

State of Wisconsin



Labor and Industry Review Commission

<p>Ryan O'Boyle, Complainant</p> <p>AmeriPro Roofing, Respondent</p> <p>ERD Case No. 202002455</p>	<p>Fair Employment Decision¹</p> <p>Dated and Mailed:</p> <p>November 21, 2024</p> <hr/> <p>oboylry_rsd.doc:149</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 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 on the basis of his conviction record 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 finding that the complainant was not discriminated against as alleged. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based upon 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 his petition for commission review, filed on the complainant's behalf by his attorney, the complainant asks the commission to reverse the administrative law judge's decision and find in his favor. However, the complainant's petition contains no argument, and the commission has no specific indication as to why the complainant believes the administrative law judge's decision was in error or that he should prevail based upon this record. Notwithstanding this, the commission has conducted an independent review of the record in order to determine whether the findings of fact and conclusions of law made by the administrative law judge are supported. The commission concludes that they are.

The issue presented in this case is whether the complainant was denied hire because of his conviction record and, if so, whether his conviction record was substantially related to the job for which he applied such that the respondent could lawfully choose not to hire him based upon that record. The evidence presented at the hearing established that the complainant applied for a job as an outside sales representative with the respondent, but was denied hire based upon the fact that he had a prior conviction for attempted second-degree intentional homicide. The position of outside sales representative would have required the complainant to frequently make unsolicited visits to the homes of potential customers who regularly slammed their doors or otherwise reacted with hostility or aggressive behavior. The complainant's conviction resulted from an incident in which, after being provoked by a stranger who bumped into him, the complainant resorted to violence and intentionally stabbed the stranger twice in the chest. Because the commission agrees with the administrative law judge that the circumstances of that offense were substantially related to the circumstances of the job at issue, such that the job presented a greater than usual opportunity for recidivism for the complainant, the dismissal of the complaint is affirmed.

cc: Atty. John Leppanen
Atty. Christopher L. Nickels
Atty. Tyler J. Roth