

**State of Wisconsin  
Labor and Industry Review Commission**

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**Michael Young,**  
Complainant

**Accurate Full Service Vehicle Center,**  
Respondent

ERD Case No. CR201702474

**Public Accommodation Decision<sup>1</sup>**

**Dated and Mailed:**

May 30, 2019

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The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

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Michael H. Gillick, Chairperson

/s/

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David B. Falstad, Commissioner

/s/

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Georgia E. Maxwell, Commissioner

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<sup>1</sup> **Appeal Rights:** See the pink 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>.

### **Procedural History**

On September 12, 2017, the complainant filed a complaint with the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development, alleging that the respondent discriminated against him based upon his race, in violation of the Wisconsin Public Accommodations and Amusements Law. On June 19, 2018, an equal rights officer for the Division issued an initial determination finding no probable cause to believe that discrimination occurred. The complainant filed a timely hearing request and the matter was certified to hearing.

On July 31, 2018, the administrative law judge assigned to the case issued a notice of a pre-hearing telephone conference to be held on August 13, 2018. On August 2, 2018, the complainant telephoned the Division and told a Division representative that he did not want the administrative law judge to whom the case was assigned to hear his case. The complainant asked the administrative law judge's supervisor to contact him. On August 6, 2018, the Civil Rights Bureau Director sent the complainant a letter notifying him that he did not have the authority to remove the administrative law judge from the proceedings and that if the complainant wanted to submit a request for recusal he could submit a written affidavit to the administrative law judge. The complainant did not do so.

The complainant appeared at the pre-hearing conference on August 13, 2018, and stated that he wanted the administrative law judge off his case. The administrative law judge told the complainant he needed to put his request in writing, and indicated that, at this point, he was going to schedule the hearing. The complainant stated that he would not appear. The administrative law judge notified the complainant that the hearing was scheduled for December 7, 2018, and that a hearing notice would be sent to the parties.

On August 17, 2018, the complainant submitted a letter to the Division containing various allegations against the administrative law judge. In his letter the complainant stated that he would never have another hearing with this administrative law judge.

On October 18, 2018, the Division issued a notice of hearing stating that the hearing would be held on the date and time scheduled at the pre-hearing conference. The hearing notice indicated that the hearing would be held before the same administrative law judge.

The respondent appeared at the December 7, 2018 hearing and was ready to proceed, but the complainant did not appear. On December 12, 2018, the administrative law judge issued a decision dismissing the complaint based upon the complainant's failure to appear. The complainant filed a timely petition for commission review of the administrative law judge's decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

### **Memorandum Opinion**

In his petition for commission review the complainant asserts that the administrative law judge “has always hated and abused Negroes.” The complainant states that he asked the administrative law judge to remove himself from his case, but he unlawfully refused to do so. The complainant indicates that he will never come to any hearing with this administrative law judge.

As indicated above, the complainant’s complaint was dismissed based upon his failure to appear at the hearing. A non-appearing complainant, in a petition to the commission, must offer an explanation which, if proved, would demonstrate that he had good cause for his failure to appear at the hearing, i.e., that his failure resulted from excusable neglect, the degree of neglect a reasonably prudent person might be expected to commit in similar circumstances. *Mason v. ASI Technologies*, ERD Case No. 199703647 (LIRC April 17, 1998). The issue presented in this appeal is whether the complainant had good cause for failing to appear.

The complainant requested that the administrative law judge recuse himself from his case.<sup>2</sup> The administrative law judge refused the request and the complainant chose to not appear at the hearing as a result. However, the commission has repeatedly held that a party who fails to persuade an administrative law judge to remove himself from the case must proceed to hearing with the administrative law judge, then raise the administrative law judge’s failure to remove himself as grounds for appeal in the event of an unfavorable decision. If a party refuses to proceed with the hearing and the complaint is dismissed for that reason, the claim that the denial of the recusal request was error must be considered to have been abandoned. *Clemons et al. v. Opportunities Industrialization Center of Greater Milwaukee*, ERD Case No. 200102575 (LIRC Feb. 14, 2003). *See, also, Casetta v. Zales Jewelers*, ERD Case No. 200204189 (LIRC June 14, 2005); *Jackson v. Transwood, Inc.*, ERD Case No. CR200303522 (LIRC April 27, 2007); *Mullins v. Wauwatosa School District*, ERD Case No. CR200800326 (LIRC May 17, 2013). The complainant ought to be well aware of the fact that a party who unsuccessfully seeks recusal of an administrative law judge must still appear at the hearing, given that the commission explained this to him in a prior decision involving one of his own complaints. *See, Young v. Valley Packaging Industries*, ERD Case No. 9001485 (LIRC April 27, 1992).

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<sup>2</sup> It should be noted that the complainant did not follow the procedures for making a request for recusal contained in DWD § 218.16 of the administrative rules, which required him to submit “a timely and sufficient affidavit” showing “personal bias or other reason.”

Because the complainant did not appear at the hearing and did not demonstrate good cause for failing to appear, the commission does not reach the issue of whether the administrative law judge erred in refusing to grant a request to recuse, and that argument will not be addressed in this decision. The dismissal of the complaint is affirmed.

cc: Mark Broehm