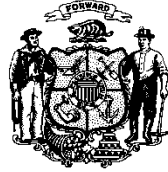


State of Wisconsin



Labor and Industry Review Commission

Michael Young, Complainant

Fair Employment Decision¹

Goodwill Industries of Southeastern Wisconsin, Respondent

Dated and Mailed:

ERD Case No. CR201900418

July 9, 2020

youngmi_rsd.doc:109

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

An administrative law judge for the Equal Rights Division (the “Division”) of the Department of Workforce Development issued a decision in this matter dismissing the complainant’s complaint on the grounds that he did not appear at the time scheduled for a hearing and did not establish good cause for failing to appear. The complainant filed a timely petition for review.

Memorandum Opinion

This case is before the commission to consider the complainant’s assertion that he had good cause for failing to appear at a hearing on the issue of probable cause for his underlying discrimination complaint. Wisconsin Admin. Code § DWD 218.18(4) provides:

If the complainant fails to appear at the hearing, either in person or by a representative authorized to proceed on behalf of the complainant, the administrative law judge shall dismiss the complaint. . . . If, within 10 days after the date of the hearing, any party who failed to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

When a complainant fails to appear for a hearing which is scheduled to decide a matter relevant to the complaint, the law requires that good cause be shown for the complainant’s absence in order to reschedule the hearing. “Good cause” has been held to mean that the failure to appear resulted from either excusable neglect, the degree of neglect a reasonably prudent person might be expected to commit in similar circumstances, or a reason, which, if established by competent evidence, would amount to circumstances beyond the individual’s control, or which would otherwise have prevented or made it unreasonable for the complainant to appear. *See, Matousek v. Sears Roebuck and Company*, ERD Case No. CR200302571 (LIRC Oct. 15, 2004); *Schwarz v. Gateway Tech. College*, ERD Case No. CR200803337 (LIRC April 10, 2010).

The hearing in this matter was scheduled for November 20, 2019. The complainant received notice of the hearing and requested to appear by telephone. The administrative law judge denied the complainant’s request. The complainant did not appear at the hearing. In his petition for commission review, the complainant argues that he did not attend the hearing because the administrative law judge is racist, and suggests that the presence of security personnel in the hearing room would make him feel unsafe. The commission finds this argument unpersuasive. The administrative law judge notified the complainant several days prior to the hearing that his request to appear by telephone was denied and explained that the denial was partly because the complainant had not given a reason for requesting to appear by telephone. The complainant did not notify the administrative law judge that he feared for his safety even after receiving the denial. Instead, the complainant chose to not appear at the hearing. The first time the complainant made any reference to his personal safety

was in his petition to the commission. While the complainant now asserts that he was fearful for his safety due to the presence of law enforcement, he did not elaborate as to why that was the case and he failed to establish that, assuming law enforcement would indeed be present, this was a circumstance that would have made it unreasonable for him to appear. Further, a reasonably prudent person who was genuinely concerned for his safety would have mentioned this concern upon requesting to appear by telephone. Under all the circumstances, the commission finds that the complainant has failed to establish there was good cause for his failure to appear at the hearing. The dismissal of his complaint is, therefore, affirmed.

cc: Bethany McCurdy, Attorney for Respondent