

State of Wisconsin



Labor and Industry Review Commission

Ken Similien, Complainant

Fair Employment Decision¹

Schneider National Carriers, Inc.,
Respondent

Dated and Mailed:

ERD Case No. CR202300943
EEOC Case No. 26G202300745

May 23, 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

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 History

The complainant filed a complaint with the Equal Rights Division (hereinafter “Division”) of the Department of Workforce Development alleging that the respondent discriminated against him based on his sex, in violation of the Wisconsin Fair Employment Act (hereinafter “Act”). An equal rights officer for the Division issued an initial determination finding no probable cause to believe that discrimination occurred. The complainant filed a timely appeal of the adverse determination and the matter was certified to hearing before an administrative law judge.

A hearing was scheduled to be held via WebEx video at 9:00 a.m. on July 9, 2024. The respondent appeared at 9:00 a.m. and was ready to proceed. At about 9:35 a.m., at which time the complainant had not made any attempt to join the hearing, the administrative law judge closed the hearing. Shortly thereafter the complainant emailed the administrative law judge requesting information about the link to join the hearing. The administrative law judge responded by advising the complainant that the hearing was closed and referring him to the appropriate section of the administrative code for information on his right to request that the hearing be reopened. A few minutes later the complainant responded that he had located the link to the video hearing. He then sent a separate email asking the administrative law judge to call him. The administrative law judge declined to do so and reiterated that the hearing was closed and that the complainant had a right to request that it be reopened.

Later that day the complainant submitted two separate emails including his explanation for failing to appear at the hearing. In the first the complainant indicated that he was confused about what time the hearing started. The complainant stated that, based upon the subpoena for one of his witnesses, he believed the hearing began at 9:45 a.m. The complainant also indicated that the administrative law judge had given him a courtesy call when he missed a pre-hearing conference and allowed him to reschedule it. He stated that if the administrative law judge had called him he would have logged on immediately. That email was followed up by a second email in which the complainant stated that he should have remembered to add that he suffers from memory loss as the result of a concussion he sustained during an accident on March 10, 2023, for which he never received treatment.

The administrative law judge gave the complainant an opportunity to submit medical documentation in support of the latter excuse, but the complainant advised the administrative law judge that he had not seen a physician and only recently realized that he has trouble remembering things. The administrative law judge found that the complainant did not establish good cause for failing to appear at the hearing and issued a decision dismissing the complaint. The complainant has filed a timely petition for commission review of that decision.

Memorandum Opinion

In his petition for commission review the complainant reiterates one of the excuses he provided to the administrative law judge, that on March 10, 2023, he suffered a concussion during a truck driving accident and has had trouble with his memory. The complainant contends that he was unable to provide medical documentation to the administrative law judge upon request because the company he worked for failed to provide him with medical attention in conjunction with the accident. The commission does not find this argument persuasive. The hearing was scheduled for July 9, 2024, and the alleged accident occurred on March 10, 2023. Even crediting the complainant's explanation that his employer refused to provide him with medical attention immediately following his accident, it seems unlikely that the complainant would not have gone to the doctor at least once in the year and four months between the date of the accident and the date of the hearing to treat for a condition that he now claims has caused such significant memory loss that it has interfered with his ability to appear at a scheduled hearing. The commission further notes that, while the complainant advised the administrative law judge that he had not seen a doctor for his concussion, the explanation he gave to the administrative law judge was that he never thought to seek medical help. This differs from his statement to the commission that he did not seek medical help because the employer refused to allow him to do so and leads the commission to question the credibility of that explanation. Finally, the commission notes that the explanation the complainant missed the hearing due to memory loss conflicts with other excuses he provided, as discussed below.

The complainant has provided a variety of additional excuses for missing the hearing, none of which are credible or persuasive. For example, in his petition the complainant states that he lives in Florida, in the Eastern time zone, and was not informed that the hearing was scheduled for Central time. This argument fails for many reasons. The complainant appeared at the pre-hearing conference, which was held on July 3, 2024 at 10:00 a.m. Central time, so he clearly understood which time zone applied. Moreover, the hearing notice specified that the hearing would be held at "9:00 a.m. CT." Given those factors, the commission sees no reason to believe that the complainant was unaware the hearing would be held on Central time. In addition, if the complainant genuinely believed the hearing would be held at 9:00 a.m. Eastern time, he would have appeared at 10:00 a.m. Central time. Instead, the complainant appeared at 9:45 a.m. Central time (8:45 a.m. Eastern time) after having notified the administrative law judge that he was having trouble locating the hearing link. The complainant subsequently told the administrative law judge that he assumed the hearing started at 9:45 a.m. because one of the witnesses who was appearing under subpoena was told to appear at that time.² It was not until he filed his petition for review that the complainant asserted he did not understand the

² Notably, a second witness was told to appear at 9:15 a.m., but that apparently did not cause the complainant to assume a 9:15 a.m. start time.

hearing was on Central time. For the foregoing reasons, the commission does not find it credible that the complainant missed the hearing because he believed it would be held on Eastern time. Finally, the commission notes that, even if the complainant had not been informed in advance that the hearing would be held on Central time, a complainant who files a complaint with the Wisconsin Equal Rights Division has no reasonable basis to assume that a hearing would be held on Eastern time and should, at very least, confirm the proper hearing time in advance of the hearing.

In his petition the complainant points out that he is not an attorney and was not represented by counsel. He indicates that he is unfamiliar with court processes, procedures and legal requirements. However, as the complainant himself notes, there are risks to self-representation. The complainant had the right to represent himself, but, having chosen to do so, was responsible for prosecuting his case. The complainant missed the hearing and, as stated above, the various excuses he offered are neither credible nor persuasive. Consequently, the commission agrees with the administrative law judge that no good cause has been shown for the complainant's failure to appear. The dismissal of the complaint is, therefore, affirmed.

cc: Attorney Chen Ni