

State of Wisconsin



Labor and Industry Review Commission

Max L. Stephenson, Complainant

International Autos, Inc., Respondent

ERD Case No. CR202001011
EEOC Case No. 26G202000761C

Fair Employment Decision¹

Dated and Mailed:

August 16, 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

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 him by discharging him because of a disability in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development held a hearing and issued a decision. The complainant filed a timely petition for commission review.

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

In a disability discrimination case, the complainant must prove that he is an individual with a disability within the meaning of Wis. Stat. § 111.32(8). *Wingra Redi-Mix Inc. v. LIRC*, 2023 WI APP 34, ¶ 56, 408 Wis. 2d 563, 993 N.W.2d 715. The complainant argues in his petition for commission review that he was an individual with a disability during his employment with the respondent and at the time the respondent discharged him. Specifically, the complainant argues he was a person with a disability under Wis. Stat. § 111.32(8)(c), which applies where the respondent perceived him as having a physical or mental impairment which made achievement unusually difficult or limited the capacity to work. The complainant's evidence in support of his contention that the respondent perceived him as having a disability is that he had informed the respondent that he had recovered from cancer and, further, that he signed up for health insurance offered by the respondent to its employees.²

However, the evidence does not support a conclusion that the respondent perceived the complainant as having a disability. Although the respondent was aware that the complainant had a prior cancer diagnosis, the complainant conceded that his medical condition did not impair his ability to perform his work or require any accommodations in the workplace. While the complainant testified that he continued to have medical appointments and take medications related to his cancer, he indicated that he scheduled his appointments on his days off and never asked for any time off for those appointments. There is no evidence the respondent was aware the complainant was taking medications and no reason to believe it was aware he was receiving ongoing medical treatment related to his cancer.

² The complainant also presented evidence that his insurance end date was backdated to the beginning of December rather than continuing through the end of the month. However, this decision was made by a human resources staff person, who was not involved in the decision to discharge the complainant, after the discharge had already occurred. Further, after the complainant indicated he would pay the premium for the month of December, his insurance was reinstated.

The complainant also argues that his condition, cancer, is generally perceived to be an expensive disease to treat. He maintains that, because the general manager, the individual who made the decision to discharge the complainant, is incentivized to reduce overhead costs, the complainant's increasing of the respondent's costs by signing up for insurance is a perceived impairment that constitutes a disability. However, there is no evidence regarding what the respondent paid for any of its employees' health insurance and no evidence that the cost to the respondent for the complainant's insurance was higher than the cost for any other employee. Moreover, the general manager credibly testified that he was not aware of whether the complainant, or any other employee, had insurance through the respondent's group insurance plan. Thus, even if there were some basis to conclude that the complainant's decision to sign up for the respondent's offered group health insurance was indicative of a disability – and the commission does not find that there is – there is nothing in the record to show that the general manager was aware he had done so.

The complainant has not provided any evidence of a real or perceived impairment that made achievement unusually difficult for him or that limited his capacity to work. Because the complainant did not establish that he was an individual with a disability, within the meaning of the Act, his complaint must be dismissed. The administrative law judge's decision is affirmed.

cc: Attorney Jaclyn Kallie
Attorney Joshua Brady