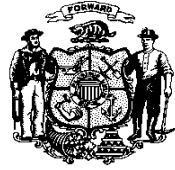


State of Wisconsin



Labor and Industry Review Commission

**Jonathan Valentin**  
Complainant

**Milwaukee Rescue Mission**  
Respondent

ERD Case No. CR202301500

**Public Accommodation Decision<sup>1</sup>**

**Dated and Mailed:**

July 15, 2024

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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

<sup>1</sup> **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 June 12, 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 based upon his race, color, ancestry, national origin, and creed, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter “WPAAL”). On November 2, 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 the Complainant submits a written appeal letter via mail or fax to:  
Equal Rights Division  
819 N 6<sup>th</sup> St  
Room 723  
Milwaukee WI 53203-1687  
414-227-4084 (fax)**

**The appeal letter must be received within 30 days of the date this determination was mailed.** (The DATE OF MAILING is stamped at the top of the Initial determination). In the appeal letter, the Complainant must state the specific reasons for appealing. **The appeal letter cannot be submitted via email and must be received by 4:30 p.m. on the appeal due date.**

(emphasis in original)

The initial determination having been mailed on November 2, 2023, the final date on which an appeal could have been filed, pursuant to the 30-day instruction contained in the initial determination, was December 2, 2023.<sup>2</sup> However, because December 2 fell on a Saturday, the deadline was extended until the next business day, Monday, December 4. *See*, Wis. Admin. Code § DWD 221.02(3). The complainant mailed his letter of appeal to the Division on December 5, and it was received on December 7.

On January 19, 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

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<sup>2</sup> Wisconsin Admin. Code DWD § 221.10 provides that appeals must be filed within 20 days. However, the initial determination erroneously gave the complainant an extra 10 days in which to file an appeal. *See, Magnarini v. Jos. Reilly*, ERD Case No. 8052083 (LIRC June 17, 1981) (Where the Division incorrectly advised a complainant that she had 20 days, instead of the then-mandated 15 days, in which to file an appeal of a no probable cause determination, the Division was obligated to treat her appeal, filed within 20 days, as timely).

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 February 2. The complainant was further advised that, if he failed to submit reasons for his late appeal by that date, the administrative law judge would issue a decision based upon the information in the file.

The complainant submitted an explanation for his failure to file a timely appeal, which was received by the Division on February 5, 2024. The complainant offered a variety of reasons for filing when he did, most of which addressed his apparent belief that he was legally entitled to do so. The administrative law judge issued a decision on February 28, 2024, noting that the complainant’s explanation was filed late, and finding that the complainant did not have a reason for the untimely appeal. The administrative law judge therefore affirmed the dismissal of his 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.

As noted in the Procedural History section, above, the Division inadvertently gave the complainant an extra 10 days in which to file his appeal beyond that to which he was entitled by law. Additionally, 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 April 29, 2023) and *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.

In his petition for commission review the complainant argues that “serving the U.S. Post Office on the day service of papers is due” constitutes timely response, pursuant to Wis. Stat. §§ 801.14(2) and 801.15(1)(a) and (b). The complainant cites other legislative authority that he apparently believes supports this contention, including Wis. Stat. § 227.40(2), and chapters 801 to 847 of the statutes. These arguments fail. The procedure and deadlines for appealing initial determinations issued in WPAAL cases are contained in Wis. Admin. Code DWD § 221.10, which requires that an appeal must be filed within 20 days of the issuance of the initial determination, and in Wis. Admin. Code DWD § 221.02(6), which defines “filing” as the physical receipt of the document at one of the Division’s offices. Other statutory deadlines and procedures, including those contained in chapter 801, which applies to appeals to circuit court, are not relevant to this proceeding. The complainant was made aware of the applicable deadline, and of the fact that the appeal document needed to be *received* within that time frame, as this information was clearly spelled out in the initial determination. Finally, the commission is compelled to point out that, even applying the standard the complainant urges, his appeal would not be considered timely, as it was not mailed “on the day service of papers [was] due,” but rather, was mailed the day *after* the appeal was due. For all these reasons, the commission agrees with the administrative law judge that the complainant’s appeal cannot be considered timely filed.

In his petition the complainant further argues that he endured ongoing hardship through the fall and winter of 2023 and 2024, in part due to actions by the respondent, and that it was difficult for him to receive correspondence in a timely fashion due to a no-contact order that was in place at the time. These arguments are without merit. While the complainant may have been undergoing personal hardship, as indicated above, that is not a circumstance that would permit the Division to accept a late appeal. Further, although the complainant indicates that he found it difficult to receive mail, he has not alleged that he did not receive the initial determination in time to file a timely appeal. Rather, it appears that the complainant received the determination in time to file a timely appeal but chose to wait until after the last day on which an appeal could have been filed to mail his appeal to the Division. The dismissal of the complaint is affirmed.