

State of Wisconsin



Labor and Industry Review Commission

Eric T. Rucker, Complainant

Fair Employment Decision¹

Milwaukee Center for Independence,
Respondent

Dated and Mailed:

ERD Case No. CR201702654

May 31, 2022
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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

This case is before the commission to consider the complainant's allegation that the respondent discriminated against him based upon his arrest and conviction records, in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development held a hearing and issued a decision finding no probable cause to believe that the complainant was discriminated against in the manner alleged. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition, and it has reviewed the evidence submitted at the hearing. 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 has multiple convictions for retail theft. The character traits revealed by such a conviction record include untrustworthiness and a tendency to steal. The job which the complainant sought, Inbound Customer Resolution Specialist, would have given him access to social security numbers, bank account information, birthdates, addresses, and other sensitive information belonging to the respondent's clients, a vulnerable population of individuals with mental and physical disabilities. While at the hearing the complainant made the argument that he has no past history of identity theft and suggested that his past convictions for retail theft are distinguishable, the contexts of the offense and the particular job duties need not be identical. The commission has found, for example, that the theft of a sweater from a retail store was substantially related to the job duties of processing and disbursing checks, given that the latter required a high degree of responsibility and necessitated complete trustworthiness. *Benna v. Wausau Insurance Companies*, ERD Case No. 8401264 (LIRC July 10, 1989)("[T]he Commission believes common sense dictates that a conviction for shoplifting, being the theft of another's property, substantially relates to the job duties of an individual who exercises unsupervised control and expenditure of large amounts of money for an employer and its clients.") Similarly, the commission is persuaded that the complainant's record of numerous retail theft convictions is so substantially related to the duties of the job of Inbound Customer Resolution Specialist for the respondent as to fall within the statutory exception contained in Wis. Stat. § 111.335(3)1. The dismissal of the complaint is, therefore, affirmed.

cc: Attorney Christopher L. Nickels