

State of Wisconsin



Labor and Industry Review Commission

Amy Beisbier, Complainant

United Cooperative, Respondent

ERD Case No. CR202101437

Fair Employment Decision<sup>1</sup>

Dated and Mailed:

April 22, 2025

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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

<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 History

On November 12, 2021, the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development sent the complainant a letter by certified mail to her last known address asking her if she wanted it to conduct a review of her case, which had been dismissed a few days earlier by the United States Equal Employment Opportunities Commission. The certified letter stated that the complainant’s response must be received within 20 days of the date the letter was mailed or the complaint would be dismissed. The complainant’s response was not received until December 6, 2021, after the 20-day deadline had elapsed. On December 9, 2021, the Division issued an order dismissing the complaint for failure to respond to a certified letter within the specified time. The complainant appealed the dismissal and the case was assigned to an administrative law judge, who affirmed the decision to dismiss the complaint. The complainant then filed a petition for commission review of that decision.

### Memorandum Opinion

Wisconsin Stat. § 111.39(3), commonly known as the “20-day letter” statute, provides:

The department shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the department concerning the complaint and if the correspondence is sent by certified mail to the last-known address of the person.

Pursuant to the statute, dismissal of a complaint is mandatory where the letter is sent by certified mail to the complainant’s last known address, as occurred in this case. Wis. Stat. § 111.39(3). Additionally, the commission has required that the 20-day letter must be “purposeful,” in that it requests information necessary for the processing of the complaint, which the Division does not already have. *See, Palmer v. Wisconsin Public Service Corp.*, ERD Case No. CR200201890 (LIRC July 30, 2003). That also occurred in this case, as the Division needed to know whether the complainant wanted to continue to pursue her case after the EEOC had issued its dismissal. *See, Wren v. Columbia St. Mary’s Hospital*, ERD Case No. 200402125 (LIRC Nov. 26, 2004)(correspondence inquiring whether the complainant wanted the Division to conduct a second independent investigation of her complaint after it was dismissed by the EEOC was considered purposeful).

As the administrative law judge noted in her decision, the statute contains no “good cause” provision or exception to the rule requiring dismissal when a 20-day letter is sent by certified mail to the correct address and is not answered in a timely fashion. Rather, the statute mandates that, where there is no response within 20 days, the complaint “shall” be dismissed. Further, as the administrative law judge also correctly observed, the complainant in this case would not be able to establish good cause, even if such a standard existed. The complainant signed for the certified letter on November 15, 2021, and was on notice that her response must be received

by December 2, 2021, or her complaint would be dismissed; the letter specified, in bold type and underlined, **“If we do not receive a response to this letter by December 2, 2021, this case will be dismissed pursuant to Section 111.39(3), Wisconsin Statutes.”** Although the complainant had ample time in which to submit a timely response, the envelope in which the response was mailed was not postmarked until December 1, 2021, indicating that the complainant did not send it until December 1, 2021, the day before it was due. While in her petition for review the complainant argues that she relied on the postal service to deliver her request and that this was a factor over which she had no control, it is commonly understood that mail sent through the regular U.S. Postal Service takes more than a day to arrive, and it was unreasonable for the complainant to assume otherwise.

Under all the facts and circumstances, the commission agrees with the administrative law judge that dismissal of the complainant’s complaint was warranted, pursuant to Wis. Stat. § 111.39(3). The dismissal of the complaint is therefore affirmed.

cc: Atty Rebecca Salawdeh