

State of Wisconsin



Labor and Industry Review Commission

Salad M. Osman, Complainant

Fair Employment Decision¹

JBS Green Bay, Inc., Respondent

Dated and Mailed:

ERD Case No. CR201702285
EEOC Case No. 26G201800107C

March 30, 2020
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The order of dismissal of the administrative law judge is **affirmed**. Accordingly, the complainant's petition for review is hereby 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>.

Memorandum Opinion

The parties to this case reached a confidential settlement agreement on October 17, 2019 and the complainant signed and submitted a “Request to Withdraw Complaint” form on that same date. Consequently, the administrative law judge issued an order dismissing the complaint with prejudice on October 31, 2019. Fifty-one days later, on December 27, 2019, the complainant petitioned for commission review of the administrative law judge’s order dismissing his complaint.

The respondent has asserted that the complainant’s petition for review is untimely, having been filed more than 21 days after the administrative law judge’s finding and order were mailed to the complainant’s last known address, as required by Wis. Stat. § 111.39(5)(b). However, the record from the Equal Rights Division (the “Division”) of the Department of Workforce Development contains no evidence that a notice of appeal rights was sent to the complainant. Wisconsin Stat. § 227.48(2) provides that every decision of an agency or hearing examiner shall include notice of any right of the parties to petition for administrative review of adverse decisions, and that no time period for filing a petition under any agency section permitting administrative agency review of an agency decision begins to run until the agency has complied with this section. Moreover, Wis. Admin. Code § DWD 218.10 requires that when, as in this case, an administrative law judge issues an order dismissing a complaint on a procedural basis following certification to hearing, “a certified copy of the order and a notice of appeal rights shall be sent by first class mail to the last known address of each party and to their attorneys of record.” The commission concludes that given the absence of a notice of appeal rights enclosure with the administrative law judge’s order dismissing Osman’s complaint, Osman’s petition for review cannot be considered untimely. *See, Fettig v. Co. of Fond du Lac* ERD Case No. CR200400675 (LIRC July 14, 2006).

However, it is the commission’s policy to treat settlement agreements as final, absent an allegation of misrepresentation or intimidation by a representative of the Division, or an allegation that the settlement agreement contains something to render it invalid on its face. *Fettig, supra*. The complainant has alleged neither. Rather, his petition merely asserts that he believes that he “was not treated fairly” and that he is “not happy with the outcome of the court.” The complainant does not allege that he was the subject of misrepresentation or intimidation by a representative of the Division. Even if his allegation of unfair treatment was construed to mean unfair treatment at the hands of the Division, a mere allegation without any factual assertions to support it cannot serve as a basis for setting aside a voluntary settlement agreement. Accordingly, the commission affirms the administrative law judge’s dismissal of the complaint.

cc: Emery Harlan and Grady Crosby III