

State of Wisconsin



Labor and Industry Review Commission

Chrisintha L. Peterson, Complainant

Fair Employment Decision<sup>1</sup>

Gamra Composites, Respondent

Dated and Mailed:

ERD Case No. CR202302379  
EEOC Case No. 26G202301317

June 13, 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 Posture

This case is before the commission to consider the timeliness of the complainant's appeal of an initial determination finding no probable cause. An administrative law judge for the Equal Rights Division of the Department of Workforce Development issued a decision dismissing the complainant's complaint because she failed to file a timely appeal of a no probable cause determination. 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 has reviewed the information that was before the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and adopts the findings and conclusions in that decision as its own.

### Memorandum Opinion

Within 30 days after the date of an initial determination finding that there is no probable cause, a complainant may file a written request for a hearing on the issue of probable cause. Wis. Admin. Code § DWD 218.08(1). "Filing," for purposes of the rule, means the physical receipt of the document. Wis. Admin. Code § DWD 218.02(6). In this case, the initial determination finding no probable cause was issued on August 1, 2024. Thirty days from the date of the initial determination was August 31, 2024. However, because August 31, 2024 was a Saturday, and Monday, September 2, 2024 was the Labor Day holiday, a hearing request received by Tuesday, September 3, 2024, the next business day after the appeal period, would be considered timely.<sup>2</sup> The complainant's appeal was received on Wednesday, September 4, 2024. It was, therefore, untimely.

In her petition for commission review the complainant argues that her appeal was postmarked by the due date and only arrived late because of the holiday. The complainant states that she "thought the instruction was clear, stating that the documents sent must be postmarked but [sic] the due date, which I was able to complete." This argument fails. The instructions contained in the initial determination that the complainant received were, indeed, clear. Those instructions stated that the appeal letter must be **received** within 30 days of the date of the initial determination. The word "received" was written in bold and underlined. Nothing in the instructions suggested that a postmark would be sufficient.

Absent a timely filed appeal, the administrative law judge was required to dismiss the complaint, pursuant to Wis. Admin. Code § DWD 218.08(2). The administrative law judge's decision is affirmed.

cc: Atty. Corey Swinick

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<sup>2</sup> If the last day of the time period to appeal is a Saturday, Sunday or legal holiday, the last day to appeal will be the next business day. *See*, Wis. Admin. Code § DWD 218.02(4).