

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

Janna Watson
2821 Dahle Street
Madison WI 53704

Complainant

vs.

The River Food Pantry
2201 Darwin Road
Madison WI 53704

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON ACCOMMODATION AND
SCHEDULING

CASE NO. 20162067

On June 3, 2016, the Complainant, Janna Watson, filed a complaint of discrimination with the Madison Department of Civil Rights Equal Opportunities Division (EOD). The complaint charged that the Respondent, The River Food Pantry, discriminated against her with respect to terms and conditions of employment (demotion, harassment, benefits (incentives) and suspension) and discharge (termination) based upon the Complainant's sexual orientation (Lesbian) and in retaliation (make a complaint), in violation of the Equal Opportunities Ordinance Sec. 39.03(8) and (9) Mad. Gen. Ord. The Respondent denied any violation of the Ordinance and asserted that the Complainant was not demoted, harassed, denied benefits or incentives, suspended, or terminated due to her protected class(es).

Subsequent to an investigation, a Division Investigator/Conciliator issued an Initial Determination concluding that there was no probable cause to believe that the Respondent had discriminated against the Complainant on the bases of sexual orientation (Lesbian) or in retaliation. This decision was issued on October 31, 2016. On November 16, 2016, the Complainant appealed the Initial Determination's conclusion that there was no probable cause to believe that discrimination or retaliation occurred to the Hearing Examiner. On November 28, 2016, the Hearing Examiner issued a Notice of Review in response to the Complainant's appeal. Both Complainant and Respondent were given thirty days in which to submit additional written documents or written arguments to the Commission or to request the opportunity to conduct discovery.

The Respondent submitted a brief in opposition to the appeal on December 27, 2016. Complainant did not submit additional material in spite of her stated intent to do so, and on January 12, 2017, the Hearing Examiner submitted an Order to Show Cause for the Complainant's failure to submit additional evidence. Complainant responded on January 13, indicating that she had a disability which was interfering with her ability to communicate and understand information in her pending case. On January 20, 2017, Complainant submitted supporting documentation, including notes from her treating psychiatrist to support her assertion of a disability and to request an accommodation to navigate the Department's appeal process.

On January 23, 2017, the Hearing Examiner issued a letter to both parties, quashing the dates set forth in the Notice of Review for submission of appeal and argument, staying proceedings until February 10, and giving Complainant until then to submit additional documentation related to her disability and necessary accommodations for that disability. Complainant's documentation was received by the Hearing Examiner on February 13, 2017. Respondent replied on February 17, 2017, and disputed whether Complainant was currently disabled for the purposes of the Madison Equal Opportunities Ordinance.

The Respondent in its initial argument contended that the Complainant's appeal was untimely. On August 4, 2017, the Hearing Examiner issued a Decision and Order concluding that the Complainant's appeal was filed in a timely manner. The Hearing Examiner indicated that by further Decision and Order, he would address the Complainant's request for accommodation and her request for the opportunity to conduct discovery in this matter.

DECISION

It is undisputed that the complaint in this matter does not contain an allegation of discrimination on the basis of disability. The Hearing Examiner views the Complainant's request for accommodation as one intended to assist her in pursuing her claim under the Ordinance. The Department, while operating pursuant to rules and procedures established by the Equal Opportunities Commission, is subject to the same set of laws and regulations covering all businesses and governmental agencies including the Americans with Disabilities Act. To this end, the Department understands that it has an obligation to adjust its procedures when the disability of a party makes application of the usual rules and procedures unusually difficult or impossible because of the impact of a party's disability.

In the present matter, the Complainant has documented certain conditions that the Hearing Examiner can find to be disabilities requiring some adjustment to the Department's procedures. It must be noted that the Complainant has indicated that due to the passage of time, her original requests may no longer be necessary. Despite that recognition on the part of the Complainant, the Hearing Examiner would like to address the requests in order to give some guidance should accommodation be necessary later in this process.

First, the Complainant generally requests that the Respondent, to the extent that the Respondent chooses to engage in discovery, be limited in the manner of its discovery and that special recognition be given her disabilities. The Hearing Examiner does not find it appropriate to attempt to limit either party's scope of discovery, especially to limit the discovery tools that either party may wish to use. Equally, the Hearing Examiner does not find that a prospective order directing the manner in which Respondent's counsel may question the Complainant should depositions be taken is particularly helpful at this stage of the proceeding. The Hearing Examiner holds Respondent's counsel in high esteem and finds that it is difficult to conceive that counsel would act in any manner that was disrespectful or intentionally intimidating to the Complainant. Instead of trying to address issues that seem unlikely to arise, the Hearing Examiner will address issues as they arise and become concrete.

Second, the Complainant requests that she be permitted to format her written argument or submission in a question and answer format. The Hearing Examiner has no problem with either party's presentation of their respective arguments in a manner that best suits them. From the Hearing Examiner's perspective, what is requested is that written argument rely on the facts

contained in the record and that it be presented in manner calculated to educate and inform the Hearing Examiner and any reviewing body of the position of the parties and why they believe the record supports their respective positions. If a question and answer format as opposed to a narrative format is more comfortable to a party, the Hearing Examiner will not prevent a party from using that format.

Should additional issues around accommodation arise, the Hearing Examiner will address those issues at the time given proper notice by the parties.

In order to bring this matter to a conclusion, the Complainant has requested the opportunity to conduct discovery. The Rules of the Commission permit a party to conduct discovery as a matter of right during the review process. The requirement to request discovery contained in the Notice of Review is intended to permit the Hearing Examiner to establish a reasonable schedule and to oversee the discovery process if necessary. Accordingly, the Hearing Examiner establishes the following schedule:

1. The parties may conduct discovery until December 1, 2017. All discovery shall be completed by that date.
2. The parties may submit additional documentary evidence and/or final written argument on or before December 15, 2017.
3. Should the parties agree to a shorter period for discovery, the Hearing Examiner will consider amendment of this order.

ORDER

The Hearing Examiner orders that accommodation of the Complainant's outlined disabilities may require accommodation, but that no accommodation is required at this time. The parties shall conduct discovery and submit additional material in accordance with the above schedule.

Signed and dated this 31st day of August, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Bob Gregg

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Complainant

vs.

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2201 Darwin Road
Madison WI 53704

Respondent

HEARING EXAMINER'S DECISION
AND ORDER ON RESPONDENT'S
MOTION TO DISMISS

CASE NO. 20162067

BACKGROUND

On June 3, 2016, the Complainant, Janna Watson, filed a complaint of discrimination with the Madison Department of Civil Rights Equal Opportunities Division (EOD). The complaint charged that the Respondent, The River Food Pantry, discriminated against her with respect to terms and conditions of employment (demotion, harassment, benefits (incentives) and suspension) and discharge (termination) based upon the Complainant's sexual orientation (Lesbian) and in retaliation for the exercise of a right protected by the Ordinance (Make a Complaint), in violation of the Equal Opportunities Ordinance Sec. 39.03(8) and (9) Mad. Gen Ord. The Respondent denied any violation of the ordinance and asserted that the Complainant was not demoted, harassed, denied benefits or incentives, suspended, or terminated due to her protected class(es).

Subsequent to an investigation, a Division Investigator/Conciliator issued an Initial Determination concluding that there was no probable cause to believe that the Respondent had discriminated against the Complainant on the bases of sexual orientation (Lesbian) or in retaliation for the Complainant's exercise of a right protected by the Ordinance. The Initial Determination was issued on October 31, 2016. On November 15, 2016, the Complainant

appealed this decision. On December 27, 2016, Respondent moved to dismiss the complaint, asserting that Complainant's appeal was not timely filed.

DECISION

While the Complainant did indicate an interest in cross-filing with the Wisconsin Department of Workforce Development, the Hearing Examiner is bound by the rules of the Madison Equal Opportunities Commission. MEOC Rule 13.2 states, "Computation of any period of time prescribed or allowed by these rules shall begin with the first business day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or holiday observed by the city of Madison, the period shall run until the end of the next business day." The Initial Determination was issued on October 31, 2016. Under Rule 13.2, that would make November 1, 2016 the first day of the 15-day appeal period. Thus, the Complainant's appeal, received on November 15, 2016, was timely filed.

ORDER

The Respondent's motion to dismiss for lack of timeliness is hereby denied.

Signed and dated this 4th day of August, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Bob Gregg