



### Memorandum Opinion

An administrative law judge for the Equal Rights Division of the Department of Workforce Development issued a decision in this matter finding that the complainant failed to prove the respondent discriminated against her based upon her age. A petition for review was filed by the complainant.

The applicable statutes provide that a party who is dissatisfied with the findings and order of the examiner may file a written petition with the department for review by the commission of the findings and order, that if no petition is filed within 21 days from the date that a copy of the findings and order of the examiner is mailed to the parties the findings and order shall be considered final, and that if the commission is satisfied that a petitioner has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department. Wis. Stat. § 111.39(5).

Wisconsin Admin. Code § LIRC 1.02 provides, in relevant part, as follows:

All petitions for commission review shall be filed within 21 days from the date of mailing of the findings and decision or order . . .

The administrative law judge's decision having been dated and mailed on August 23, 2021, the last day on which a timely petition for review could have been filed was September 13, 2021. The complainant's petition for review was not filed until September 20, 2021 and was, therefore, untimely.

The complainant does not contend that there was any delay in her receipt of the administrative law judge's decision. Rather, in her petition the complainant argues that she knew she had 21 days in which to file her petition, but thought this meant 21 working days and that holidays and weekends would not be counted. However, the term "days," as used in the statute, refers to calendar days, not business days. *Byrne v. Aurora Health Care*, ERD Case No. CR201800455 (LIRC Jan. 31, 2019). Nor did the complainant have any reason to assume otherwise. The Notice of Appeal Rights that accompanied the administrative law judge's decision stated that the petition must be received by the ERD within 21 days of the date of the decision. It did not state that the complainant had 21 business days in which to file or that holidays would be excluded. *See, Banda v. Wisconsin Jobs Now*, ERD Case No. CR201604781 (LIRC March 13, 2018).

The commission therefore finds that the petition for commission review was not timely and that the complainant was not prejudiced because of exceptional delay in the receipt of a copy of the decision, within the meaning of the applicable statutes. Consequently, the petition for review must be dismissed.