

State of Wisconsin



Labor and Industry Review Commission

Ronald J. Puddy
Complainant

General Machinery Corp.
Respondent

ERD Case No. CR201700504
EEOC Case No. 26G201700519C

Fair Employment Decision¹

Dated and Mailed:

March 30, 2020
puddyro_rpr.doc:107

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. No petition in this matter was filed by that date, and the complainant's attempt now to obtain commission review is therefore **dismissed**. The administrative law judge's decision remains in effect.

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>.

Memorandum Opinion

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:

(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.

(3) Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission or of the division of the department to which the petition is being transmitted. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission...

On December 30, 2019 the Administrative Law Judge issued a decision dismissing the complaint in this matter. It was mailed to the last known addresses of the parties. The mailing consisted of a Certification page attesting to the authenticity of the copy of the decision, followed by a page entitled Notice of Appeal Rights, giving instructions to the parties on filing a petition for review by the commission, followed by the 12-page decision, a total of 14 pages.

The Notice of Appeal page stated that a petition for review must be received by the Equal Rights Division's offices in Madison or Milwaukee within 21 days of the date of the decision, and that if a petition for review was not received by that date the ALJ's decision would become final.

Twenty-one days from December 30, 2019 was Monday, January 20, 2020. In early January the complainant, Ronald Puddy, sent an email to the ALJ requesting copies of documents from the hearing file and a copy to the transcript of the hearing. In reply, the ALJ send copies of the documents requested and a CD of the hearing (there was no transcript). During this time Puddy also asked the ALJ by email if in his appeal he needed to address the facts of the case. The ALJ replied that he did not need to discuss the facts of his case in his appeal letter. None of Puddy's emails can constitute a petition for commission review. Petitions for review cannot be filed by email. They must be filed by mail, fax or in-person delivery. Wisconsin Admin. Code § LIRC 1.025.

There is no indication that any petition from Puddy was received in the Milwaukee or Madison office of the ERD on or before January 20, 2020.

On February 3, 2020, the Milwaukee office of the ERD sent a letter to the parties stating that the case was now closed because a timely petition for review had not been received.

On February 5, 2020, Puddy sent an email to the Milwaukee ERD office indicating that he had received the letter stating that his case was closed. He maintained that he had a confirmation indicating that he had faxed something to the ERD office at 12:33 p.m. on January 20, 2020. This confirmation, as he called it, was a single sheet entitled Transmission Report, indicating that a 14-page document, the first page of which was the Certification sheet from the ALJ's decision, was faxed from 920-453-7052 on January 20, 2020 beginning at 12:33 p.m. The Transmission Report contains no information about the destination of the fax, and neither the Transmission Report nor any of the other 14 pages of the January 20, 2020 fax were found have been received in the Milwaukee ERD office.

On February 7, 2020, Puddy faxed an 18-page document that was received in the Milwaukee ERD office. That fax included the following:

- Page 1: A copy of the Transmission Report referred to above.
- Page 2: A copy of the letter from the Milwaukee ERD office dated February 3, 2020 stating that the case was closed.
- Page 3: A copy of a letter from the EEOC dated February 3, 2020 informing Puddy that he had a right to have his case reviewed by the EEOC.
- Page 4: Another copy of the Transmission Report referred to above.
- Page 5: A partially cut-off copy of ReMax Realty note paper, containing handwritten information.
- Pages 6-11: Blank pages.
- Pages 12-17: Lined paper with handwritten marks too faint to read.
- Page 18: Blank.

Discussion

Petitions for review by the commission must be filed by mail, fax or in-person delivery. They may not be filed by email. *Goulet v. Senior Citizens Employment and Training, Inc.*, ERD Case No. CR201001563 (Feb. 21, 2012). Therefore, none of Puddy's emails to the ALJ in early January 2020 can be considered a valid petition for commission review.

Puddy did not establish that he faxed a timely petition for review to the Milwaukee ERD office on January 20, 2020. The ERD office has no record of having received anything that day from Puddy, and the Transmission Report that Puddy provided does not indicate the destination of the fax sent on January 20, 2020. In addition, Puddy did not provide the ERD with copies of the other 13 pages that presumably were part of that fax. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission. Wisconsin Admin. Code § LIRC 1.025(3).

The commission may consider a late petition only if the party filing the petition has been prejudiced because of exceptional delay in the receipt of a copy of the ALJ's decision. There was no exceptional delay in this case. *Strommen v. Cross Plains Citgo Station*, ERD Case No. 200402871 (Mar. 29, 2007).

Finally, the test for determining whether a writing with the ERD after issuance of an ALJ decision should be treated as a petition for commission review has to do with its intent and purpose, specifically whether it expresses dissatisfaction with the ALJ's findings and order and asks for review of or changes to the finding and order. *Triege v. Servicemaster Clean*, ERD Case No. CR200802826 (June 25, 2010); *Henderson v. Dep't of Corrections*, ERD Case No. CR200304180 (Mar. 19, 2009); *Nagy v. Fox Valley Technical College*, ERD Case No. 9402568 (Nov. 22, 1995); *Wright v. Computer People Unlimited*, ERD Case No. 9350458 (Mar. 28, 1995).

Neither the purported January 20, 2020 fax nor the fax of February 7, 2020, satisfies this test. As to the fax of January 20th, even if it were assumed against all indications that it was received by the ERD, Puddy made no showing that it included any statement of dissatisfaction with the ALJ's findings or order, or asked for a review. The only page provided, the Transmission Report, was simply a copy of the Certification page of the ALJ's decision. As to the February 7th fax, in addition to being untimely, it too contained no statement of dissatisfaction with the ALJ's findings or order, and no request for a review. It mostly consisted of blank or indecipherable pages. The only pages that made sense were copies of the Transmission Report, a copy of the ERD's letter closing the case, and a copy of the EEOC's letter informing Puddy of his right to request review by the EEOC.

The commission therefore finds that no petition for commission review was timely filed, and that the petitioner was not prejudiced because of exceptional delay in the receipt of a copy of the decision, within the meaning of the applicable statutes. Consequently, the purported petition for review must be dismissed.

cc: Anthony Resimius
EEOC

Case appealed to Circuit Court.