

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MONONA AVENUE
MADISON, WISCONSIN**

<p>Luvinia Thompson 1023 Fiedler Lane, #3 Madison, WI 53713</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Wisconsin Life Insurance Company 709 North Segoe Road Madison, WI 53713</p> <p style="text-align: center;">Respondent</p>	<p>RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Case No. 2479</p>
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A complaint was filed with the Madison Equal Opportunities Commission (MEOC) dated December 3, 1980 alleging discrimination on the basis of race in regard to employment (specifically, refusal to hire). Subsequent to an investigation by MEOC Human Relations Investigator Mary Pierce, an Initial Determination dated March 16, 1981 was issued finding Probable Cause to believe that discrimination had occurred as alleged.

Conciliation was waived and/or failed. The case was then certified to public hearing. A hearing was held beginning on August 24, 1981 and concluding on August 25, 1981. The Complainant appeared in person and by lay advocate Michael Thompson (her husband). The Respondent appeared by Attorney James K. Ruhly of MELLI, SHIELS, WALKER AND PEASE, S.C. and by employee-representative Rosalie Beck Detomer. Based on the record of the hearing and after consideration of any written arguments submitted by the parties, the Examiner proposes the following Recommended Findings of Fact, Conclusions of Law and Order:

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Luvinia Thompson, is a black female residing in the State of Wisconsin.
2. The Respondent, Wisconsin Life Insurance Company, is an insurance company doing business in the City of Madison.
3. The Complainant, in response to a newspaper advertisement, applied for a position with the Respondent as a Claims Processor. She filed a written application on April 21, 1981 with the Respondent for said Claims Processor position.
4. The Claims Processor position sought was a four-hour per day (5:00 p.m. to 9:00 p.m.) job, four days per week. The job included, inter alia, the following skill requirements:
 - a. working with numbers;
 - b. balancing and computing accounts;
 - c. putting numerical information into a computer (CRT).
5. The Complainant, as part of the regular application process, took a "basic math skills" test administered by the Respondent. She scored 72 correct out of 76 problems attempted in a given time period.
6. After taking the math test, the Complainant was interviewed by one of the Respondent's personnel assistants, Sharifa Merchant.
7. Subsequent to the interview with Merchant, the Respondent contacted the Complainant's most recent employer noted on the Complainant's application. The previous employer, the University of Wisconsin Credit Union, conveyed the following information regarding the Complainant (see Respondent's Exhibit 12):

"Terminated -- not able to perform duties -- which dealt with computer -- was good with public. Very personable. Found it hard to balance at the end of the day. Took too long over it and this held up customers."

In response to the Respondent's question about whether the Credit Union would re-employ the Complainant, the Credit Union indicated "not for that position." Ms. Merchant recorded the telephone

conversation for the Respondent and received the employment information from the Complainant's former supervisor, Franceen Heeren, at the Credit Union.

8. Merchant relayed the information received from the Credit Union to Pamela Yelton (now Josheff), Vice President-Administration and in charge of Personnel for the Respondent.
9. Merchant had been impressed by the Complainant during the personal interview and conveyed that information to Yelton. Yelton suggested that Merchant call another of the Complainant's previous employers in order to determine whether or not the Credit Union experience was a fluke and to see if any information could be obtained to mitigate the information provided by the Credit Union.
10. When making inquiries of previous employers regarding the previous employment of Claims Processor and similar applicants, the Respondent asks for information using a form entitled "Employment Reference Inquiry." The Respondent does not deviate from the information requested on the form and asks for no more or no less information than indicated on the form.
11. Merchant contacted AVCO Financial Services, the Complainant's previous employer from March, 1978 until January, 1979, immediately prior to the Credit Union position. Merchant was informed by telephone that the Complainant had left AVCO because she was "moving out of town." The Complainant was described by AVCO as generally being "reliable" with "no personality problems" and as one who "got along well with people." (See Respondent's Exhibit 13.)
12. Merchant communicated the AVCO information to Ms. Yelton. Merchant also tried to contact another of the Complainant's previous employers but could not reach the person most familiar with the Complainant's work (see Respondent's Exhibit 14).
13. In the views of both Yelton and Merchant, the AVCO information did not contradict or mitigate in any way the more recent U.W.-Credit Union information, and Yelton determined to end any further consideration of the Complainant for the Claims Processor position.
14. The Respondent hired a white female, Esther Gaganis, for the Claims Processor position. Gaganis had scored 77-79 attempted and 77 correct - on the basic math skills test. The Respondent had no negative references regarding Gaganis' ability to perform the job.
15. Gaganis had been interviewed by Yelton while Merchant, who had been promoted to Personnel Assistant on April 1, had observed. Merchant subsequently had interviewed the Complainant without Yelton being present.
16. Persons who can type can operate a CRT as required in the Claims Processor job. Even some persons who cannot type can operate a CRT to an adequate extent as required in the Respondent's Claims Processor job. Previous CRT experience was not a necessary job requirement for the Claims Processor job, although such experience was desirable.
17. The Respondent customarily performs only one reference check of previous employers for Claims Processor and similar applicants. As part of its affirmative action program, the Respondent will perform more than one reference check of previous employers for "minority" applicants where the Respondent has received a negative reference from the original previous employer contacted. The purpose of the additional reference check(s) is to ascertain if any contradictory or mitigating information is available sufficient to warrant further consideration of the applicant.
18. The Respondent does not contact those previous employers which an applicant indicates that s/he does not wish to be contacted. The Complainant did not insert any employer's name in the application form space for indicating any employer not to be contacted.
19. In July, 1980, the Complainant applied for a position as an Accounting Clerk II after having received a document from the Wisconsin Job Service and after having called the Job Service to find out the name of the employer and how to apply. Said Accounting Clerk II position required "balancing" skills.
20. The Complainant voluntarily completed and submitted a second application form on July 14, 1981 without having been told to do so and without asking whether it would be necessary to do so.
21. She gave the application to Gene Sprecher, Respondent's only other Personnel Assistant in addition to Merchant.
22. Sprecher requested that the Complainant take the "basic math skills" test. After being informed by the Complainant that she had taken it just a few months earlier and had scored 72 correct out of 76 attempts, Sprecher indicated there would be no need to re-take the test.
23. Sprecher and Thompson then discussed the requirements and duties of the Accounting Clerk II position. The Complainant spoke about her past employment, but did not refer to the U.W.-Credit Union which she had not listed on her second application.
24. Sprecher told Thompson upon the conclusion of the interview that if the recollection of her earlier math test results were accurate, that she appeared qualified and might be asked to return for an additional interview with the department supervisor. Sprecher also said that if she did not hear from the Respondent in the next week or so, she could assume she was no longer being considered for the position.
25. Shortly after the Complainant had departed, Sprecher spoke with Merchant who had overheard part of the interview or had seen Ms. Thompson as she was leaving. Merchant assisted Sprecher in his search for the earlier math test results. Sprecher and Merchant together located all of the earlier papers; Complainant's April

- 21, 1980 application, the resume, the math test and the several "Employment Reference Inquiry" forms completed by Merchant.
26. Sprecher confirmed the math test score, and then noticed that the Complainant had omitted on her July application the U.W.-Credit Union as well as a far earlier employer, Maggie's Grocery where she had worked for eleven months about nine years ago, which were included on her April application.
 27. Both the April and July applications contained the Complainant's signature and declaration that the information was "true, correct and complete" to her knowledge.
 28. Sprecher did not process the Complainant's application further based on Merchant's April reference inquiries and her employer omissions on the July application.
 29. Elly M. Wroblewski, a white female, was hired for the Accounting Clerk II position. Wroblewski had scored 69 out of 69 correct on the basic math skills test. Wroblewski had worked with a Wisconsin based insurance company from September, 1971 to June, 1975 and Respondent's inquiry to her employer revealed no negative information about her performance. Like the Complainant, Wroblewski possessed CRT skills. Wroblewski also had studied accounting in school. The Respondent did not check with Wroblewski's two most recent employers, the University Hospital Food Service in Madison and the Davis Travel Agency in Frankfurt, Germany. Sentry Insurance, the reference contacted, did not have information available regarding Wroblewski's job performance, other than her attendance was no problem.
 30. On July 17, 1980, the Complainant called Sprecher. Sprecher told her that the position had been filled, but that individualized reasons for non-employment could not be communicated to the applicant due to the volume of applications.
 31. The Respondent had hired 3 blacks for Claims Processor positions in 1980; one prior to the Complainant's April application and two subsequent. Merchant screened the two black applicants who were hired subsequent to the Complainant's April application.
 32. The Respondent rejected 12 applicants for hire in 1980 due to negative job references: ten whites, one Hispanic and the Complainant. Six of the applicants (including the Complainant) were screened out prior to seeing a supervisor.
 33. The Complainant had worked full time, 40 hours per week, for the State of Wisconsin since sometime in August, 1980 to at least sometime in August, 1981. She was a clerical LTE for the Wisconsin Unemployment Compensation Division and then for the Department of Veteran Affairs. She earned \$4.926 per hour at each job. She left the Department of Veteran Affairs to return to school full time at the University of Wisconsin for the Fall, 1981 semester beginning early September, 1981.
 34. The Accounting Clerk II position paid \$3.75 per hour.

RECOMMENDED CONCLUSIONS OF LAW

1. The Complainant is a member of the protected class of race within the meaning of Section 3.23, Madison General Ordinances.
2. The Respondent is an employer within the meaning of Section 3.23, Madison General Ordinances.
3. The Respondent did not discriminate against the Complainant on the basis of race in regard to refusal to hire her for either the Claims Processor or Accounting Clerk II position.

RECOMMENDED ORDER

That this complaint be and hereby is dismissed.

MEMORANDUM OPINION

The following discussion will construe the facts in the Complainant's favor and assume Complainant has established a prima facie case of discrimination.¹ Once the Complainant has overcome that initial burden, the burden of proof shifted to the Respondent to articulate a legitimate, non-discriminatory reason for the non-hires. In this case, the Respondent articulated legitimate reasons for not hiring the Complainant for either position as discussed below. Complainant failed to show that the reasons were either pretextual or unworthy of credence.² Consequently, the Complainant failed in carrying her burden of proof.

I. Claims Processor Job

The Complainant, a black female, was not hired for this position based on the reference the Respondent had received from the U.W.-Credit Union indicating that she had problems "balancing" while employed there. The person hired for the job, a white female, had a higher score than the Complainant (77 versus 72) on the basic math skills test, but she had no CRT experience which the Complainant did have. However, the evidence shows that anyone who can type can operate a CRT, and even some persons who cannot type can adequately operate a CRT. Consequently, while the

Complainant's past CRT experience was helpful, it was not necessary and the Respondent certainly was not bound to ignore her negative employment reference regarding her "balancing". It was not discriminatory where two employees were essentially equally qualified for the Respondent to choose one with no balancing experience rather than one with negative balancing experience (the Complainant). In other words, whatever advantage the Complainant had with her CRT experience was offset by the negative reference.³

Also, the Respondent gave the Complainant the benefit of the doubt by checking an additional reference, a practice generally followed for minority applicants but not for white applicants.⁴

II. Accounting Clerk II Job

Again, it was not discriminatory for the Respondent where two applicants were otherwise about equally qualified to consider the negative balancing references from the U.W.-Credit Union.⁵ Nor was it discriminatory for the Respondent to consider the Complainant's omission of the U.W.-Credit Union from her July application (as the Complainant failed to show that any white applicants who the Respondent knew had omitted recent previous employers from an application were nevertheless hired or passed on in the interview process).⁶

Overall, the Complainant, an otherwise good employee, seems to be unwilling to accept the U.W.-Credit Union's negative job reference regarding her balancing as true. But the evidence clearly shows that the Credit Union gave the negative reference. The Complainant could take up the matter with the U.W.-Credit Union, but the Complainant has made no showing that the Wisconsin Life Insurance Company discriminated against her by their good-faith reliance on the Credit Union reference as given.⁷

Signed and dated 13th day of October, 1981.

Allen T. Lawent
Hearing Examiner

FOOTNOTES

¹ While there is some dispute by the Respondent that the Complainant was qualified for the jobs in questions, I construe the facts in the Complainant's favor in order to illustrate that she did not carry her burden of proof in any event (see McDonnell Douglas v. Green, 411 U.S. 792, 5 FEP Cases 965 (1973) for discussion of the prima facie case).

²Texas Department of Community Affairs v. Burdine, 450 U.S. _____, 25 FEP Cases 113 (1981).

³Also probative that no discrimination occurred in either job hire decision are the facts that ten of the twelve applicants rejected for a negative job reference (all positions) were white. The Respondent hired 3 black Claims Processors during 1980.

⁴The Respondent checked with AVCO Financial Services to determine if any reference mitigating or contradicting that of the U.W.-Credit Union reference could be found. However, the Respondent uses the same format in making employment reference inquiries, and that format does not include direct questions regarding "balancing". Nevertheless, the effort of contacting an additional reference is more of an effort, in light of its affirmative action goals, than the Respondent generally expends for white applicants who have initial negative references.

⁵The white female hired as the Accounting Clerk II had a slightly lower score on the basic math skills test (69 versus 72), but also had CRT experience like the Complainant. In addition, she had accounting courses which the Complainant did not. Finally, it was not unreasonable for the Respondent to skip over her most recent employers and check with a more remote job-related employer where the purpose of skipping over was not shown to be a purposeful avoidance of a negative reference.

⁶The omission of Maggie's Grocery was inconsequential.

⁷Even had the Complainant prevailed for either job, her backpay remedy would have been limited to the time in August, 1980 when she received her first State LTE job, as she earned more at the State jobs than she would have at either of Respondent's jobs, then quit the second LTE job to attend school full time. At most, she would have received money from April to August, 1980 (15 hours per week) or July to August, 1980 (full time). However, she did not prevail in either instance.