

State of Wisconsin



Labor and Industry Review Commission

William Rogers, Complainant

Fair Employment Decision

Fox Valley Workforce Development Board, Respondent

Dated and Mailed:

ERD Case No. CR202401326

December 11, 2025

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The decision of the administrative law judge is **set aside** and the matter is **remanded** to the Division for a hearing on the timeliness of the complainant's appeal and for further proceedings, if warranted.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

Procedural Posture

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, in violation of the Wisconsin Fair Employment Act. On May 27, 2025, an equal rights officer for the Division issued an initial determination finding no probable cause to believe discrimination occurred. The determination explained that the complainant had 30 days in which to file an appeal. The complainant’s appeal was received on June 27, 2025, three days late. On August 25, 2025, an administrative law judge for the Division, without having held a hearing, issued a decision finding that the complainant failed to file a timely appeal and dismissing the complaint on that basis. The complainant has filed a timely petition for commission review of that decision.

Memorandum Opinion

The Division’s rules provide that, where there has been an initial determination of no probable cause to believe discrimination occurred,

The department shall, by a notice to be incorporated in the initial determination, notify the parties *and their attorneys of record* of the complainant’s right to appeal as provided in s. DWD 218.08.

Wis. Admin. Code § DWD 218.07(3) (emphasis added).

The above-cited rule contemplates that both the complainant and his attorney will receive notice of the initial determination.

In this case, it is undisputed that the complainant received a copy of the determination. However, his attorney of record, Attorney Nathaniel Cade, contends that he did not. Attorney Cade asserts that the complainant attempted to contact him during the week before the appeal was due, but Attorney Cade was unavailable. According to Attorney Cade, the complainant reached him on June 27, 2025, and texted him a photograph of the initial determination. The appeal was filed that day.

There is a rebuttable presumption that mail that is correctly addressed will be delivered and received. *State ex rel. Flores*, 183 Wis. 2d 587, 612, 516 N.W.2d 362 (1994); *Mullen v. Braatz*, 179 Wis.2d 749, 763, 508 N.W.2d 446 (Ct. App. 1993). Here, a copy of the initial determination was mailed to the complainant’s attorney at the proper address and was not returned to the Division as undeliverable. However, the complainant’s attorney insists that he did not receive the document and suggests the possibility that the mail was delivered to the wrong post office box.

Due process requires that the complainant be given an opportunity to establish non-receipt of the no probable cause initial determination by his attorney. If, in fact, it can be established that the complainant’s attorney of record did not receive notice of

the determination and the right to appeal, and that the lack of receipt was not due to any circumstances for which Attorney Cade was directly responsible, then the late appeal should be accepted.

cc: Atty. Nathaniel Cade, Jr.
Atty. Lynne Mueller