

State of Wisconsin



Labor and Industry Review Commission

Moeketsi Molaoli
Complainant

National Board for Certified Counselors
Respondent

ERD Case No. CR202300805

Public Accommodation Decision¹

Dated and Mailed:

September 15, 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 pink 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 discriminated against him based upon his race, color, and ancestry, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL"). An administrative law judge for the Equal Rights Division (hereinafter "ERD") of the Department of Workforce Development issued a decision dismissing the complaint on the basis of timeliness and for lack of jurisdiction. 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 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

This appeal presents the question of whether the complainant's discrimination complaint was timely filed and, if so, whether the allegations raised in the complaint are covered by the WPAAL. The administrative law judge found that the complainant's complaint was not timely filed and, further, that at least some of the allegations raised in the complaint are not covered under the statute. The commission agrees. The complainant alleges that on January 14, 2022, he sat for the National Clinical Mental Health Counseling Examination, and that the proctor who administered the test treated him less favorably than other individuals taking the test based upon his race, color, and/or ancestry. The complainant also appears to be alleging that the content of the test itself was discriminatory. However, the complainant's complaint was not filed until March 15, 2023, well in excess of the 300-day time limit provided for in the WPAAL. Further, as the administrative law judge explained in her opinion, the WPAAL protects the complainant's right to the nondiscriminatory use of and access to physical places of public accommodation or enjoyment; the WPAAL is not the appropriate vehicle for challenging the content of a national examination. For these reasons, the complaint was properly dismissed.²

In his petition for commission review the complainant argues that the administrative law judge failed to take into account the discriminatory practices that occurred within 300 days of the complaint. However, the complainant has not elaborated on this assertion, and the commission has no specific indication of what violations of the statute he is alleging occurred within 300 days of the filing of his complaint. The complainant took the examination on January 14, 2022, 425 days before the complaint was filed. His complaint does not reference any additional acts of discrimination alleged to have occurred within 300 days of the day the complaint

² In addition, although the administrative law judge declined to decide this issue because the complainant's claims regarding the administration of the exam were time barred, it appears that the named respondent did not operate the test site and was not responsible for the allegedly discriminatory actions of the proctor who administered the exam.

was filed. While the complainant did contend that the test itself was discriminatory, an allegation that might be potentially be considered timely, that allegation was properly dismissed as being outside the purview of the WPAAL.

Finally, the commission notes that in his petition the complainant asserts that the majority of ERD staff are “persons of no color” and suggests that this interfered with the ability of ERD employees to be impartial or equitable. This argument fails. The complainant has provided no reason to believe that the administrative law judge was unable to make an unbiased decision in this case. Further, the commission has conducted an independent review of the same information that was before the administrative law judge, and it has done so without bias. Based on its review, the commission agrees that dismissal of the complaint was warranted. The administrative law judge’s decision is, therefore, affirmed.

cc: Atty. Thomas A. Cabush