

**State of Wisconsin**



**Labor and Industry Review Commission**

**Michael Marty**, Complainant

**Fair Employment Decision<sup>1</sup>**

**S.C. Johnson & Son, Inc.**, Respondent

**Dated and Mailed:**

ERD Case No. CR202000271

March 31, 2021

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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/*

Georgia E. Maxwell, Commissioner

*/s/*

Marilyn Townsend, Commissioner

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<sup>1</sup> **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**

On January 24, 2020, the complainant filed a complaint with the Equal Rights Division of the Department of Workforce Development, alleging that the respondent discriminated against him with respect to hire based upon his marital status (single), in violation of the Wisconsin Fair Employment Act. The complainant alleged that he applied for jobs with the respondent on December 9, 2010, April 14, 2017, May 11, 2017, and April 30, 2019, but was not offered any of those positions. The complainant contended that on May 3, 2019 he received a rejection notice for the job he applied for on April 30, 2019, but that he never received any response to the other three applications he submitted.

The respondent filed a response to the complainant's complaint in which it argued, among other things, that the complaint was untimely filed with respect to the first three positions at issue, since all of the alleged acts of discrimination occurred more than 300 days before the complainant filed his complaint. The respondent also argued that the fourth position, for which the complainant applied on April 30, 2019, was located in Chicago, Illinois and did not entail regular work in Wisconsin. In support of this assertion, the respondent provided a copy of the job description which indicated that the position would be located in Chicago. The respondent contended that the complainant's allegation regarding that position was beyond the geographical jurisdiction of the Equal Rights Division.

After receiving the respondent's response, the equal rights officer assigned to the case sent a letter to the complainant asking for his response to the information provided by the respondent. The complainant submitted a response to the respondent's position statement in which he stated, without further elaboration, that he disagreed that the fourth position was located in Chicago. With respect to the first three positions, the complainant indicated that he was not made aware of any action taken on his earlier applications until after he submitted the 2019 application.

On April 8, 2020, the equal rights officer issued two separate preliminary determinations. One determination found that the complainant's allegations that he was denied hire for jobs for which he applied in 2010 and 2017 were untimely. A second determination found that the department had no jurisdiction over the complainant's allegation regarding the job for which he had applied in 2019 because it was not located in Wisconsin. As a result, the complainant's claims were dismissed.

The complainant filed a timely appeal of both determinations. In his appeal the complainant contended that he was not made aware of the action taken on his 2010 and 2017 job applications until April of 2019. The complainant did not explain why he believed the Equal Rights Division had jurisdiction over the 2019 job.

On August 4, 2020, an administrative law judge for the Equal Rights Division issued a decision affirming the preliminary determinations. With respect to the timeliness

of the claims, the administrative law judge stated that a reasonable person would have understood that he was not selected for the positions within a few months of having applied and receiving no response. The administrative law judge further pointed out that the complainant had not explained what event took place in April of 2019 that led him to conclude discrimination had occurred. The administrative law judge therefore concluded that the complainant's claims were untimely filed. With respect to the jurisdictional issue, the administrative law judge noted that the complainant disputed that the job for which the complainant applied in April of 2019 was located in Chicago, but presented no information to explain this. The administrative law judge affirmed the finding that the Equal Rights Division lacked jurisdiction over the claim.

The complainant filed a timely petition for commission review of the administrative law judge's decision. In his petition the complainant indicates that he is only appealing the portion of the decision that relates to timeliness and is not appealing the administrative law judge's findings regarding jurisdiction. Therefore, although the commission agrees with the administrative law judge that the department lacks jurisdiction over the job for which the complainant applied in April of 2019 and affirms that finding, it will limit this discussion to the question of whether the complainant's claims regarding jobs he applied for in 2010 and 2017 were properly dismissed as untimely.

The Wisconsin Fair Employment Act provides that a complaint of discrimination is to be filed no more than 300 days after the alleged discrimination occurred. *See*, Wis. Stat. § 111.39(1). The complainant alleges that he was discriminated against in hire for positions he applied for in 2010 and 2017. However, the complainant's complaint was not filed until January 24, 2020, well in excess of 300 days after the alleged acts of discrimination occurred. The complainant's explanation for the delay is that he did not realize he was not being hired for the jobs until April of 2019.

The statute of limitations period begins to run when the complainant knew or reasonably should have known of the wrong that was committed against him. Stated something differently, a statute of limitations begins to run when the facts that would support a charge of discrimination are apparent or would be apparent to a person with a reasonably prudent regard for his or her rights. *Washington. v. United Water Services*, ERD Case No. CR199902104 (LIRC Aug. 15, 2003).

The complainant contends that he was not made aware of the action taken on his 2010 and 2017 applications until April of 2019. However, as the administrative law judge noted in her decision, a reasonable person would conclude that he or she had not been hired for a position within a few months of submitting an application and receiving no response. Surely the complainant was aware prior to April of 2019 that he had not been selected for jobs for which he applied years earlier. Further, the complainant has not explained what information he received in April of 2019 (prior

to submitting the final job application on April 30 and receiving a rejection notice on May 3) that put him on notice that discrimination may have occurred. The commission agrees with the administrative law judge that the complainant had the same information in April of 2019 that he had much earlier. The complainant knew that he was not being offered the positions for which he had applied, and his speculation that the decision not to hire him was related to his marital status was not based on any new information. Under the circumstances, the commission sees no basis to suspend the running of the statute of limitations in this case. The dismissal of the complainant's complaint is affirmed.

cc: Attorney Scott T. Allen