

State of Wisconsin



Labor and Industry Review Commission

Elsie Cordero, Complainant

Fair Employment Decision¹

Milwaukee Board of School Directors,

Dated and Mailed:

ERD Case No. CR201600403
EEOC Case No. 26G201600486C

September 27, 2018

A petition for commission review must be received within 21 days after the administrative law judge's decision was mailed to the party's last-known address. The petition in this matter was filed late and is therefore **dismissed**. The administrative law judge's decision remains in effect.

By the Commission:

/s/

Georgia E. Maxwell, Chairperson

/s/

Laurie R. McCallum, Commissioner

/s/

David B. Falstad, Commissioner

¹ **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review.

Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

Memorandum Opinion

An administrative law judge for the Equal Rights Division (hereinafter “ERD”) of the Department of Workforce Development issued a decision in this matter dismissing the complaint based upon the complainant’s failure to appear at a hearing. The complainant filed a petition for commission review of that decision. The issue to be decided is whether the complainant’s petition for review was timely filed and, if not, whether there is any circumstance under which the petition could be accepted.

The applicable statutes provide that a party who is dissatisfied with the findings and order of the examiner may file a written petition with the department for review by the commission of the findings and order, that if no petition is filed within 21 days from the date that a copy of the findings and order of the examiner is mailed to the parties the findings and order shall be considered final, and that if the commission is satisfied that a petitioner has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department. Wis. Stat. § 111.39(5), Wis. Stat. §106.52(4)(b).

Wisconsin Admin. Code § LIRC 1.02 provides, in relevant part, as follows:

All petitions for commission review shall be filed within 21 days from the date of mailing of the findings and decision or order . . .

Wisconsin Admin. Code § LIRC 1.025 provides, in relevant part, as follows:

(1) Petitions for review may be filed by mail or personal delivery. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the commission or by the division of the department to which the petition is mailed, except that petitions for review in unemployment insurance cases under s. 108.09 or 108.10, Stats. which are filed by mail or personal delivery are deemed filed when received or postmarked as provided for in s. LIRC 2.015.

(2) Except as provided for in subs. (3) and (4), petitions for review may not be filed by e-mail or by any other method of electronic data transmission.

The administrative law judge’s decision having been dated and mailed on April 19, 2018, the last day on which a timely petition for review could have been filed was May 10, 2018. The complainant’s petition for review was not filed until June 4, 2018.

In her petition the complainant explains that she failed to appear at her hearing

because she was “under custody” and did not receive her mail until after May 17, 2018. Presuming this explanation also applies to the complainant’s failure to file a timely petition, it is without merit. Although the statute provides that the appeal deadline may be extended when an appeal is late due to an exceptional delay in the receipt of the decision, this exception does not apply to situations in which the complainant herself is responsible for the delay. *See, Hadelli v. ESSCO Incorporated*, ERD Case No. 8900333 (LIRC April 9, 1992). The administrative law judge’s decision was mailed to the complainant at her last address of record with the department and, presumably, was delivered to her at that address in due course. If the complainant failed to receive her copy of the complaint in a timely manner, this was related to her own actions in failing to keep the department apprised of changes in her mailing address or to take other steps to ensure that she received her mail during her absence from home.

Under all the circumstances, the commission finds that the petition for commission review was not timely filed, and that the complainant was not prejudiced because of exceptional delay in the receipt of a copy of the decision, within the meaning of the applicable statutes. The petition for review is, therefore, dismissed.