brought under the Madison Equal Opportunities Ordinance, the Complainant will prove that she was discriminated against based upon prohibited criteria where the evidence shows that these criteria even *partly* motivated an adverse employment action.

By establishing certain facts, the Complainant has successfully made her prima facie employment discrimination claim. The Complainant has shown that: (1) she was sixty-two when the Respondent terminated her employment; (2) she was replaced with someone half her age; (3)

she was neither disciplined, nor informed that she was facing termination unless her work quality improved; (4) she received regular pay raises over three years; and (5) management-level employees made derogatory remarks about her age, weight, appearance and hygiene. Specifically, the evidence shows that Mark Reynolds called the Complainant an "old beetle," that Lisa Pekorsky was hired even before the Complainant was terminated, and that Shane Prichard gave conflicting statements about not only the frequency with which the Complainant was approached regarding her supposed deficiencies, but which person—Prichard, Reynolds or David Finger—actually made the critical decision about replacing her. Again, these facts are sufficient to establish a prima facie claim.

The Complainant acknowledges that the Respondent has articulated one broad nondiscriminatory reason for terminating her employment—poor performance. According to the Respondent, the Complainant was simply too reliant upon hand-written notes and generally unwilling to make full, effective use of Group Wise and Memo

Pad. Although the Complainant may once have been skilled enough for her position, the Respondent contends, she could not adapt when her clientele expanded. The Complainant does *not* concede that this explanation is believable or credible, but merely that the Respondent has articulated an explanation.

Under the burden-shifting framework described above, the Complainant must demonstrate that the proffered explanation lacks credibility or merely conceals an otherwise discriminatory intent. The Complainant advances two general arguments here: (1) the notion that Shane Prichard alone made any decision about replacing the Complainant lacks credibility, and (2) longstanding hostility toward the Complainant based upon her age, weight and appearance motivated her dismissal, not poor performance. With respect to the first argument, the Complainant observes that David Finger contacted Movers Search Group months before she was terminated, that Prichard initially told Jeff Coatta and Nancy Vorderman that terminating the Complainant was "beyond his control," and that although Prichard may have counseled the Complainant about using Group Wise and Memo Pad, Prichard never suggested, before the Complainant was fired, that she was performing poorly and could not handle her responsibilities. Regarding the second argument, the Complainant strongly emphasizes the "old beetle" remark, the fact that Bob Van Rens repeatedly expressed interest in replacing her with someone younger, and that Finger and Reynolds made negative remarks about her weight, appearance and hygiene.

In reply, the Respondent makes eleven distinct arguments: (1) Nancy Vorderman did *not* testify that Prichard, Reynolds, Finger and Van Rens ever made comments, public or private, specifically about age; (2) Mark Reynolds made the "old beetle" remark years before the Complainant was terminated; (3) the Respondent still employs several older women; (4) Jeff Coatta left Reynolds Transfer & Storage nearly two full years before the Complainant was dismissed, and could not accurately comment on her performance thereafter; (5) the Complainant has not produced compelling evidence that she was performing adequately; (6) the Complainant acknowledges that she and Prichard disagreed about whether she could use Memo Pad more often and more fully; (7) Prichard could have concluded that the Complainant was not performing adequately without informing her; (8) the Complainant cannot simultaneously argue that she was consistently performing well and that she was never formally evaluated; (9) the fact that Krenz and Vorderman were disciplined, unlike the Complainant, does not by itself show disparate treatment, much less intentional discrimination; (10) even assuming that Bob Van Rens actually made statements about replacing the Complainant with someone younger, Van Rens did not make personnel decisions, and the Respondent never interviewed the young woman whom Van Rens had recommended; and (11) the Complainant was given reasons when she was terminated, and the fact that neither Finger nor Prichard specifically mentioned Group Wise and Memo Pad does not imply that the Respondent had "shifting" or "unjustified" reasons for seeking another Move Coordinator.

In the opinion of the Hearing Examiner, the Complainant has shown, by the greater weight of the credible evidence, that age partly motivated her termination, and that the proffered nondiscriminatory explanation—that she was terminated solely because she could not handle the responsibilities associated with her position—is not entirely credible. The Respondent's attempts to characterize the Complainant's work as inadequate are directly supported only by the testimony of her supervisor, Shane Prichard, who undercut his own credibility by testifying inconsistently about whether and how often he initiated conversations with the Complainant about using Group Wise and Memo Pad, and whether terminating the Complainant was his decision or "beyond his control." These inconsistencies call into question not only whether Prichard actually made or even could have made the decision to terminate the Complainant, but also, by implication, the stated reason for that decision. Additionally, Prichard qualified almost every statement with "probably." Prichard was either unwilling or unable to testify about anything with certainty.

In contrast, Jeff Coatta, who heard the "old beetle" remark and who testified that Prichard used the phrase "beyond my control" in describing the decision to discharge the Complainant, was credible and believable, even though he displayed some lingering resentment toward the Respondent. Coatta became friends with Prichard when they worked together, and they have remained friends. On this basis, the Hearing Examiner is inclined to believe his testimony about whether Prichard claimed responsibility for terminating the Complainant. Nancy Vorderman was likewise credible and believable in describing the workplace and management-level employees, including Mark Reynolds, David Finger and Bob Van Rens, as uniquely hostile to the Complainant. Vorderman also testified that the Complainant was "doing her job," meaning she was performing adequately, but because Vorderman was not qualified to make such an assessment, the Hearing Examiner must disregard this portion of her testimony.

As important as credibility are what the Respondent has characterized as the "stray" remarks of Mark Reynolds, David Finger and Bob Van Rens. These would include the "old beetle" comment, numerous remarks

about the Complainant's weight, appearance and hygiene, and Van Rens' suggestion that the Respondent should replace the Complainant with someone younger—someone who could wear short skirts. Reynolds was apparently referring to the Complainant's eating habits when he made the "old beetle" remark, but the context in which he chose to observe, disparagingly, that the Complainant was old, is irrelevant. If the Complainant had been only twenty, it seems unlikely that Reynolds would have chosen "*old* beetle." Even accepting that Van Rens did not make personnel decisions, and recognizing that Finger never specifically referred to the Complainant's age, their comments, taken together, clearly establish that management was hostile to the Complainant. Moreover, even if their "stray" remarks were made in isolation, over several years, it is difficult to avoid the conclusion that hostility toward the Complainant was longstanding.

In attempting to show that the Complainant was not subject to different treatment based upon her age, the Respondent points out that Reynolds Transfer & Storage still employs several females aged 50 and above. The Hearing Examiner takes note of this fact, but in the absence of evidence indicating that the employees in question perform duties or have responsibilities similar to those of the Move Coordinator, this fact is not very persuasive. To prove disparate treatment, the Complainant certainly could not be required to prove that *all* older female employees were terminated. To do so would be to ignore the fact that age, and the perceived disabilities that accompany advanced age, often become more or less important to employers depending upon the necessities of particular jobs and levels of responsibility. And as the Complainant observes, the employment status of these other women does not change one uncomfortable fact—that the Complainant was terminated and replaced with someone approximately half her age. It is undisputed that Ms. Pekorsky has performed well for the Respondent. But given that the Complainant experienced open and obvious hostility in the form of negative remarks by her superiors about her age, eating habits, odor, appearance, weight and hygiene, the Hearing Examiner cannot avoid the conclusion that the Complainant was terminated, at least in part, based upon her age.

On the issue of damages, the Hearing Examiner finds that the Complainant made reasonable efforts to mitigate her losses after the Respondent terminated her employment. She applied for several positions, mostly in customer service, and attended workshops connected with the unemployment office. After applying for jobs, she followed up with telephone calls and office visits. In December of 2002, she finally found work staffing the front desk and teaching water aerobics at the Swim West Family Fitness Center, where she currently works 18-20 hours/week for $8.00/hour. When she was terminated by the Respondent, the Complainant was earning $12.24/hour, or $489.60/week. On this basis, the Hearing Examiner awards the Complainant back pay in the amount of $489.60 per week from March 29, 2002, until the date upon which this order becomes final.

The Complainant also seeks $5,000 in compensatory damages for the emotional injuries that she suffered. The authority of the Commission to make such awards was established in Nelson v. Weight Loss Clinics of America, Inc. et al., MEOC Case No. 20684 (Ex. Dec. 9/29/89) and Ossia v. Rush, MEOC Case No. 1377 (Ex. Dec. 6/7/88). Following the guidance of these cases and those upon which they rely, an award of compensatory damages may be made without expert testimony, and the existence of emotional injuries may be inferred from the circumstances of the particular case. Morgan v. Hazelton Labs, MEOC Case No. 21005 (Ex. Dec. 4/2/93). *See also* Chomicki v. Wittekind, 128 Wis. 2d 188, 381 N.W.2d 561 (Wis. App. 1985); Seaton v. Sky Realty Company, Inc., 491 F.2d 634 (7th Cir. 1974); Crawford v. Gamier, 719 F.2d 1317 (7th Cir. 1983); and Brantley v. Rosenblatt, No 601-474 (Milwaukee Cir. Ct.1984).

The Hearing Examiner hereby awards the Complainant $5,000 for emotional distress. Although the Respondent clearly acted inappropriately, this case does not recall Leatherberry v. GTE Directories Sales Corp, MEOC Case No. 21124 (Comm. Dec. 4/14/93, Ex. Dec. 1/5/93), where the use of explicit racial language, combined with evidence that Leatherberry suffered severe emotional distress, justified a much larger award for emotional injuries. The Complainant in this case was unemployed for nine months. Eventually, she found part-time work paying $8.00/hour—much less than the hourly wage she received when she began working for the Respondent. The Hearing Examiner can infer that the Complainant suffered some emotional distress, given the circumstances surrounding her termination and the difficulty with which she found new employment. However, the record lacks strong evidence regarding the significance of the injury. Consequently, an award of compensatory damages for emotional distress is necessarily limited. Morgan v. Hazelton Labs, *supra*.

Because the record does not indicate whether the Complainant was actively seeking equivalent, full-time employment after finding part-time work teaching water aerobics and staffing the Swim West front desk, the Hearing Examiner cannot award front pay, which the Complainant seeks in lieu of an order of reinstatement.

The Complainant is under a continuing obligation to mitigate her damages, and the lack of evidence that she was still seeking equivalent, full-time employment constitutes a failure of proof with respect to this particular remedy.

Finally, the Hearing Examiner finds that reinstatement would be impossible. The Complainant faced longstanding hostility from management-level employees of the Respondent, including its president. Given such hostility between the parties, the Hearing Examiner cannot order that the Respondent reinstate the Complainant in her position as Move Coordinator.

Signed and dated this 13th day of September, 2004.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner