

State of Wisconsin



Labor and Industry Review Commission

<p>Melvin M. Anderson, Complainant</p> <p>Fashion Angels Enterprises, Respondent</p> <p>ERD Case No. CR201802379 EEOC Case No. 26G201801248C</p>	<p>Fair Employment Decision¹</p> <p>Dated and Mailed:</p> <p>May 9, 2025</p> <hr/> <p>anderme_rsd.doc:103</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 terminated his employment and refused to re-hire him because of his arrest record in violation of the Wisconsin Fair Employment Act ("the Act"). An administrative law judge ("ALJ") for the Equal Rights Division ("the Division") of the Department of Workforce Development held a hearing and issued a decision. The complainant filed a timely petition for commission review.

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

Memorandum Opinion

In his petition for commission review, the complainant argues that the respondent failed to prove that he was fired for his performance.² The commission has carefully reviewed the record and agrees that the complainant was not discharged for his work performance. Indeed, the complainant's supervisor testified that he was a good worker. Rather, the evidence shows that the respondent terminated the complainant's employment due to excessive absenteeism, which occurred while the complainant was incarcerated following an arrest. While the Act prohibits discrimination because of arrest record, it does not require an employer to provide accommodations for an arrest record. *Knight v. LIRC*, 220 Wis. 2d 137, 582 N.W.2d 448 (Ct. App. 1998). The respondent allowed the complainant to miss several days of work due to court hearings and jail without consequence and completed the necessary paperwork to allow the complainant to return to his job on work release. However, after the complainant was required to return to jail and was out of work for more than a month, the respondent terminated his employment due to the prolonged absence. The respondent's actions were not in violation of the Act.

The commission also agrees with the ALJ's conclusion that the respondent's decision not to rehire the complainant was not in violation of the Act. While the complainant was in jail, the respondent realized that the three-person department in which he had worked was able to function well with only two people. In the year following his termination, the respondent did not hire anyone to fill his former position. Given the circumstances, the respondent's decision not to refill the complainant's position was

² In its brief to the commission, the respondent argues, "To challenge a prior ruling, a party must provide substantial grounds for such a reconsideration and reversal. Without any explanation or argument explaining the lower court's error, LIRC lacks the necessary foundation to overturn the established decision." The respondent is apparently contending that the complainant has not raised arguments sufficient to warrant commission review. However, the commission conducts a *de novo* review of both facts and law, which means that even when a petitioner raises no argument, the commission considers anew the case presented before the Division. *Clemons et al. v. Opportunities Industrialization Center of Greater Milwaukee*, ERD Case No. 200102575 (LIRC Feb. 14, 2003).

based on legitimate business needs. The record reveals no evidence of discrimination. The dismissal of the complaint is therefore affirmed.

cc: Attorney Corey Swinick