

State of Wisconsin



Labor and Industry Review Commission

Laura Pospychala, Complainant

Fair Employment Decision¹

Pine Crest Nursing Home, Respondent

Dated and Mailed:

ERD Case No. CR202000563

September 17, 2021

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The decision of the administrative law judge is modified and, as modified, 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

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 History

On February 27, 2020, the complainant filed a complaint with the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development alleging that the respondent discriminated against her in retaliation for conduct protected under the Wisconsin Fair Employment Act (hereinafter “Act”). The complainant alleged that there were several acts of retaliation, culminating in the termination of her employment on April 2, 2019.

The respondent submitted a response to the complaint in which it argued, among other things, that the complaint should be dismissed as untimely, having been filed more than 300 days after the most recent act of discrimination. The complainant responded with an explanation for the timing of her complaint; she indicated that she was suffering from anxiety and deep depression and provided details as to how that condition affected her ability to function.

On July 1, 2020, an equal rights officer for the Division issued a preliminary determination dismissing the complaint as untimely. The complainant filed a timely appeal of that determination, and the matter was assigned to an administrative law judge. In her appeal the complainant reiterated that her complaint was filed late because of her mental health and provided a letter from her doctor stating that she was taking medications for depression. On March 1, 2021, the administrative law judge issued a decision affirming the dismissal of the complaint on the basis of timeliness. In his decision, the administrative law judge noted that the complainant failed to provide medical evidence describing how her condition affected her ability to function and, further, that the complainant had been able to perform work and other personal tasks, which undermined her assertion that she was unable to file a complaint during the 300-day limitations period. The complainant filed a timely petition for commission review of the administrative law judge’s decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was before the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own, except that it makes the following:

Modification

The last paragraph on page 4 of the administrative law judge’s Decision is deleted and the following substituted therefor:

Because the complaint in this matter was filed after the 300-day statute of limitations, and because the complainant failed to establish that the statute of limitations should be tolled based upon equitable considerations, her complaint was properly dismissed.

Memorandum Opinion

In her petition for commission review the complainant reiterates her argument that she suffers from severe depression and anxiety which affected her ability to perform daily life tasks. The complainant states that she did not even want to get out of bed most days, let alone file a timely complaint. In support of her petition the complainant provides a copy of an article from the publication Healthline.Com regarding the symptoms and causes of depression. The commission has considered the complainant's arguments, but does not find them persuasive. While the deadline for filing complaints under the Act may be extended where a complainant's failure to comply with the statute of limitations is because of a medical condition, this only occurs when the complainant's incapacity reaches such a level that she was incapable of filing a complaint within the requisite time period. *Wilson v. Doskocil Foods*, ERD Case No. CR200202555 (LIRC July 30, 2003). The complainant must submit medical evidence, or a statement from her physician, which would support a showing that her condition was so disabling that it rendered her incapable of filing a complaint of discrimination with the Division throughout the 300-day charge-filing period. *Id.* Although the commission does not doubt that depression can be debilitating, in this case the complainant has failed to establish that her mental state was such that she was not capable of filing a timely complaint. The complainant provided the administrative law judge with a doctor's note indicating that she was prescribed anti-depression medications (on December 31, 2020, more than 10 months after she filed her complaint), but has failed to present any medical evidence indicating that she was too incapacitated during the 300-day period after she lost her job to file a timely complaint. Indeed, in her correspondence with the equal rights officer and administrative law judge the complainant indicated that during that time period she was able to seek work, start a new job, manage her personal finances, and pursue an internal grievance with respect to her discharge. As the administrative law judge pointed out, the complainant's ability to perform those tasks undercuts her claim that she was too medically debilitated to file a timely complaint. Given all the circumstances, the commission agrees that there is no equitable basis to suspend the running of the statute of limitations in this case and that dismissal of the complaint is warranted.

NOTE: The commission has modified the administrative law judge's decision to delete the finding that the Division "lost legal competency" to hear this matter. The 300-day time limit is a statute of limitations and not a statute concerning subject matter jurisdiction. *Milwaukee County v. LIRC*, 113 Wis. 2d 199, 205, 335 N.W.2d 412 (1983). The Division has the authority to hear a complaint that is filed beyond the statute of limitations, but in this case appropriately dismissed the complainant's complaint when the respondent successfully raised the affirmative defense that the complaint was untimely filed.

cc: Attorney Mindy K. Dale