

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

<p>Orlando Verdecia 601 Vera Court, # 8 Madison, WI 53704</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>McDonald's Restaurant 5901 Dryden Madison, WI 53704</p> <p style="text-align: center;">Respondent</p>	<p>RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Case No. 21661</p>
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This matter came on for public hearing before Hearing Examiner Clifford E. Blackwell, III, on May 25, 1993 at 8:30 a.m. in Room 312 of the Madison Municipal Building, 215 Martin Luther King, Jr., Blvd., Madison, Wisconsin, 53710. The Complainant, Orlando Verdecia, did not appear at the time set for the commencement of the hearing. The Respondent, McDonald's Restaurant, appeared by witnesses Mike Mangin and Mary Cox and by its Attorney Jeff Younger of the law firm of Lee, Kilkelly, Paulson and Kabaker, S.C. Before taking any testimony, the Hearing Examiner waited thirty (30) minutes for the Complainant to appear. The Complainant did not appear and did not contact the Commission to request a postponement or to explain his failure to appear. The Respondent's Attorney moved for a default judgment and made an offer of proof that was accepted. Based upon the record of these proceedings, the Hearing Examiner makes the following RECOMMENDED FINDINGS OF FACT, CONCLUSIONS of LAW and ORDER:

**RECOMMENDED FINDINGS of FACT**

1. The Complainant is a Cuban male.
2. The Respondent is a restaurant that employs people to cook and serve food and to maintain the equipment and restaurant site. The Respondent's site is located within the City of Madison.
3. A Pre-Hearing Conference was held in this matter on January 25, 1993. The Complainant appeared in person at that time. The time and date for the public hearing was set at that Conference with the participation of the Complainant.
4. A Notice of Hearing setting forth the time, date and location of the hearing was mailed by the Commission to the parties on January 28, 1993. The Complainant signed for his copy on January 30, 1993.
5. The Hearing Examiner mailed to both parties a confirmation of the time, date and location of the hearing on May 21, 1993.
6. The Complainant was initially offered a position working on a cooking crew. As part of the position the Complainant was to undergo training or orientation. The Complainant failed to appear for the training session to which he had been assigned. Approximately two weeks after the training session, the Complainant spoke with the Respondent's manager, Mike Mangin. As a result of their conversation, the Complainant was hired as the maintenance worker for the Respondent.

7. The position of maintenance worker was not a supervisory or management position. It is, however, a desirable job because of the personal discretion that the maintenance worker has over his or her daily responsibilities and whether work is performed inside or outside.
8. During his employment the Complainant exhibited sexist behavior such as refusing to take orders from female supervisors and by making unwelcome offensive comments of a personal or intimate nature to other female workers. The Complainant was warned about his conduct.
9. In general, the Complainant's actual work performance was acceptable.
10. In February of 1992, the Complainant engaged in a number of loud arguments with his female supervisors about work assigned to him. On these occasions, the Complainant was told that such conduct would not be tolerated and was sent home early. After each of these incidents Mangin held long discussions with the Complainant about his conduct. In at least one of these discussions with Mangin, the Complainant recognized that he (the Complainant) was responsible for the work problems and that he would have to change his behavior and attitude.
11. Despite the warnings received by the Complainant, he continued to argue with female supervisors. He always got along well with Mangin.
12. The Respondent determined that since the position of maintenance worker reported to many people that the best way to get the Complainant to stop arguing with supervisors was to reassign him to a cooking crew where he would have fewer people acting as supervisors. When the Complainant was told of this reassignment, he was also told that he might be able to be reassigned to the position of maintenance worker if his conduct improved.
13. The Complainant failed to come to work for his first crew shift and he has not appeared again since.

### **CONCLUSIONS of LAW**

14. The Complainant is a member of the protected class "national origin/ancestry" because he is Cuban.
15. The Respondent is an employer within the meaning of the Ordinance.
16. The Complainant was not treated differently from other workers not of his national origin/ancestry because the Respondent had a legitimate, nondiscriminatory reason for switching him from the position of maintenance worker to that of the crew position. The Complainant's conduct in arguing with female supervisors and his refusal to follow orders of female supervisors warranted the change of positions.
17. The Complainant was not constructively discharged from his employment because the conditions of his transfer from one position to another did not constitute an unusual or unbearable term or condition of employment. The Complainant voluntarily quit his employment with the Respondent.
18. The Respondent did not discriminate against the Complainant on the basis of his national origin/ancestry in the terms and conditions of his employment.
19. The Respondent did not discriminate against the Complainant on the basis of his national origin/ancestry in causing his termination of employment.

### **ORDER**

20. The complaint of discrimination in this matter is dismissed.

### **MEMORANDUM DECISION**

The Complainant failed to appear at the time scheduled for the commencement of the public hearing in this matter. He did not appear within the thirty (30) minute grace period set forth in the Ordinance.

He had appeared at a Pre-Hearing Conference and had participated in setting the time and date for hearing. He received written notice of the time, date and location of the hearing. Additionally, the Hearing Examiner sent a letter to the parties confirming the time, date and location of the hearing along with information about the translator who had been selected to assist with the hearing shortly before the hearing date. The Complainant did not object to the hearing date on any of these occasions nor did he at any time request a postponement or rescheduling of the hearing. His failure to appear is entirely unexplained.

As a result of the Complainant's failure to appear, the Respondent moved for a default judgment dismissing the complaint. In addition to the motion to dismiss, the Respondent's Attorney made an offer of proof concerning those facts that the Respondent would have tried to demonstrate if a hearing had been held. This offer was accepted by the Hearing Examiner.

The essence of the Respondent's case is that the Complainant, though a good worker, often disrupted work at the restaurant by either arguing with female supervisors or ignoring their legitimate orders or instructions. The Complainant had a history of this type of "sexist" behavior and had received warnings about the unacceptability of his conduct.

Problems came to a head during the month of February, 1992. The Complainant engaged in two major arguments with his female supervisors. On these occasions, the Complainant was told that his conduct could not and would not be tolerated. He was sent home early on both occasions. After these incidents Mangin met with the Complainant to try to correct his behavior. The Complainant admitted that the incidents were a result of his own views and that he would need to change them.

Ultimately it became obvious that the Complainant could not accept the authority of female supervisors. As the maintenance worker, the Complainant had discretion in setting his own work agenda but he could receive instructions from many different people. In an attempt to demonstrate the seriousness of his behavioral problems, the Complainant was demoted to a position on the crew. This would also presumably limit the number of persons who could supervise the Complainant. The Complainant was told that he could be reassigned to the more desirable maintenance position depending upon how things worked out on the crew. The Complainant was assigned a work schedule. The Complainant did not show up for his assigned schedule and has not appeared again.

Even if the Hearing Examiner were to accept as true the general allegations of the Complainant concerning his treatment, the Respondent has demonstrated a legitimate, nondiscriminatory reason for its actions. The Respondent acted reasonably to discipline a disruptive employee. In addition to having a duty not to discriminate against employees such as the Complainant, the Respondent has a duty to its other employees to address abusive conduct by another employee. This is particularly true where the disruptive conduct may constitute sexual harassment of a co-worker. In this instance, the Respondent acted in a neutral manner towards the Complainant, while seeking to assure its female workers a workplace free of sexual harassment.

The Complainant left his employment with the Respondent on his own authority. The Respondent had demonstrated that it had work for the Complainant and under the circumstances of his "demotion", the Respondent was willing to continue to employ the Complainant. The terms and conditions of this employment were not burdensome or under the circumstances should not have been demeaning to the Complainant. The Complainant could not demonstrate that he had been constructively discharged from his employment.

For the foregoing reasons, the Hearing Examiner grants the Respondent's motion for a default judgment. The complaint is dismissed.

Signed and dated this 2nd day of June, 1993.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III  
Hearing Examiner