

State of Wisconsin



Labor and Industry Review Commission

<p>Angela Eide, Complainant</p> <p>Swiss Tech, LLC, Respondent</p> <p>ERD Case No. CR201903330 EEOC Case No. 26G202000345C</p>	<p>Fair Employment Decision¹</p> <p>Dated and Mailed:</p> <p>August 29, 2023</p> <hr/> <p>eidean_rsd.doc:149</p>
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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 her on the basis of race and sex in violation of the Wisconsin Fair Employment Act. An administrative law judge for the Equal Rights Division (hereinafter "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 as alleged. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, 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 arguments raised by the complainant in her petition for review address her failure to present documentary evidence on her behalf at the hearing. The complainant contends that she had no exhibits to present at the hearing because she was unaware that she could use the same records that were provided to the equal rights officer during the investigation of her claim² and, further, that she requested records from the respondent which it failed to provide. The commission has considered these arguments, but does not find them persuasive.

On December 16, 2020, the administrative law judge issued a pre-hearing conference order which advised the complainant of her right to conduct discovery and provided detailed instructions regarding the discovery process. The order specified that discovery would be available until March 24, 2021, and that any discovery motions must be filed by April 7, 2021. Prior to the hearing, the department also mailed the complainant a Notice of Hearing which instructed her to read the enclosed information sheet. The information sheet described her rights and responsibilities in the hearing process and placed her on notice that the hearing would be her only opportunity to present evidence on her behalf. Although the complainant now alleges that she requested documents from the respondent in March of 2021, there is no record on file with the Division of the complainant having made such a request. She also did not inform the administrative law judge of the respondent's alleged failure to provide documents until May 13, 2021, well after the March 24 and April 7 deadlines had passed. Where the complainant failed to avail herself of the opportunity to engage in pre-hearing discovery according to the schedule and following the procedures provided by the administrative law judge or to seek timely assistance from the administrative law judge in doing so, the administrative law judge appropriately declined to assist her in resolving last-minute discovery issues.

The complainant requests that the commission review all records obtained during the Division's investigation. Additionally, the complainant requests that the respondent

² In her petition the complainant refers to this as "mediation." However, there was no mediation in this case. The commission assumes that the complainant is referring to the Division's investigation.

produce “the entire Employee Records” for several individuals, and also requests that these individuals each sign a document attesting to the accuracy of their records. However, the commission’s review is restricted to the record of the case, which includes any evidence submitted during the hearing. Wis. Admin. Code. § LIRC 1.071. The commission does not conduct its own investigation or gather additional evidence. As stated above, it was the complainant’s right to obtain records through pre-hearing discovery and to present evidence during the hearing. However, absent any reason to believe that the complainant’s opportunity to engage in pre-hearing discovery and present evidence on her behalf at the hearing was unfairly limited, the commission can see no reason to reopen the record in this case.

Finally, the complainant argues that her attendance records, which the respondent admitted as an exhibit during the hearing, were tampered with and contain inaccurate information. The administrative law judge found that the respondent’s time records were accurate regarding when the complainant worked and whether she had the proper documentation sufficient to excuse her absences. The complainant’s petition contains nothing to call that finding into question and, after conducting an independent review of the evidence presented at the hearing, the commission agrees with it.

Based on its review of the record, the commission is satisfied that the complainant had a full and fair opportunity to engage in pre-hearing discovery and to present her evidence at the hearing before the administrative law judge. Because, based upon its independent review of the evidence in the hearing record, the commission agrees with the administrative law judge that the complainant failed to meet her burden of establishing probable cause to believe that she was discriminated against in the manner alleged in her complaint, the dismissal of the complaint is affirmed.

cc: Atty. Christina A. Katt