

State of Wisconsin



Labor and Industry Review Commission

**Bryan Morel**, Complainant

**Marshfield Clinic Health System Inc.**,  
Respondent

ERD Case No. 202002270

**Fair Employment Decision**

**Dated and Mailed:**

April 22, 2025

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The decision of the administrative law judge is **reversed**. Accordingly, this matter is remanded to the Equal Rights Division for a hearing and decision on the merits of the complainant's complaint.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

### **Procedural Posture**

This case is before the commission to consider whether there is probable cause to believe the complainant's allegation that the respondent discriminated against him because of his conviction record, in violation of the Wisconsin Fair Employment Act (hereafter "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 there was no probable cause to believe that the respondent discriminated against the complainant in violation of the Act. The complainant 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 makes the following:

### **Findings of Fact**

1. The respondent, Marshfield Clinic Health System, Inc. (hereinafter "respondent"), operates multiple healthcare facilities including locations in Marshfield, Wisconsin
2. The complainant, Bryan Morel (hereinafter "complainant"), is an individual with a conviction record. In separate cases, he was convicted of theft of movable property, operating while revoked, carrying a concealed weapon, and disorderly conduct. The most recent conviction was in July of 2017.
3. The complainant earned an Associates of Science Nursing degree from Rasmussen college in March of 2018 and obtained a nursing license. He worked as a Registered Nurse (RN) for Saint Clair's Hospital from September through December 2018, Wausau Manor from January through March 2019, and North Central Health Care from April 2019 through June 2020.
4. In August of 2020, the complainant applied for a position as an RN in the respondent's emergency department.
5. Stephanie Tate, the respondent's emergency department manager, interviewed the complainant in early September 2020. During the interview, she asked the complainant why he had left his previous nursing job at North Central. The complainant indicated he could not discuss why he left due to a nondisclosure agreement. During the course of the interview, the complainant commented to Ms. Tate that he has a deep, stern tone and mannerism that has been characterized as a "dad voice."
6. Ms. Tate felt the interview went well.
7. On September 8, 2020, the respondent offered the complainant the RN position, contingent on a physical, drug screen, and background check. That same

day, the complainant completed a background information disclosure form and disclosed his past criminal convictions to the respondent.

8. The respondent ran a caregiver background check and a criminal background check on the complainant and received the results on September 9, 2020. The caregiver background check returned information about the complainant's nursing license, but no negative information. The criminal background check returned information related to the convictions the complainant had disclosed.

9. The complainant passed the drug screen and physical exam.

10. On September 25, 2020, Heather Ule, the recruiter who handled the complainant's job application, called the complainant and informed him the contingencies had been completed and he would start employment on September 30, 2020. However, later that day, Ms. Ule informed the complainant she was putting his start date on hold because she needed more information about his background.

11. When the complainant learned Ms. Ule needed documentation related to his convictions, he provided her with the documentation he had. However, the respondent's policies required it to obtain police reports and conviction records from the police departments or courts involved. Ms. Ule therefore continued to work on obtaining this documentation from the original sources. She also informed Ms. Tate that the complainant would not be starting work as previously planned and that his start date was on hold because of "some background issues." Ms. Tate responded: "yikes, is that good or bad – OK, keep me posted and on everyone else thanks."

12. After this conversation, Ms. Ule gathered the necessary documentation and sent it to her supervisor, Heidi Kramer, for review. Ms. Kramer reviewed the complainant's file and raised a concern to Ms. Ule about the complainant's work history because some of his past employment relationships had not lasted more than a few months.

13. Between September 25 and October 8, 2020, the complainant reached out to the respondent by phone and email on several occasions to inquire about the status of his job offer. On October 2, 2020, the complainant sent an email to Ms. Ule, and copied Ms. Tate. The email reads, in relevant part:

Good afternoon Heather, I wanted to reach out again and see if you had any further updates? It's been a month since I was offered the position, and a week since I was originally supposed to start. I am feeling like the rug was yanked out from underneath me. If there is someone else that I need to speak to about the status of my start date, could you please put them in touch with me. Thank you

14. That same day, Ms. Tate responded to the complainant's email with the following message:

I am sorry you haven't heard anything. I have escalated this, obviously less than ideal. Please let me know if you don't hear from her, and I will do what I can on my end.

The complainant replied: "Thank you, I will keep you updated." Ms. Tate responded: "Thanks hang in there..."

15. Also on October 2, 2020, a clinic administrator for the respondent emailed Ms. Kramer, Ms. Ule's supervisor, and indicated that Ms. Tate, the emergency department manager, was having "challenges" with Ms. Ule. Regarding the complainant specifically, the administrator indicated Ms. Tate was "fearful that she [would] lose him before he starts." The email also mentioned that Ms. Tate was aware there was "more to check" regarding the complainant's background.

16. On October 7, 2020, Ms. Ule informed Ms. Tate that she had received approval to proceed with rescinding the complainant's offer of employment based on his "overall manner and communication throughout the process of waiting." Ms. Ule asked Ms. Tate if she wanted to proceed with rescinding the offer. Ms. Tate chose to proceed.

17. Ms. Tate made the decision to rescind the complainant's offer of employment in consultation with Ms. Ule. The respondent also required approval from Ms. Kramer to move forward with rescinding the offer, and Ms. Kramer approved of the decision.

18. On October 8, 2020, Ms. Ule and Ms. Tate contacted the complainant by phone and informed him that the respondent was rescinding its offer of employment based on his communication with Ms. Ule which, the respondent indicated, was inappropriate, aggressive, and negative. During this phone conversation, the complainant requested specific examples of problematic communication. The respondent referenced the example of the complainant's October 2 email, in which he indicated he felt like the rug had been yanked out from under him, but provided no additional examples.

19. The respondent rescinded the job offer it had made to the complainant based upon his conviction record.

### **Conclusions of Law**

1. There is probable cause to believe that the respondent discriminated against the complainant because of his conviction record, in violation of the Act, when it rescinded an offer of employment.

### Memorandum Opinion

This matter is before the commission on the question of whether probable cause exists to believe that the respondent discriminated against the complainant based upon his conviction record, within the meaning of the Act. Probable cause is defined as “a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe that a violation of the act probably has been or is being committed.” Wis. Admin. Code § DWD 218.02(8). Probable cause “lies somewhere between preponderance of the evidence and suspicion.” *Mitchell v. DNR*, ERD Case No. CR201801226 (LIRC Oct. 30, 2023) (citing *Braunschweig v. SSG Corp.*, ERD Case No. CR200400816 (LIRC Aug. 31, 2006)).

It is an act of employment discrimination to refuse to hire an individual because of his conviction record. Wis. Stat. §§ 111.321, 111.322. Here, the respondent has not argued that the complainant’s conviction record was substantially related to the job of RN, or that any of the other exceptions found in Wis. Stat. § 111.335 are applicable. Rather, the respondent argues that it rescinded the offer of employment because of legitimate, non-discriminatory reasons unrelated to the complainant’s conviction record. Specifically, the respondent asserts that its reasons for rescinding the offer were the complainant’s work history and the complainant’s communications with the respondent’s staff between September 25 and October 8, 2020.

Because the respondent has asserted non-discriminatory reasons for its actions, the burden shifts to the complainant to show probable cause to believe that the respondent’s asserted non-discriminatory reasons are a pretext for discrimination. The timing of events supports the complainant’s position. The respondent was aware of the complainant’s work history prior to its September 8, 2020 decision to extend a conditional offer of employment to the complainant and prior to its September 25, 2020 decision to set a start date for the complainant’s employment. The respondent did not learn any new information regarding the complainant’s past employment between September 8 and October 8, when the respondent rescinded the offer of employment. It is therefore unlikely that the complainant’s employment history played any significant role in the respondent’s decision to rescind the offer of employment.

The commission finds the respondent’s explanation that it rescinded the job offer based upon the complainant’s communications equally unpersuasive. The complainant continued to communicate with the respondent between September 25, the date on which it set and cancelled the complainant’s start date, and October 8, 2020, the date on which the offer was rescinded. The respondent therefore did gain some additional information about the complainant’s style and manner of communication. However, when asked to provide examples of the problematic communications that led to the respondent’s decision to rescind the job offer, it

provided only two specific examples.<sup>1</sup> The first was the October 2 email the complainant sent to Ms. Tate and Ms. Ule in which he expressed his frustration by stating that he felt like the “rug was yanked out from underneath [him].” However, Ms. Tate, the individual who had the final say regarding the complainant’s employment, did not find this email to be aggressive or otherwise inappropriate. Rather, she sympathized with the complainant’s frustration and escalated the matter to the clinic administrator because she was afraid she would lose the opportunity to employ the complainant due to the delays in the hiring process.

The respondent’s second example of communication that it considered inappropriate took place during an alleged three-way phone call involving Ms. Tate, Ms. Ule, and the complainant in early October of 2020. The commission does not consider the respondent’s testimony on this point to be credible. Ms. Tate’s testimony regarding the alleged call closely tracks an exhibit she was shown during the hearing to refresh her memory of the call: an email written by Ms. Ule after the respondent was served with the complaint in this matter. However, the complainant testified that he only spoke to Ms. Tate on the phone twice, once being the job interview in early September and the second being the call on October 8, which also included Ms. Ule, informing him of the respondent’s decision to rescind the job offer. The complainant’s testimony on those points is supported by Ms. Ule’s testimony that she only recalled being involved in one phone call with both the complainant and Ms. Tate – the phone call when the offer was rescinded.

Finally, the commission notes that the respondent delayed the hiring process in order to obtain information about the complainant’s conviction record. This delay to obtain further information, in itself, is not a violation of the Act, as the complainant argues. However, during the delay, the respondent gathered information about the complainant’s past convictions and reviewed that information. Shortly thereafter, the job offer was rescinded. This suggests that the information gathered during this delay about the complainant’s conviction record played a role in the respondent’s decision to rescind the offer.

For the reasons above, the commission concludes that the respondent’s asserted non-discriminatory reasons for its decision to rescind the offer of employment are pretexts for discrimination and that the complainant met his burden of establishing probable cause to believe he was discriminated against based upon his conviction record. The administrative law judge’s decision is therefore reversed and the matter is remanded to the Equal Rights Division to hold a hearing on the merits of the complainant’s complaint.

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<sup>1</sup> Ms. Tate mentioned additional behaviors on the complainant’s part that she found “odd,” such as the complainant’s discussion of his “dad voice.” However, these examples all occurred in the context of the job interview that Ms. Tate specifically testified she felt went well, and after which she decided to offer the complainant the job. It therefore does not appear that these “odd” behaviors played a role in her decision to rescind the job offer.

NOTE: Prior to reversing, the commission consulted with the administrative law judge who held the hearing to obtain her impressions as to the credibility of the witnesses, based on their demeanor, which were a factor in her decision. However, the administrative law judge had no demeanor impressions to impart.

cc: Attorney Christopher Toner