

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

Vickey Davidson
Complainant

State Collection Service, Inc.
2509 South Stoughton Road
Madison, WI 53716
Respondent

ERD Case No. CR201701844

Fair Employment Decision¹

Dated and Mailed:

August 13, 2019
davidvi_rsd.doc:107

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

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

David B. Falstad, Commissioner

/s/

Georgia E. Maxwell, 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>.

Procedural Posture

This case is before the commission to consider the complainant's petition from a decision of an administrative law judge for the Equal Rights Division of the state Department of Workforce Development. On June 28, 2019, the administrative law judge dismissed the complaint pursuant to Wis. Stat. § 111.39(3), which states:

The department shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the department concerning the complaint and if the correspondence is sent by certified mail to the last-known address of the person.

The complainant filed a timely petition for review by the commission.

Memorandum Opinion

Summary of the facts and proceedings in the ERD

In June 2017 the complainant filed a charge with the Equal Employment Opportunity Commission (EEOC), a federal agency that receives and investigates employment discrimination claims alleging violations of federal civil rights laws. The complainant's mailing address at that time was P.O. Box 1523, Rockford, IL 61110.

The complainant's EEOC charge also appeared to state a claim under the Wisconsin Fair Employment Act (WFEA). Complaints alleging a violation of the WFEA are investigated by the state Equal Right Division (ERD).

On the charge of discrimination, immediately above the complainant's signature, is the following:

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

The EEOC and the ERD have a work-sharing agreement which provides that if a complaint is filed first with the EEOC, the EEOC would investigate first and the ERD would not conduct an investigation until the EEOC closed its case. In June 2017, the ERD sent a notice to the complainant and respondent, explaining this process.

The EEOC concluded its investigation in September 2018, and sent a notice dated September 26, 2018 to the complainant stating that it found reasonable cause to believe that violations of the law had occurred, but that it could not obtain a settlement with the respondent. The notice went on to say that the EEOC was not

going to bring suit against the respondent on behalf of the complainant, and that it was closing its file in the case. The address to which the EEOC mailed this notice was 3322 S. 90th Lane, Tolleson, AZ 85353. The complainant had been living with her daughter and her daughter's children at that address. The EEOC mailed a copy of that notice to the ERD.

In February 2019, the complainant asked the EEOC to send her a copy of her EEOC file. The EEOC replied by email, asking what the complainant's current address was. The complainant replied to the EEOC that it was P.O. Box 1523, Rockford, IL 61110.

On May 20, 2019, the ERD sent a notice by certified mail, return receipt requested, to the complainant at the address in Tolleson, Arizona. To the ERD, that address was the complainant's last known address, because the last notice the ERD had received was a copy of the EEOC's notice of September 26, 2018, sent to the complainant at the Arizona address. The purpose of the ERD's letter was to find out if the complainant wished to have her complaint reviewed by the ERD. The letter stated in part:

The Wisconsin Equal Rights Division (ERD) has had this case on hold while you pursued the matter with the Federal Equal Employment Opportunity Commission (EEOC). The ERD has been advised that your case has been dismissed by the EEOC. It is now necessary for you to respond to this letter. The response must be received within 20 days of the date this letter was mailed.

...

If we do not receive a response to this letter by June 10, 2019, this case will be dismissed pursuant to Section 111.39(3), Wisconsin Statutes.

The post office delivered the letter and returned the receipt-card to the ERD. The receipt showed that a Leslie Davidson received and signed for the letter on the 28th of May.

The ERD received no response from the complainant by June 10, 2019. On June 14, 2019, the ERD sent a Notice of Dismissal to the complainant, again at the Tolleson, Arizona address, informing her that her ERD complaint was dismissed due to her failure to respond to its certified letter within 20 days of its mailing.

On June 24, 2019, the ERD received a letter from the complainant appealing the dismissal of her complaint. In that letter, the complainant informed the ERD that her address was P.O. Box 1523, Rockford, IL 61110. In the letter the complainant stated:

I am writing to request an appeal of the dismissal. I was unaware that I needed to follow up on anything else with the EEOC. I was only there [at the address in Arizona] to care for my daughter's kids while she underwent a Bone Marrow Transplant. I did not receive mail from anyone else but the EEOC there; so I didn't think to change my address. I would like the [ERD] to investigate my claim. I am no longer in [Arizona]. I had spoken with the EEOC to request my case file and let them know I was in Illinois; I didn't know that I needed to contact the [ERD] as well. My daughter has not been home for a while as she does rehab and must go back for treatments. I was sent a picture of the letter as she was going through the mail. I apologize for the delay in responding and would like this claim to move forward.

An administrative law judge for the ERD considered the complainant's appeal. She affirmed the dismissal, noting that: (1) Wis. Stat. § 111.39(3) requires dismissal for a complainant's failure to respond to correspondence concerning the complaint sent by certified mail to the complainant's last-known address; (2) exceptions to the required dismissal have only been granted in cases where the lateness of the complainant's response was due to circumstances beyond the complainant's control; and (3) in this case, the lateness of the complainant's response was not due to circumstances beyond her control.

The complainant filed a petition for commission review of the administrative law judge's decision, in which she repeated much of what she had written in her appeal to the administrative law judge, but she added that she did not know that she had a case with the Equal Rights Division, and thought her case was over once she had received the determination letter from the EEOC.

Discussion

The ERD is authorized by Wis. Stat. § 111.39(3) to dismiss a complaint if a complainant fails to respond within 20 days to the ERD's correspondence concerning the complainant's case. Commission decisions have required these "20-day letters" to meet certain criteria to justify dismissal of a complaint for failure to timely reply. First, the correspondence must pose some question and inform the complainant that a response is required. Second, the purpose of the correspondence must be to obtain information the ERD needs to process and decide the case and advance the goal of efficiently managing its caseload. [*Palmer v. Wis. Pub. Serv. Corp.*](#), ERD Case No. CR200201890 (LIRC July 30, 2003).

The letter in this case meets these two criteria. It clearly informed the complainant that it was requiring a response from her, and its purpose was to further process and decide the complaint. The commission has already found that an ERD letter asking a complainant to respond within 20 days if he or she wished to have the ERD

review a case after it had been reviewed and closed by the EEOC meets the criteria set out in *Palmer*. [*Johnson v. Badger Meter*](#), ERD Case No. 200404168 (LIRC July 29, 2005).

The letter in this case also meets the statutory requirement that it be sent to the last-known address of the complainant. The last piece of correspondence about the case that the ERD had at the time it mailed its 20-day letter was its copy of the EEOC's determination letter, which was mailed to the Tolleson, Arizona address.

The administrative law judge noted in her decision that the statute requires the ERD to dismiss a complaint if the complainant fails to timely respond to a 20-day letter, but also noted that exceptions have been made for cases in which the failure to timely respond was due to circumstances beyond the control of the complainant. [*McGee v. County of Milwaukee*](#), ERD Case No. CR200503166 (LIRC Aug. 18, 2006); [*Unseth v. County of Vernon*](#), ERD Case No. 200404469 (LIRC June 30, 2005).

In this case, however, the complainant's failure to timely respond was not due to circumstances beyond her control. When she signed her charge with the EEOC, she indicated that she wanted her charge filed with the state agency as well, and acknowledged that she would "advise the agencies if I change my address or phone number..." She may have forgotten this acknowledgement, but because she made it, it was within her control to know that her charge had been filed with the ERD as well as the EEOC, and to therefore know that she needed to keep the ERD advised of any address changes in case the ERD wanted to contact her. It was also within her control, once she had moved back to Rockford, Illinois from Tolleson, Arizona, to arrange to have her daughter notify her right away of any mail delivered to her in Arizona, so that she could timely respond to it. Her daughter received the 20-day letter from the ERD on May 28, 2019, 13 days prior to the expiration of the 20-day time period to respond. It was within her control to learn of that delivery and make a timely response. As the administrative law judge pointed out, this case is similar to the situation in *Johnson v. Badger Meter, supra*, in which the complainant asserted that she did not receive the 20-day letter because he was out of town when the post office attempted to deliver it. The commission held that the complainant's apparent failure to make arrangements for the monitoring or forwarding of his mail during his absence was a circumstance within his control, and did not permit an exception to the requirement that his complaint be dismissed for failure to timely respond to the letter.

The complainant had a duty to keep the agency apprised of its current address or, failing that, to arrange for prompt handling of mail delivered to an address where the recipient knows how to get that correspondence into the complainant's hands. The commission understands that at times difficult personal circumstances can pose challenges. Nevertheless, the statute mandates dismissal for failure to respond to a proper 20-day letter if it is found that a timely response was within the

complainant's control. A timely response was within the complainant's control here, therefore the commission affirms the dismissal of the complaint.

cc: Saul C. Glazer, Attorney for Respondent