

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

Priscilla A Whitt 2317 Allied Dr Apt 21 Madison WI 53711-4573 <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> Catholic Charities 426 S Yellowstone Dr Ste 100 Madison WI 53719 <p style="text-align: center;">Respondent</p>	COMMISSION'S DECISION AND ORDER CASE NO. 20062043 EEOC CASE NO. 26BA600045
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BACKGROUND

On June 6, 2006, the Complainant, Priscilla A. Whitt, filed a complaint with the Madison Equal Opportunities Commission (Commission). The complaint alleged that the Respondent, Catholic Charities, terminated her employment because of her color and her race in violation of the Madison Equal Opportunities Ordinance, MGO 3.23 et seq. The Respondent asserts that it did not discriminate against the Complainant on any basis, and states further that the Complainant's attendance fell outside of the Respondent's policy.

Subsequent to an investigation, a Commission Investigator/Conciliator issued, on August 2, 2006, an Initial Determination concluding that there was no probable cause to believe that the Respondent had discriminated against the Complainant on any basis. The Initial Determination was mailed to the Complainant along with a Notice of Right to Appeal, and a document informing the Complainant of her right to have the U.S. Equal Employment Opportunity Commission (EEOC) review the outcome of the investigation of her complaint. The Notice of Right to Appeal indicates that the Complainant must appeal the finding of no probable cause within 15 days of the Complainant's receipt of the Initial Determination and accompanying documents.

The Complainant received the Initial Determination and accompanying documents on August 4, 2006, as evidenced by the Complainant's signature on a return receipt (green postal card). On August 9, 2006, the Complainant wrote and mailed to the EEOC, a document requesting an appeal of the Commission's Initial Determination. That letter appears to have been received by the EEOC on August 10, 2006.

For an unexplained and likely inexplicable reason, the EEOC did not forward the Complainant's August 9, 2006 appeal to the Commission until August 21, 2006. The August 9, 2006 appeal, after it was received by the EEOC, was transmitted to the Commission by facsimile transmission.

On August 28, 2006, Ariel Y. Ford, Investigation Supervisor, sent the Complainant a letter informing the Complainant that her complaint had been closed because the Commission had not timely received a written appeal from her. The letter further advised that the Complainant could petition the Commission to "reopen" her complaint.

On September 7, 2006, the Complainant filed a written request to the effect that she would like the Commission to reopen her complaint. Subsequent to the Commission's receipt of this document, the Director issued a Notice of Appeal and Briefing Schedule dated September 18, 2006.

The Notice of Appeal and Briefing Schedule required the Complainant to make an initial submission on or before October 18, 2006. The Complainant made her submission on October 17, 2006. The Respondent could submit a response on or before November 17, 2006. The Respondent made such a submission on November

6, 2006. The Complainant could make a final reply on or before December 2, 2006. The Complainant did not make any submission until January 8, 2007. The Complainant did not explain her late submission. The Respondent filed an objection to the Complainant's January 8, 2007, submission on January 10, 2007.

The Commission met, on February 8, 2007, to consider the Complainant's late filing of her reply brief and the merits of her petition. Taking part in the Commission's deliberations were Commissioners Bayrd, Enemuoh-Trammell, Holmes-Hope, Howe, McDonell, Morrison, Selkove, Solomon, Walsh, Woods and Zipperer.

DECISION

The Commission first addresses the question of whether it should consider the Complainant's untimely filed reply brief when considering the merits of her petition. The Complainant's reply brief was due on or before December 2, 2006. It was not filed with the Commission until January 8, 2007. The Complainant submitted nothing explaining why the reply brief was over one month late. In fact, there was no recognition on the part of the Complainant that her submission was late. Given the Respondent's objection and the Complainant's complete failure to explain her failure to timely file the reply brief, the Commission determines that it will not consider her January 8, 2007 submission in connection with her petition to reopen her complaint. The Commission reaches this decision unanimously.

The Commission next addresses the Complainant's request to permit her appeal of the Initial Determination's finding of no probable cause to continue. The Complainant states that she was confused by the instructions concerning appeal of the Initial Determination and the accompanying document setting forth her right to a review by the EEOC. Both documents require that a written submission be made within 15 days of receiving the Initial Determination. The Respondent asserts that the language of the Initial Determination is clear and unambiguous regarding the obligation to submit a written appeal to the Commission offices, not to the EEOC.

The Commission reviewed in detail the language of the Initial Determination relating to appeal of a finding of no probable cause. The language by itself seems clear. However, when combined with the language of the EEOC's "right to review" letter, the Commission understands how there could be some confusion, particularly in the mind of a less sophisticated and unrepresented complainant.

The record in this matter indicates that the Complainant submitted what would otherwise have been a timely appeal of the Initial Determination had it been sent to the Commission rather than to the EEOC. The EEOC does not act as an agent for the Commission in these matters. It is an interesting sidelight to this matter, that if the EEOC had forwarded the Complainant's appeal when it received it, the Commission would have likely received the appeal in a timely manner. The EEOC's failure to act professionally by "sitting" on the Complainant's appeal is unexplained in this record.

Taking the record as a whole, the Commission finds that the Complainant's failure to timely file a written appeal with the Commission must be excused. The Commission finds that the Complainant's filing with the EEOC, while insufficient in itself, demonstrates a good faith effort to comply with the requirements for appeal. A good faith effort that was to some degree compromised by the actions or lack of action on the part of the EEOC.

The Commission accepts that the appeal language in the Initial Determination coupled with the EEOC's right to review letter could cause confusion for an unrepresented Complainant. The Commission will make reasonable efforts to attempt to lessen possible confusion over this procedure and to avoid future problems. The Commission recognizes that the Respondent may have had to expend some additional effort in this matter. The Commission regrets this; however, it believes that it is necessary to assure the integrity of the complaint process.

ORDER

The Commission hereby orders that the complaint be re-opened and transferred to the Hearing Examiner as an appeal of a finding of no probable cause and for further proceedings.

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

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

EQUAL OPPORTUNITIES COMMISSION

Bert G. Zipperer
President

cc: Bill Stevenson