

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OSCAR CARTER, JR., Appellant,

vs.

UNIVERSITY OF WISCONSIN-GREEN BAY, Respondent.

Case 11
No. 63843
PA(sel)-15

Decision No. 31403

Appearances:

Oras Carter, Jr., 4665 North 28th Street, Milwaukee, Wisconsin 53202, appearing on his own behalf.

Melissa Jackson, Attorney, Office of the Chancellor, University of Wisconsin-Green Bay, David A. Cofrin Library, Suite 810, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001, appearing on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On July 13, 2004, Oras Carter, Jr. filed an appeal with the Wisconsin Employment Relations Commission asserting among other matters that the University of Wisconsin-Green Bay had failed to provide him with a fair opportunity to be considered for the position of Human Resources Manager.

Carter failed to appear at the hearing on his appeal and the University moved to dismiss the appeal.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Oras Carter, Jr., herein Carter, filed an appeal with the Wisconsin Employment Relations Commission asserting among other matters that the University of Wisconsin-Green Bay, herein UW, had failed to provide him with a fair opportunity to be considered for the

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position of Human Resources Manager. His appeal listed his address as 4665 North 28th Street, Milwaukee, Wisconsin. Carter has never advised the Commission of a change in address and all written communications from the Commission to Carter have been mailed to this address. None of said communications have been returned to the Commission.

2. During a January 24, 2005 telephone conference with Carter and a representative of the University, Hearing Examiner Paul Gordon advised Carter that hearing on his appeal would be held April 12 and 13, 2005. By letter to Carter and the University dated January 25, 2005, Examiner Gordon confirmed the April 12 and 13, 2005 hearing dates.

3. Carter failed to appear at the April 12, 2005 hearing in person or by representative and telephonic attempts by Gordon to contact Carter that day were unsuccessful. UW then made a motion to dismiss the appeal pursuant to PC 5.03(8).

4. By letter dated April 13, 2005, Examiner Gordon advised Carter that the motion to dismiss had been made and gave him 10 days to respond to the motion.

5. Carter did not respond to the motion to dismiss.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over the Carter appeal pursuant to Sec. 230.44(1)(d), Stats.

2. Carter had the burden of establishing that UW's action was illegal or an abuse of discretion.

3. Carter has failed to show good cause for his failure to appear at the hearing on his appeal and has failed to prosecute his appeal.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

UW's motion to dismiss is granted and the complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties:

Oras Carter, Jr.
4665 North 28th Street
Milwaukee, WI 53202

Kevin Reilly, President
UW System
1720 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

University of Wisconsin-Green Bay

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

As reflected in the Findings of Fact, Carter failed to appear at the duly noticed hearing on his appeal and has failed to provide any explanation for that failure. As reflected in the Conclusions of Law, Carter had the burden of proof. Therefore, the Commission concludes that the UW's motion to dismiss the appeal due to a failure to prosecute should be granted¹ SALAZAR V. DHSS, CASE NO. 84-0038-PC (6/84).

Dated at Madison, Wisconsin, this 19th day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

¹ Section PC 5.03(8)(a), Wis. Admin. Code provides in part:

If the absent party has the burden of proof, the commission shall consider a motion to dismiss by the parties present without requiring the presentation of any evidence.