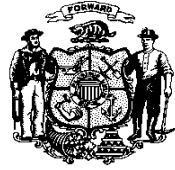


State of Wisconsin



Labor and Industry Review Commission

<p>Pastori Balele Complainant</p> <p>Spectrum Respondent</p> <p>ERD Case No. CR202301277</p>	<p>Public Accommodation Decision¹</p> <p>Dated and Mailed: July 15, 2024</p> <hr/> <p>balelpa_rsd.doc:164</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 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>.

Procedural History

On May 1, 2023, the complainant filed a complaint with the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development, alleging that the respondent discriminated against him in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter “WPAAL”). On November 6, 2023, an equal rights officer for the Division issued an initial determination finding no probable cause to believe that discrimination occurred. The initial determination included the following information:

The dismissal will become final unless written appeal is received by the Equal Rights Division, P.O. Box 8928, Madison, Wisconsin 53708, within 20 days of the date this determination was mailed. (The DATE OF MAILING is stamped at the top of the Initial Determination.)

The initial determination having been mailed on November 6, 2023, the final date on which an appeal could have been filed was November 26, 2023. However, because November 26 fell on a Sunday, the deadline was extended until the next business day, Monday, November 27. *See*, Wis. Admin. Code § DWD 221.02(3). The complainant’s letter of appeal was received by the Division on November 28.

On November 30, 2024, the Division issued a letter informing the parties that a late appeal had been filed and that the matter was being assigned to an administrative law judge to determine whether the complainant had shown that “legally sufficient circumstances exist” for the Division to accept the late appeal. The complainant was informed that he must submit his reasons for filing a late appeal along with any supporting documentation by December 14.

The complainant submitted several documents pertaining to his appeal, which were received by the Division between December 6 and December 14, 2023. The complainant asserted, among other things, that he had, in fact, filed a timely appeal. On February 20, 2024, the administrative law judge issued a decision finding that the complainant’s appeal was not filed in a timely manner and that he did not demonstrate circumstances justifying accepting a late appeal. The administrative law judge therefore affirmed the dismissal of the complaint. The complainant has filed a timely petition for commission review of that decision.

Memorandum Opinion

The Division’s rules provide the following with respect to appeals of no probable cause initial determinations issued in WPAAL cases:

DWD 221.10 Appeal of initial determination of no probable cause.

(1) **WHEN FILED.** Within 20 days after the date of an initial determination finding that there is no probable cause, a complainant may file with the division a written request for a hearing on the issue of probable cause. The department shall notify the respondent that an appeal has been filed within 10 days of receiving the appeal.

(2) **DISMISSAL FINAL IF NO APPEAL FILED.** If no timely written request for a hearing is filed, the initial determination's order of dismissal shall be the final determination of the department.²

In his petition for commission review the complainant argues that the Division failed to send its initial determination by certified mail, per Wis. Admin. Code DWD § 221.07. He further argues that the Division received his appeal by November 27, but that, as a “racist trick,” it stamped the document as having been received the next day, November 28. These arguments fail. As the administrative law judge explained in her decision, Wis. Admin. Code § 221.07 does not require the Division to send determinations by certified mail. Moreover, the complainant has not contended that he did not receive the determination in time to file a timely appeal; to the contrary, the complainant insists that his appeal was filed on November 27. Regarding that assertion, the commission notes that materials in the case file demonstrate that the complainant's appeal was not delivered to the Division by the U.S. Postal Service until November 28, the day after the appeal was due. While the complainant suggests that the Division really received the document on time but fraudulently stamped it as having been received late, there is no evidence to support this, and U.S. Postal Service records clearly indicate otherwise.

In his petition the complainant also argues that the administrative law judge's decision in this matter was “misplaced as to the stage of the case” and therefore “void.” The complainant elaborates that the administrative law judge should have addressed the issue of what damages were due to him because the respondent failed

² The Division gave the complainant an opportunity to submit an explanation for his failure to file a timely appeal. However, neither the WPAAL nor the administrative rule cited above provide for any such procedure. To the contrary, the rule requires dismissal of an appeal that is filed beyond the statutory deadline, without regard to the reason why it was late. While a showing that the initial determination was not received in time to file a timely appeal (for reasons that were unrelated to the complainant's own actions) may provide a rationale for accepting a late appeal, it is well established that personal circumstances, even compelling ones, do not permit the Division to accept a late appeal. See, *Nute v. CESA #5*, ERD Case No. CR202202143 (LIRC Apr. 29, 2023); *Sipprell v. Kenosha Unified School District*, ERD Case No. CR201104269 (LIRC Jan. 15, 2015), citing *Rivas v. City of Milwaukee Building Inspection*, ERD Case No. 199601483 (LIRC May 24 1999). Consequently, absent an assertion by the complainant of non-receipt or delayed receipt of the initial determination, there would be no reason for the Division to request that the complainant submit an explanation for his failure to file a timely appeal.

to file a timely answer to his complaint and, further, that he should have received a default judgment on that basis.³ This argument also fails. The complainant's opportunity to challenge the initial determination or to raise other issues related to his case was by filing a timely appeal. Having found that the appeal was not timely filed, the administrative law judge lacked authority to consider the other arguments raised by the complainant. Because the commission agrees with the administrative law judge's disposition of the matter, the dismissal of the complaint is affirmed.

cc: Attorney Craig Papka

³ Wis. Admin. Code DWD § 221.05 directs respondents to respond in writing to the allegations of the complaint within 10 days after being notified of the complaint. Per the rule, "if no response is filed within the time provided, the division will make an initial determination based on the information provided by the complainant." There is no provision requiring the respondent to pay damages to the complainant if it fails to file an answer within 10 days, nor is the complainant entitled to a default judgment under these circumstances.