

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

<p>Olinka Harris 18 Granby Cr. Madison WI 53704</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Accent Service Company, Inc. 596 Grand Canyon Dr. Madison WI 53719</p> <p style="text-align: center;">Respondent</p>	<p>HEARING EXAMINER'S DECISION AND ORDER ON RESPONDENT'S MOTION TO DISMISS</p> <p>Case No. 22576</p>
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**BACKGROUND**

On January 10, 1997, the Complainant, Olinka Harris, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Accent Service Company, Inc. failed to hire her or terminated her employment immediately after hiring her, because of her race and/or her conviction record. The Respondent denies that it ever hired the Complainant and asserts that it did not discriminate against the Complainant on any basis.

The complaint was transferred to a Commission Investigator/Conciliator for processing of the complaint. After investigating the allegations, the Investigator/Conciliator, on April 4, 1997, issued an Initial Determination concluding that there was probable cause to believe that the Respondent had discriminated against the Complainant on the basis of conviction record, but that there was no probable cause to believe that the Respondent had discriminated against the Complainant on the basis of race. The Complainant did not appeal the Initial Determination's finding of no probable cause.

The complaint was transferred to the Hearing Examiner for a public hearing on the remaining issues. A Pre-Hearing Conference was held on August 21, 1997. As a result of that conference, the Hearing Examiner set January 22, 1998 as the date for the hearing on the allegations of the complaint. The parties also agreed to various interim dates including one for the cut-off of discovery. On December 22, 1997, the Respondent filed a Motion to Compel discovery because of the Complainant's failure to respond to interrogatories propounded by the Respondent. The Hearing Examiner set a hearing on the Respondent's motion for December 29, 1997. The Complainant failed to appear.

On January 6, 1998 the Hearing Examiner issued an order compelling the Complainant to respond to the interrogatories. On January 13, 1998, the Hearing Examiner took the scheduled hearing off the calendar to permit the Complainant to respond to the outstanding discovery requests. The Hearing Examiner directed the Respondent to inform him if there were additional matters to be resolved or if the Complainant continued to default in her responsibility.

The Hearing Examiner set a status conference for April 21, 1998. The Complainant failed to appear at the scheduled time. Subsequent to the date set for the status conference, the Hearing Examiner became aware that the Complainant had not received notice of the status conference in time to attend. The Hearing Examiner set a date for another status conference.

On May 28, 1998, the parties appeared at a status conference to discuss outstanding discovery and possible dates for a hearing. At that time, the Respondent wished the Complainant to provide details of earnings and signed authorizations so that the Respondent could contact past employers of the Complainant. The Hearing Examiner ordered the Complainant to provide the requested information and authorizations on or before June 3, 1998.

The Complainant apparently provided the requested information on June 3, 1998 but did not and has not provided the requested authorizations.

On July 9, 1998, the Hearing Examiner issued an Order to Show Cause why the complaint should not be dismissed for the Complainant's failure to comply with the earlier order. The Complainant was required to submit a response on or before July 27, 1998. On July 29, 1998, the Hearing Examiner received the envelope in which he had sent the order back and marked "unclaimed," but with a new address. The Hearing Examiner reissued the Order to Show Cause on July 31, 1998 giving the Complainant until August 14, 1998 to show cause why the complaint should not be dismissed. He mailed the new order to the new address indicated on the returned envelope.

The Hearing Examiner did not receive any response from the Complainant and no cause has been shown to date.

## **DECISION**

The Complainant in this case has demonstrated an utter disregard for the Commission's orders and procedures. She has twice failed to comply with orders of the Hearing Examiner to comply with the Respondent's reasonable discovery requests. The Complainant has failed to keep the Commission properly informed of her general whereabouts for purposes of scheduling hearings and other proceedings. The Complainant has now failed or refused to claim mail necessary to maintain her action.

Given the Complainant's extensive record of noncompliance with reasonable orders of the Hearing Examiner and her refusal to actively participate in the processing of her complaint, the Hearing Examiner has no recourse but to dismiss the complaint with prejudice. Filing of a complaint before the Commission creates a substantial obligation for the Complainant to meet various requirements intended to assure that both parties are given a fair opportunity to present both sides of a dispute. If the Complainant is unwilling or unable to meet these obligations, then she should not have filed her complaint or should have willingly withdrawn it. Since she did file the complaint and has not voluntarily withdrawn it, it falls to the Hearing Examiner to take those steps for the Complainant.

Neither the Ordinance nor the Rules of the Commission give the Hearing Examiner the authority to grant attorney's fees to the Respondent. This case would otherwise appear to be an appropriate one for such consideration. The Complainant's level of noncompliance approaches one consistent with harassment of the Respondent. At an early hearing on a Motion to Compel Discovery filed by the Respondent to gain the deposition testimony of several non-party witnesses, one of the witnesses indicated that the Complainant had told the witness that it was not necessary for the witness to respond to the Respondent's subpoena. This appears to be an incident that could be characterized as

intentional misconduct on the part of the Complainant. The Complainant has not yet had an opportunity to explain her statement to the witness, so the Hearing Examiner will not make a specific finding of intentional misconduct. However, the record, when taken as a whole, would support an award of attorney's fees to the Respondent, if the Hearing Examiner had the authority to make such an award.

### **ORDER**

The complaint is hereby dismissed with prejudice. The Complainant may seek review of this decision by filing a written request within twenty (20) days of the undersigned date. Such a request must be filed in the offices of the Commission no later than 4:30 p.m. on the indicated date or on the next business day if the indicated date falls on a holiday or weekend.

Signed and dated this 24th day of August, 1998.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III  
Hearing Examiner