

State of Wisconsin



Labor and Industry Review Commission

Johanna Stolar, Complainant

Fair Employment Decision

State of Wisconsin DOC,  
Respondent

ERD Case No. CR202002513  
EEOC Case No. 26G20210123C

Dated and Mailed:

February 28, 2024

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The decision of the administrative law judge is **dismissed**. Accordingly, this matter is returned to the Equal Rights Division for further proceedings.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

### **Procedural Posture**

On November 17, 2020, the complainant filed a complaint with the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development alleging that the respondent discriminated against her based upon her sex and because she opposed discrimination in the workplace, in violation of the Wisconsin Fair Employment Act. On August 31, 2021, an equal rights officer for the Division issued an initial determination finding no probable cause to believe that the complainant was discriminated against with respect to the terms or conditions of her employment because of her sex or was discharged because she opposed discrimination, but finding probable cause to believe that sexual harassment may have occurred. The complainant filed an appeal of the no probable cause findings in the initial determination and the matter was certified to hearing on the issue of probable cause. On January 31, 2024, an administrative law judge for the Division issued a decision (entitled “Dismissal Order”) affirming the no probable cause findings and dismissing the complainant’s allegations of discrimination based upon sex and in retaliation for opposing discrimination. The administrative law judge’s decision specified, however, that the matter would be “remanded” for a hearing on the allegations for which probable cause was found in the initial determination, and a Notice of Appeal Rights issued along with the decision explained that the matter was certified to a hearing on the merits and that the Dismissal Order could be appealed only after the Division issued a final decision on the entire complaint. Notwithstanding that injunction, the complainant, by his attorney, filed an immediate petition for commission review.

### **Memorandum Opinion**

The Division’s rules with respect to appeals to the commission provide:

*APPEALS LIMITED TO FINAL DECISIONS AND ORDERS.* Any party may file a written petition for review of a final decision and order of the administrative law judge by the labor and industry review commission. *Only final decisions and orders of the administrative law judge are appealable. A final decision is one which disposes of the entire complaint and leaves no further proceedings on that complaint pending before the division.*

Wis. Admin. Code § DWD 218.21(1) (emphasis added).

The administrative law judge’s Dismissal Order in this matter was clearly not a “final decision,” as that term is defined in Wis. Admin. Code § DWD 218.21(1). While the decision disposed of some of the issues raised in the complaint, the sexual harassment issue, on which the Division issued an initial determination finding probable cause, is still awaiting resolution by the Division. As indicated in both the Dismissal Order and the Notice of Appeal Rights, the matter has been certified for a hearing on the merits of that claim. Because the administrative law judge’s

Dismissal Order is not a final decision, but leaves proceedings pending before the Division, it is not appealable to the commission at this time.

For the reasons set forth above, the commission is unable to accept the complainant's petition. The matter is returned to the Division so that it can conduct a hearing on the merits of the complainant's sexual harassment allegations. Once a final decision has been issued by the Division with respect to that portion of the complaint, the complainant will have an opportunity to file a petition for review by the commission of the entire matter.

cc: Attorney Ben Hitchcock Cross  
Attorney Michelle Zaccard