

State of Wisconsin



Labor and Industry Review Commission

Tommie L. Burks, Complainant

Fair Employment Decision¹

Perlick Corp., Respondent

Dated and Mailed:

ERD Case No. CR202001217
EEOC Case No. 26G202000898C

July 29, 2022
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A petition for commission review must be received within 21 days after the administrative law judge's decision was mailed to the party's last known address. The petition in this matter was filed late and is therefore **dismissed**. The administrative law judge's decision remains in effect.

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>.

Memorandum Opinion

An administrative law judge for the Equal Rights Division of the Department of Workforce Development issued a decision in this matter finding no probable cause to believe the complainant was discriminated against in the manner alleged in his complaint. The complainant filed a petition for commission review of that decision.

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 . . .

Wisconsin Admin. Code § LIRC 4.01 provides, as follows:

A petition for commission review of the findings and order of a department of workforce development administrative law judge under s. 106.52 or 111.39(5), Stats., shall be filed with the equal rights division of the department at any of the following locations:

- (1) The equal rights division, 819 North Sixth Street, Milwaukee, Wisconsin 53203 (FAX: 414-227-4981).
- (2) The central administrative office of the equal rights division, 201 East Washington Avenue, P.O. Box 8928, Madison, Wisconsin 53708 (FAX: 608-267-4592).

The administrative law judge's decision having been dated and mailed on March 31, 2022, the last day on which a timely petition for review could have been filed was April 21, 2022. The complainant's petition for review was filed by fax with the Equal Rights Division on April 28, 2022.

The complainant contends that he also mailed a timely petition, but sent it to the wrong address. The complainant indicates that he assumed it was going to the commission, at P.O. Box 8126, Madison, WI, 53708, but that it should have been

mailed to the Equal Rights Division at P.O. Box 7997, Madison, WI 53703.² He acknowledges that he should have paid more attention and that he made a mistake. The complainant requests a review of his case notwithstanding this error.

The commission is unable to comply with the complainant's request. The statutes provide that the petition must be filed "with the department," Wis. Stat. § 111.39(5)(a), and the rules specify that petitions shall be filed at either of two addresses for the Equal Rights Division.³ Wis. Admin. Code LIRC § 4.01. There is no authority to accept as timely a petition that has been filed directly with the commission, but which the department did not receive in a timely manner. Nor is there any authority to accept a petition that is late unless the petitioner was prejudiced by an exceptional delay in the receipt of a copy of the decision, a circumstance which does not exist in this case.

Because the commission 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, the petition for review must be dismissed.

cc: Attorney Emery K. Harlan

² The commission received a document from the complainant by mail on April 20, 2022. The document in question is a petition for judicial review that has been stamped and assigned a case number by a circuit court judge, and on which the complainant has written an ERD case number that corresponds with the number of the instant case. However, the commission had not yet issued any decision in this case at the time the petition for judicial review was filed.

³ The Notice of Appeal Rights that accompanied the administrative law judge's decision indicated that a petition should be mailed or faxed to the Equal Rights Division at either of the two addresses for the Division, and clearly set forth what those addresses were.