

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

<p>Daniel G. Francis 206 A Ski Court Madison, WI 53713</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Quarra Stone Company 4301 Robertson Road Madison, WI 53714</p> <p style="text-align: center;">Respondent</p>	<p>DECISION AND ORDER</p> <p>Case No. 21764</p>
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On October 14, 1993, the Madison Equal Opportunities Commission (Commission) met to consider the Complainant's appeal of the administrative dismissal of his complaint. Participating in the Commission's deliberations were: Commissioners Anderson, Greenberg, Houlihan, Johnson, Verridan, Wallner and Wilberg.

BACKGROUND

On August 24, 1992, the Complainant, Daniel Francis, filed a complaint of discrimination with the Commission against the Respondent, Quarra Stone Company. The complaint alleged that he had been treated differently from white employees while on the job and that he had been terminated in violation of the provisions of the Equal Opportunities Ordinance, MGO 3.23(7). The Commission Investigator/Conciliator, after investigation, issued an Initial Determination on December 22, 1992, concluding that there was probable cause to believe that discrimination had occurred. The parties were offered the opportunity to conciliate the complaint. These efforts failed.

The complaint was certified to the Hearing Examiner for the conduct of a public hearing. At a Pre-Hearing Conference held on February 22, 1993, it became clear to the Hearing Examiner that the Complainant felt that he might have an additional claim of discrimination based upon a handicapping condition. The Hearing Examiner, on March 30, 1993 remanded the complaint for investigation of an additional claim of discrimination. On May 6 the Investigator/Conciliator certified the complaint back to the Hearing Examiner without a further finding of probable cause because the Complainant had failed to cooperate with the investigation and produced no evidence in support of his additional claim.

On May 18 the Hearing Examiner issued a Notice of Pre-Hearing Conference. This notice was sent to the parties by certified mail, return receipt requested. The Complainant's copy was sent to the address provided to the Commission by the Complainant. The Complainant's return receipt indicates that his copy was received on May 20, 1993. The person signing the receipt signed as Daniel Francis. The Pre-Hearing Conference was held on June 2, 1993 as scheduled. The Respondent appeared by its attorney. The Complainant failed to appear at the time scheduled or within thirty (30) minutes of that time. The Complainant did not contact the Commission prior to the Pre-Hearing Conference or shortly after the Conference to explain his absence or to request a different date.

On June 16, 1993, the Acting Executive Director signed a Notice dismissing the Complainant's complaint for his failure to appear at the Pre-Hearing Conference. The notice gave the Complainant twenty (20) days to appeal the dismissal to the Commission. On June 21, 1993, the Complainant appealed the dismissal stating that he had not actually received the Notice of Pre-Hearing Conference and that he had not signed the return receipt.

DECISION

The Complainant's appeal of the dismissal of his complaint is based upon his claim that he did not receive actual notice of the Pre-Hearing Conference. Though the Commission file contains a return receipt that appears to have been signed by the Complainant, he states that it is not his signature and that his roommate must have signed for the notice and then failed to give him the mail.

The Commission sent the notice to the address provided by the Complainant. The return receipt was signed with the Complainant's name. Even if the Complainant's explanation is correct, the Commission could have done no more than what it did to assure that the Complainant received notice of the Pre-Hearing Conference. Any problem between the Complainant and his roommate in exchange of the mail is not the responsibility of the Commission. It is the responsibility of all complainants to remain informed about their complaint and its progress. Given the evidence that the notice was actually received at the Complainant's address and the Complainant's failure to provide any reason why his roommate's failure to give him the mail represents an unusual or unique circumstance, the Commission will not re-open or re-instate the complaint.

The Commission feels that a demonstration of some uniqueness is important because in the opinion of the Commission, the signatures for many of the return receipts included in the Commission file appear to be identical to the one in question. This leads to conflicting inferences that the Commission does not need to resolve at this time. One inference is that the Complainant signed for the notice and his statement that he did not receive the notice is untrue. The other inference is that the Complainant's roommate had signed for previous letters and there had been no trouble in exchanging mail with the Complainant. If the second explanation is to be believed, there must be a demonstration of why this particular circumstance was different from the earlier ones.

Under the circumstances of this case, the Commission will not re-open the complaint.

ORDER

The Complainant's request to re-open his complaint is denied. The complaint is hereby dismissed.

Signed and dated this 4th day of November, 1993.

EQUAL OPPORTUNITIES COMMISSION

Booker Gardner
President