

State of Wisconsin



Labor and Industry Review Commission

Roy A. Stone, Complainant

Fair Employment Decision¹

Andis Company, Complainant

Dated and Mailed:

ERD Case No. CR201901024
EEOC Case No. 26G201900780C

October 15, 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

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

On April 15, 2019, the complainant filed a complaint with the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development in which he alleged that the respondent discriminated against him based upon his age, in violation of the Wisconsin Fair Employment Act. On March 4, 2020, an equal rights officer for the Division issued an initial determination finding no probable cause to believe discrimination occurred. The determination specifically indicated on the front page in bold type that it would become final unless a written appeal was mailed to the Division at the address of its Milwaukee office and received within 30 days of the date the determination was mailed. The complainant did not submit a written appeal within 30 days and the matter was dismissed. On February 28, 2021, the complainant attempted to submit an appeal of the initial determination by email. The matter was assigned to an administrative law judge for consideration. On March 8, 2021, the administrative law judge issued a decision dismissing the complainant’s appeal on the grounds that it was not filed in a timely manner. The complainant has 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.

Memorandum Opinion

The complainant acknowledges that his appeal was not filed timely. He explains that he did not file a timely appeal because he believed the Division did not handle the investigation of his complaint properly and was convinced that any further action at the state level would only produce more of the same. The complainant also indicates that he requested review by the EEOC but misunderstood the nature of the EEOC’s review and believed it would be more comprehensive than it was. The complainant asks the commission to rectify his error by overturning the administrative law judge’s decision and allowing a “true investigation.”² The commission is unable to grant this request. In the first place, the commission notes that the complainant’s appeal was filed by email, although the initial determination directed that appeals must be filed by mail, and the Division’s rules do not permit emailed appeals.³ Further, even assuming that an emailed appeal could be accepted, by law a late appeal of an initial determination must be dismissed. Wis.

² Had the complainant filed a timely appeal of the initial determination he would have been given a hearing on the issue of probable cause. *See*, Wis. Admin. Code § DWD 218.08. There would have been no new investigation.

³ The rules provide that documents may be filed by email only if expressly authorized by the equal rights officer or the administrative law judge assigned to the case. Wis. Admin. Code § DWD 218.25(2). There is no reason to believe that the complainant in this case was authorized to file an appeal by email.

Admin. Code § DWD 218.08(2). The rules contain no exception for appeals that are filed late, even if the reason for the late filing is a compelling one. *Van Oss v. Human/Employers Health Insurance*, ERD Case No. 199802433 (LIRC May 19, 2000). The dismissal of the complainant's appeal is, therefore, affirmed.

cc: Attorney Sally A. Piefer