

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

<p>Jane Downing 705 Orton Ct., # 4 Madison, WI 53703</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Labor Ready 3361 E. Washington Ave. Madison, WI 53704</p> <p style="text-align: center;">Respondent</p>	<p>DECISION AND FINAL ORDER OF THE MADISON EQUAL OPPORTUNITIES COMMISSION</p> <p>Case No. 22462</p>
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### **BACKGROUND**

On June 24, 1996, the Complainant, Jane Downing, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Labor Ready, discriminated against the Complainant on the basis of her sex when it failed or refused to offer her employment and therefore violated Section 7(a) of the Madison Equal Opportunities Ordinance, Mad. Gen. Ord. 3.23 et seq. (ordinance). Early efforts to mediate the complaint failed and an investigation of the allegations of the complaint was completed. Subsequent to the investigation, an Investigator/Conciliator for the Commission issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant on the basis of her sex in violation of the ordinance.

Once again, efforts to conciliate the complaint failed and the complaint was transferred to the Hearing Examiner for a public hearing on the merits of the complaint. The Hearing Examiner scheduled a Pre-Hearing Conference for 9:30 a.m. on September 20, 1996. The purpose of the Pre-Hearing Conference is to set a date for hearing, narrow and establish the issues for hearing and set various interim dates for disclosure of witnesses, the end of discovery and the exchange of exhibits. The Notice of Pre-Hearing Conference notes that failure to appear may result in an order disposing of the complaint.

The Respondent failed to appear at the time and place set for the Pre-Hearing Conference. It had not contacted the Hearing Examiner prior to the time of the Pre-Hearing Conference to indicate that it would be unable to attend or to request that the Pre-Hearing Conference be rescheduled.

When the Respondent failed to appear within thirty (30) minutes of the time set for the Pre-Hearing Conference, the Hearing Examiner placed the Complainant under oath and took her testimony. At the end of the Complainant's testimony, the Hearing Examiner indicated that he would issue an Order to Show Cause why a default judgment should not be entered.

On September 25, 1996, the Hearing Examiner issued an Order to Show Cause giving the Respondent the opportunity to explain its failure to appear. On October 2, 1996, the Respondent submitted an

explanation of its failure to appear and requested that a new date for the Pre-Hearing Conference be set. After consideration of the materials provided by the Respondent, the Hearing Examiner determined that the Respondent had failed to demonstrate good cause for its failure to appear at the Pre-Hearing Conference.

Having determined that there was not good cause for the Respondent's failure to appear at the Pre-Hearing Conference, the Hearing Examiner prepared Recommended Findings of Fact, Conclusions of Law and Order based upon the Complainant's testimony. The Hearing Examiner issued his Decision and Order on the merits of the complaint on November 20, 1996. The Hearing Examiner concluded that the Respondent had discriminated against the Complainant on the basis of her sex and recommended a make-whole remedy and ordered the Respondent to attend a training session to educate the Respondent and its managers about the requirements of the ordinance. The Respondent was also ordered to post certain information about the law in its office. The Hearing Examiner issued his Decision regarding his Order to Show Cause and the Recommended Findings of Fact, Conclusions of Law and Order at the same time.

The Respondent timely appealed the Hearing Examiner's combined Decision and Recommended Findings of Fact, Conclusions of Law and Order. The Commission met on August 21, 1997 to consider the Respondent's appeal. Participating in the Commission's consideration were Commissioners: Hands, Turner, Verriden, Vedder, Washington, Zarate and Zipperer.

### **DECISION**

The Commission determined that the Respondent had offered three (3) different explanations for its failure to appear at the Pre-Hearing Conference. These explanations ranged from a conflict in the Respondent's local manager's calendar, to the local manager forgot about the Pre-Hearing Conference, to the corporate lawyer for the Respondent was unable to appear and didn't let the local manager know in time to inform the Hearing Examiner. The Commission joins in and adopts the Hearing Examiner's evaluation of these explanations. The Commission additionally finds that the Respondent's proffering of three (3) inconsistent explanations demonstrates a complete lack of credibility and that none of the individual explanations can be accepted as the truth. The Commission also finds that the Respondent failed to demonstrate good cause for its failure to appear at the Pre-Hearing Conference.

The Commission reviewed the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order. The Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order accurately reflect the record as compiled by the Hearing Examiner. The record contains sufficient testimony to support the Hearing Examiner's conclusion that the Respondent had discriminated against the Complainant on the basis of her sex. The record reveals no information to indicate that the Complainant lacked credibility or that her testimony was some how untrustworthy. The Commission adopts the Hearing Examiners Recommended Findings of Fact, Conclusions of Law and Order as its own.

The Commission reviewed the Hearing Examiner's proposed remedy. The Commission finds that the Hearing Examiner's proposed Order adequately makes the Complainant whole and serves to effectuate the preventative purposes of the ordinance by requiring training and posting. The Commission adopts the Hearing Examiner's proposed Order as its own.

### **ORDER**

The Commission affirms the Hearing Examiner's determination that the Respondent failed to demonstrate good cause for its failure to appear at the Pre-Hearing Conference and his Recommended

Findings of Fact, Conclusions of Law and Order. The Commission adopts the Hearing Examiner's decision and incorporates it by reference into this Decision and Final Order.

Joining in this Decision and Order are Commissioners: Hands, Turner, Vedder, Verriden, Washington, Zarate and Zipperer.

Signed and dated this 29th day of August, 1997 for the Madison Equal Opportunities Commission.

Vicki Washington,  
President