

State of Wisconsin



Labor and Industry Review Commission

Valerie Kreger  
Complainant

County of Dane  
Respondent

ERD Case No. CR202100014

Public Accommodation Decision<sup>1</sup>

Dated and Mailed:

March 31, 2022

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The complainant's petition for commission review is accepted. The administrative law judge's decision 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

<sup>1</sup> **Appeal Rights:** See the pink 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>.

## Memorandum Opinion

The complainant filed a complaint alleging that the respondent discriminated against her based upon her sex, marital status, and disability, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter “WPAAL.”)<sup>2</sup> An administrative law judge for the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development issued a decision dismissing the complaint for lack of jurisdiction. A petition for review was filed by the complainant.

The first issue to decide is whether the complainant’s petition for review was filed in a timely manner.

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. § 106.52(4)(b).

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 September 17, 2021, the last day on which a timely petition for review could have been filed was October 8, 2021. The complainant’s petition for review was not filed until October 15, 2021.

The complainant argues that her petition should be considered timely, and the commission agrees. In an email dated August 5, 2021, the complainant notified the Division that she had a new mailing address. The complainant stated that her address was now P.O. Box 620493. However, due to a typographical error, the administrative law judge’s decision was sent to the complainant at P.O. Box 62093. The decision was mailed on September 17, but was returned to the Division on September 24 with a label stating, “RETURN TO SENDER, NO SUCH NUMBER, UNABLE TO FORWARD.” On October 12, the Division sent the complainant a letter notifying her that her case had been closed because no appeal was filed. That letter was also addressed incorrectly,

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<sup>2</sup> While the statute prohibits discrimination based upon sex and disability, marital status is not a basis protected under the WPAAL. *See*, Wis. Stat. § 106.52(3).

although it does not appear that the envelope was returned to the Division as undeliverable.

On October 18, 2021, based on communications from the complainant notifying the Division that she had not received the decision, a representative for the Division sent the complainant a new copy of the administrative law judge's decision. On October 21, the Division received a petition from the complainant. In her petition the complainant stated that she would like extra time to submit her appeal because there was a mistake on her most recent letters and she did not receive them.

Based upon the above, the commission concludes that the complainant was prejudiced in her ability to file a timely petition because of an exceptional delay in the receipt of a copy of the administrative law judge's decision, and that the complainant is entitled to an additional 21 days to file her petition. The commission will therefore accept the October 18, 2021 petition as timely, and proceed to review the underlying issue of whether the complaint was properly dismissed for lack of jurisdiction.

In her complaint, filed against the County of Dane, the complainant alleged that Dane County judges discriminated against her by taking away custody of her child and that she was harassed by security workers in the Dane County Courthouse when they asked her to put her bag through the metal detector more than once. The commission agrees with the administrative law judge that the Division lacks jurisdiction over these claims.

Wisconsin Stat. § 106.52(3)(a)1. provides that that no person may:

Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

The statute further provides, at Wis. Stat. § 106.52(3)(a)2., that no person may:

Give preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

The definition of a "public place of accommodation or amusement" in the statute is as follows:

"Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist;

aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods or services are available either free or for a consideration. . .

Wis. Stat. § 106.52(1)(e)1.

The commission has generally found that governmental entities are not covered by the WPAAL. *See, Sauers v. Village of Prairie du Sac*, ERD Case No. CR201802285 (LIRC Sept. 27, 2019), and cases cited therein. The County of Dane is a unit of local government and not a “place.” While the County does operate the Dane County Courthouse, a building that is open to the public, the Courthouse is not a public place of accommodation or amusement within the meaning of the statute; its primary function is not to provide public accommodations or amusements, and it is not comparable to the places of business referenced in the WPAAL. Nor is the complainant’s contention that she received an adverse judicial ruling a matter that would be covered by the statute. The statute is meant to address access to businesses or other places where accommodations and amusements are provided to the public. Adverse judicial rulings are addressed through the court system, not through the WPAAL. For all the foregoing reasons, the dismissal of the complaint is affirmed.

cc: Attorney Patricia Epstein Putney