

State of Wisconsin



Labor and Industry Review Commission

**James C. Young**, Complainant

**Amazon.com Services, LLC**,  
Respondent

ERD Case No. CR202101968  
EEOC Case No. 26G202100894C

**Fair Employment Decision**

**Dated and Mailed:**

October 23, 2024

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A petition for commission review must be received within 21 days after the administrative law judge's decision was mailed to the party's last known address. The petition in this matter was filed late, but the commission is satisfied that the complainant was prejudiced because of exceptional delay in the receipt of a copy of the decision. Therefore, the petition for review is not dismissed and the commission will proceed to review the administrative law judge's decision.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

### **Memorandum Opinion**

An administrative law judge for the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development issued a decision in this matter finding that the complainant failed to demonstrate he was discriminated against as alleged in his complaint. The complainant has filed a petition for commission review of that decision.

The applicable statute provides that a party who is dissatisfied with the findings and order of the examiner may file a written petition with the department for review by the commission of the findings and order, that if no petition is filed within 21 days from the date that a copy of the findings and order of the examiner is mailed to the parties the findings and order shall be considered final, and that if the commission is satisfied that a petitioner has been prejudiced because of exceptional delay in the receipt of a copy of any findings and order it may extend the time another 21 days for filing the petition with the department. Wis. Stat. § 111.39(5).

Wisconsin Admin. Code LIRC § 1.02 provides, in relevant part, as follows:

All petitions for commission review shall be filed within 21 days from the date of mailing of the findings and decision or order . . .

The administrative law judge’s decision having been dated and mailed on April 30, 2024, the last day on which a timely petition for review could have been filed was May 21, 2024. The complainant’s petition for review was submitted by fax at 6:00 p.m. on May 27, 2024. Therefore, it is considered to have been filed on May 28, 2024. *See*, Wis. Admin. Code LIRC § 1.025(3)(b)2. and Wis. Stat. § 230.35(4)(f).

The complainant contends that his petition was late because he never received a copy of the administrative law judge’s decision by mail, and only received a copy of the decision via email, after contacting the administrative law judge to inquire about when the decision would be issued and discovering it had already been mailed. Consistent with this explanation, the Division’s records indicate that on May 20, 2024, the complainant emailed the administrative law judge to inquire when he could expect a decision in this matter. The complainant copied the respondent’s attorney on this email. Although the final day to file a timely petition for commission review was May 21, 2024, and the complainant could still have managed to file a timely petition at the time he sent his inquiry to the administrative law judge, he received no response until after the appeal period had elapsed. On May 22, 2024, the administrative law judge informed the complainant that the decision was mailed on April 30, 2024. The complainant explained that he did not receive it. The following day, May 23, 2024, the Division’s program assistant supervisor sent him a copy of the decision by email. The complainant filed his petition five days later.

Under Wis. Stat. § 111.39(5), the commission may consider a late petition if it is satisfied that a party has been prejudiced because of an exceptional delay in the receipt of a copy of the administrative law judge's decision. Here, the complainant maintains that he never received a copy of the administrative law judge's decision in the mail. Although the decision was mailed to the complainant at his most recent address and was not returned to the Division as undeliverable mail, the explanation that it was not received is not inherently implausible. Moreover, as indicated above, the complainant contacted the Division prior to the expiration of the appeal period to inquire about the status of the decision, but notwithstanding that inquiry, did not receive a copy of the decision until after the appeal period had run.

Given these circumstances, the commission considers it appropriate to extend the time for filing the petition another 21 days, as contemplated by Wis. Stat. § 111.39(5). Because the complainant's petition was filed on May 28, 2024, five days after he received a copy of the administrative law judge's decision, the commission accepts it as timely. The commission will therefore proceed to order a synopsis of the hearing and conduct a review of the complainant's case. The commission notes that the respondent has requested a briefing schedule in the event the complainant's petition is accepted. A briefing schedule will be issued once preparation of the synopsis is complete.

cc: Attorney Rudolph Burshnic