

State of Wisconsin



Labor and Industry Review Commission

Elizabeth Anne Woolever
Complainant

University of Wisconsin-Whitewater
Respondent

ERD Case No. CR202001060

Fair Employment Decision

Dated and Mailed:

August 31, 2021

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The petition for commission review is dismissed, and the matter is returned to the Equal Rights Division for further action consistent with this decision.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner¹

¹ Commissioner Townsend did not participate in this decision.

Memorandum Opinion

The complainant filed a complaint under the Wisconsin State Employee Whistleblower Law and, on January 29, 2021, an administrative law judge for the Equal Rights Division (hereinafter “ERD”) of the Department of Workforce Development issued a decision dismissing her complaint on the basis of timeliness. The administrative law judge’s decision was accompanied by a Notice of Appeal Rights, which advised the complainant that she could file an appeal with the Labor and Industry Review Commission (hereinafter “commission”) within 21 days of the decision. The complainant followed those directions. However, decisions of the ERD under the State Employee Whistleblower Law are not appealable to the commission. Rather, by law, appeal from ERD decisions under the State Employee Whistleblower Law must be taken directly to circuit court. *See, Wis. Stat. § 230.87(1).* Because the commission has no authority to decide appeals from decisions of ERD administrative law judges in State Employee Whistleblower Law cases, it has dismissed the petition for review.

It should be noted, however, that the commission’s dismissal of the petition for review should not prejudice the complainant’s right to obtain judicial review of the administrative law judge’s decision. This is because under Wis. Stat. § 227.48(2), no timeline for commencing a proceeding for judicial review of an agency’s decision begins to run until the agency issuing that decision provides the parties with notice of their rights to judicial review. In this case, when the ERD issued its decision, it attached its standard letter advising the parties that if they were dissatisfied with the decision they could petition for review by the commission. The ERD never provided correct information concerning the right to appeal the decision, and the time period for filing a petition for judicial review of the decision does not begin to run until it does so. The commission therefore requests that the ERD issue to the parties a new notice of appeal rights properly describing the rights of the parties to petition for judicial review of the administrative law judge’s decision. Issuance of such notice will cause the effective period within which a petition for judicial review of the decision may be filed to begin to run. *See, Gamroth v. Department of Corrections*, ERD Case Nos. CR200303157, CR200303158, and CR200303159 (LIRC Oct. 20, 2006).

cc: Attorney Kristin Johnson