

State of Wisconsin



Labor and Industry Review Commission

David Buker, Complainant

Fair Employment Decision¹

Cottingham & Butler, Respondent

Dated and Mailed:

ERD Case No. CR202402756

November 12, 2025

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The decision of the administrative law judge is **modified** and, as modified, 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 “ERD”) of the Department of Workforce Development on October 14, 2024, alleging that the respondent discriminated against him based upon a disability, in violation of the Wisconsin Fair Employment Act. On October 28, 2024, an equal rights officer for the ERD issued a preliminary determination which found that the ERD did not have jurisdiction over the complaint, as it did not allege an act of discrimination in employment. The complainant filed an appeal of that determination and the matter was referred to an administrative law judge. On August 25, 2025, the administrative law judge issued a decision affirming the dismissal of the complaint. The complainant 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, except that it makes the following:

Modification

The second paragraph on page 2 of the administrative law judge’s decision is deleted.

Memorandum Opinion

In his petition for commission review the complainant argues that the ERD mischaracterized his complaint and applied the wrong statute. The complainant states that he is not alleging employment discrimination and that his complaint is related to the refusal of the respondent, the claims administrator for his worker’s compensation claim, to provide him with access to certain records that he is entitled to under Wis. Stat. § 102.13(2)(a). The problem here stems from the fact that the complainant filed an employment discrimination complaint with the ERD, alleging discrimination based on disability, in violation of the Wisconsin Fair Employment Act, Wis. Stat. § 111.31-111.395, rather than instituting proceedings with the Worker’s Compensation Division. As the administrative law judge correctly noted, the ERD has no jurisdiction over this matter, since it does not involve a violation of the Fair Employment Act; the ERD does not have any authority over matters involving worker’s compensation claims.

For the reasons above, the dismissal of the Fair Employment Act complaint is affirmed. The complainant may wish to contact the Worker’s Compensation Division of the Department of Workforce Development for information on how to proceed with his complaint regarding records related to his worker’s compensation claim.

NOTE: The commission has modified the administrative law judge’s decision to delete the statement that the Wisconsin Fair Employment Act only

extends to employer-employee relationships. To the contrary, it is well settled law that one need not be an employee of an employer in order to bring a claim under the Act. *See, Lofton v. State of Wisconsin – DOC*, ERD Case No. CR201420159 (LIRC Sept. 27, 2018). A complaint may be stated under the Act, even in the absence of an actual or potential employment relationship between the parties, provided the complainant has alleged that the respondent engaged in an action that directly relates to an employment opportunity. *Maxberry v. Goodwill Industries*, ERD Case No. CR201301901 (LIRC March 19, 2015).