

State of Wisconsin



Labor and Industry Review Commission

Vanessa D. Bonick, Complainant

County of Clark  
Clark County Rehabilitation & Living  
Center, Respondent

ERD Case No. CR202002697  
EEOC Case No. 26G202100177C

**Fair Employment Decision<sup>1</sup>**

**Dated and Mailed:**

April 15, 2025

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The decision of the administrative law judge is **affirmed**, subject to modification. 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 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 her on the basis of 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 finding no probable cause to believe that the complainant was 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 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, subject to the following:

### **Modifications**

1. In the first and second sentences of paragraphs 17 and 19 of the administrative law judge's FINDINGS OF FACT, the word "absences" is deleted wherever it appears, and the phrase "attendance infractions" is substituted therefor.
2. Paragraph 18 of the administrative law judge's FINDINGS OF FACT is deleted.

### **Memorandum Opinion**

The issue before the commission in this matter is whether the respondent violated the Act by refusing to provide the complainant with a reasonable accommodation for her disability and/or by discharging her because of her real or perceived disability. The administrative law judge found no probable cause to believe that the respondent violated the Act under either theory. The commission agrees.

To be held liable for refusing to reasonably accommodate the complainant's disability or for subsequently taking an adverse employment action against the complainant because of disability, the respondent must have some level of awareness of the complainant's disability and his or her need for accommodation. *Wingra Redi-Mix Inc. v. LIRC et al.*, 2023 WI App 34, ¶¶ 52, 76, 408 Wis. 2d 563, 993 N.W.2d 715. If the information known to the respondent should allow a reasonable employer to recognize that the complainant has a physical or mental impairment which makes achievement unusually difficult or limits the complainant's capacity to work, and that limitation might be permanent, the commission may find that the respondent should have recognized that the complainant has a disability and was entitled to a reasonable accommodation. *Id.* at ¶¶ 96-97. The information necessary for the respondent to recognize that a complainant has a disability and requires an accommodation depends on the facts of the given case, and this determination is a finding of fact, which the commission is ultimately responsible for making. *Id.* at ¶¶ 89, 97.

In her petition for commission review, the complainant argues that the respondent had sufficient knowledge of her chronic migraine condition for it to recognize that she

might have a disability. She alleges that the respondent was aware that she suffered from migraines and was missing work due to this condition, that she sought medical care for this condition, that she requested leave under the Family and Medical Leave Act (FMLA) due to this condition, and that migraines could constitute a disability under the Act. She also argues that, despite the respondent's knowledge that she was suffering from migraines, the respondent did not meet with her to discuss her condition, ask her for medical documentation, or otherwise engage in an interactive process. Finally, the complainant argues that, in concluding that the respondent did not violate the Act, the administrative law judge disregarded her testimony and relied exclusively on the testimony from the respondent's director of nursing, Karen Simmington, who the complainant contends was not credible. The commission has considered the complainant's arguments but does not find them persuasive.

This case presents numerous disputes of fact about the parties' conduct, which the commission must resolve in order to determine whether the information known to the respondent would allow a reasonable employer in the same situation to recognize that the complainant might have disability. The administrative law judge credited the respondent's witnesses' testimony, including testimony from Karen Simmington, that, while they did know the complainant had missed work due to migraines, they were unaware that the complainant had a migraine condition that might be considered a disability. The commission agrees with the administrative law judge's credibility determination on this point and adopts it as its own. The commission also credits the respondent's witnesses' testimony that the complainant did not request FMLA leave related to her migraines in August of 2020, and it has modified the administrative law judge's decision accordingly.

Based on the credible evidence in the record, the commission agrees with the administrative law judge that the information known to the respondent was insufficient for it to have recognized that the complainant had a disability. Although the complainant informed the respondent that some of her absences were attributable to migraines, the use of the term "migraine" itself was insufficient to put the respondent on notice that the complainant had a disability, as that term is used in common vernacular by both individuals with and without a disability to refer to a particularly severe headache. *See, e.g., Wester v. Charter Media/Communications*, ERD Case No. CR200003872 (LIRC Oct. 14, 2004) (finding that the phrase "mental health day" is a phrase used in common vernacular to refer to a day free from stressors from work, and is not sufficient to put a respondent on notice of a mental disability). The complainant also did not explicitly inform the respondent that her migraine condition was permanent or that she needed an accommodation. Therefore, the commission is unpersuaded that the information known to the respondent, was sufficient to put the respondent on notice that she had a disability.

In her petition, the complainant also argues that the administrative law judge did not address whether the respondent perceived her as having an autoimmune disease—lupus—or whether she was discharged on that basis. However, as discussed above, the respondents' witnesses credibly testified that they were unaware that the

complainant had a condition that might constitute a disability, including her alleged autoimmune disease. The information known to the respondent—namely, the complainant’s single conversation with the respondent informing it that she had received a positive antinuclear antibody (ANA) test and *may* have an autoimmune disease—was not sufficient for it to have reasonably understood that she was claiming to have a disability. Further, even if it could be found that the respondent perceived the complainant as having a disability, the fact remains that it made the decision to discharge the complainant based on her attendance before she informed the respondent of an alleged autoimmune disease. Therefore, it could not have been motivated by a desire to discriminate against the complainant based upon a perceived disability.

The commission has considered the complainant’s remaining arguments but does not find them persuasive. Because the commission agrees with the administrative law judge that the respondent was unaware that the complainant had a condition that might constitute a disability under the Act or that it perceived her as having a disability, there is no probable cause to believe that the respondent refused to reasonably accommodate the complainant or discharged her due to her disability. The dismissal of the complaint is, therefore, affirmed.

cc: Atty. David Schoenberger  
Atty. Samantha Wood