

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

Jacob P Yeamans
PO Box 1455
Madison WI 53701

Complainant

vs.

RRDS
4682 Brown Thrush Trail
Cottage Grove WI 53527

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON RESPONDENT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION

CASE NO. 20172144

BACKGROUND

On August 16, 2017, the Complainant, Jacob Yeamans, filed a complaint of discrimination with the Madison Department of Civil Rights (DCR). In that complaint, Yeamans charged that the Respondent, RRDS, Inc. d/b/a Rabuck's Delivery Service, discriminated against him on the basis of his conviction record when it failed or refused to hire him for a position as a Delivery Driver. The Respondent denied having discriminated against the Complainant and asserted that the DCR was without jurisdiction over the complaint because the complaint was filed outside of the 300-day limit for filing such complaints.

On October 12, 2017, the complaint was transferred to the Hearing Examiner for determination of the DCR's jurisdiction. On October 17, 2017, the Hearing Examiner sent a notice scheduling this matter for a telephone conference with counsel for the parties. The telephone conference was held on October 25, 2017.

Based upon the discussion during that conference, the Hearing Examiner issued a Briefing Schedule on October 27, 2017.

The Respondent did not feel that it needed an additional opportunity to brief its argument. The Complainant was given until December 1, 2017 to submit any evidence or argument in support of the DCR's jurisdiction over the complaint in this matter. The Respondent was given until December 22, 2017 to reply to any submission of the Complainant.

The Complainant did not submit any argument or documentary evidence in support of the DCR's jurisdiction. On December 22, 2017, the Respondent noted the failure of the Complainant to submit an argument and urged dismissal of the complaint.

DECISION

Without any submission on the part of the Complainant, the Hearing Examiner is left with only those submissions made to the Investigator/Conciliator prior to transfer of this complaint to the Hearing Examiner as the only source of facts or information to address this motion. While it is tempting to dismiss the complaint for the failure of the Complainant to make a submission, the Hearing Examiner feels a responsibility to review the meager facts at his disposal and to make an independent determination of jurisdiction.

It does not appear that there is a contest with respect to the date upon which the Complainant first learned of the fact that the Respondent's decision not to hire him was based upon his "background." Use of this phrase seems to clearly implicate the Complainant's conviction record. The record does not contain any information indicating that there might have been some other factor in the Complainant's history which might be referenced as a reason not to hire him. It is clear that the period of limitations begins to run once the Complainant knows or reasonably should have known that the Respondent's hiring decision was premised upon an allegedly discriminatory motive.

The Hearing Examiner is satisfied that the Complainant knew or reasonably should have known that the Respondent's hiring decision was likely motivated by his conviction record as of October 10, 2016. It is from that date that the Hearing Examiner will calculate the date by which the Complainant must have filed his complaint to stay within the ordinance's 300-day limit. The Hearing Examiner finds that the three hundredth day after October 10, 2016 is August 6, 2017. In order to preserve his claim, the Complainant's complaint must have been filed on or before that date.

The record demonstrates convincingly that the complaint in this matter was not filed until August 16, 2017, ten days beyond the end of the 300-day period of limitations. The Complainant presents no argument or information indicating any reason why the period of limitations should have been or might have been tolled prior to the lapse of the period of limitations. The Hearing Examiner's review of the file reveals no such reason for tolling the period of limitations either.

Given this record, taken as a whole, and the Complainant's initial submissions and his failure to submit any additional material in response to the Briefing Schedule issued by the Hearing Examiner, the Hearing Examiner must conclude that the Department of Civil Rights is without jurisdiction over this complaint due to the running of the period of limitations prior to the filing of the complaint.

ORDER

The complaint is dismissed for a lack of jurisdiction.

Signed and dated this 8th day of February, 2018.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner