

State of Wisconsin



Labor and Industry Review Commission

Gloria Marigny, Complainant

Fair Employment Decision¹

Sunrise Care Center, Respondent

Dated and Mailed:

ERD Case No. CR202002291

December 10, 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 July 20, 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 violation of the Wisconsin Fair Employment Act. On March 17, 2021, an Equal Rights Officer for the Division issued a Preliminary Determination and Order dismissing the complainant’s complaint because it was filed beyond the statute of limitations period. The complainant filed an appeal of the adverse determination. On June 23, 2021, an administrative law judge for the Division issued a decision dismissing the complainant’s appeal on the basis of timeliness. The complainant has filed a petition for commission review of that 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

In her petition for commission review the complainant argues that she should have been given 3 additional days in which to file her appeal. In support of that argument, the complainant cites to Wis. Stat. § 801.15(5)(a), which provides:

801.15 Time.

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party:

(a) If the notice or paper is served by mail, 3 days shall be added to the prescribed period.

However, Chapter 801 applies to proceedings in court, and not to matters before the Equal Rights Division. The Equal Rights Division has its own rules, found in Chapter 218 of the Wisconsin Administrative Code, which provide that the complainant may file an appeal of the preliminary determination “within 20 days of the date of the order.” Wis. Admin. Code § 218.05(3). The complainant was specially advised of this on the first page of the preliminary determination, which notified her that the dismissal of her case would become final unless a written appeal was received “within 20 days of the date this determination was mailed.” Notwithstanding that specific instruction, the complainant did not file her appeal until 22 days after the date on which the determination was mailed. Because the complainant’s appeal was filed late, and because the rule does not allow the Division to accept an untimely appeal of a preliminary determination, the administrative law judge’s decision must be affirmed.

cc: Attorney Lisa Handler Ackerman

Editor's Note: affirmed *Marigny v. LIRC and Sunrise Care Center*, (Wis. Cir. Ct. Milwaukee Cnty. Jan. 19, 2023).