

State of Wisconsin



Labor and Industry Review Commission

William Lush II, Complainant	Fair Employment Decision¹
County of Dane, Respondent	
ERD Case No. CR202301396	
	Dated and Mailed: August 8, 2025 <hr/> lushwi_rsd.doc:164

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

On May 5, 2023, 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 upon his arrest record, in violation of the Wisconsin Fair Employment Act. On May 6, 2024, an equal rights officer for the Division issued an initial determination finding no probable cause to believe that discrimination occurred. On February 11, 2025 the Division received a letter of appeal from the complainant, and on April 8, 2025, an administrative law judge from the Division issued a decision denying the complainant’s hearing request on the grounds that it was untimely and dismissing the complaint. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition and has reviewed the information that was available to 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

The complainant’s petition for commission review contains no argument with respect to his failure to file a timely appeal. The complainant does not explain why he believes the administrative law judge’s decision was incorrect or why his appeal should be accepted. He states that he only glanced at the administrative law judge’s decision, and indicates that if he is not given a hearing he will “file for injunctive relief.”

By law, the Division cannot accept a late appeal. Wisconsin Admin. Code § DWD 218.08 controls the appeal of no probable cause determinations and provides as follows:

- (1) WHEN FILED. 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. The request for hearing shall state specifically the grounds upon which the appeal is based. The department shall notify the respondent that an appeal has been filed within 10 days of receiving the appeal.
- (2) DISMISSAL FINAL IF NO APPEAL FILED. If no timely written request for a hearing is filed, the initial determination's order of dismissal shall be the final determination of the department.

While the commission has recognized a limited exception to the rule that late appeals must be dismissed for situations where the complainant did not receive a copy of the initial determination in time to file a timely appeal, that exception only applies where the nonreceipt of the initial determination was not due to any action

or inaction on the complainant's part. See *Cyphes v. Independence Corrugated*, ERD Case No. CR200804333 (LIRC Dec. 9, 2010). Here, the complainant did not receive the initial determination because he was incarcerated and failed to provide the Division with an updated mailing address or make any arrangements for the collection or forwarding of his mail. This is not a circumstance that would permit the Division to accept his late hearing request. The dismissal of the complaint is, therefore, affirmed.

cc: Atty. Jerilyn Jacobs