

State of Wisconsin



Labor and Industry Review Commission

Latisha Little, Complainant

Fair Employment Decision¹

Milwaukee Board of School Directors,
Respondent

Dated and Mailed:

ERD Case No. CR201903024
EEOC Case No. 26G202000202C

December 26, 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 Posture

This case is before the commission to consider the complainant's allegation that the respondent discriminated against her by discharging her because of her disability, in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division (hereinafter "ERD") of the Department of Workforce Development held a hearing and issued a decision finding that no discrimination occurred. The complainant 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 evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact

1. The respondent, Milwaukee Board of School Directors (hereinafter "respondent"), operates Milwaukee Public Schools.
2. The complainant, Latisha Little (hereinafter "complainant"), began working for the respondent as a Head Start coordinator in December of 2017.
3. The complainant suffers from recurrent major depressive disorder, migraines, and general anxiety disorder.
4. In early 2019, the complainant informed her supervisor and her supervisor's supervisor of her condition and stated that she required accommodations. They directed her to contact Therese Freiberg, the interim manager of employee rights, regarding accommodations. Following the filing of a complaint with the ERD in February of 2019, Ms. Freiberg's office worked with the complainant regarding accommodations.
5. The complainant was approved for intermittent leave from January 31, 2019 through June 17, 2019. She was then approved for continuous Family and Medical Leave Act (hereinafter "FMLA") leave from June 18, 2019 through August 26, 2019. She was approved for a leave of absence from August 27, 2019 through October 28, 2019.
6. In April 2019, the complainant requested a transfer due to a personal conflict among Head Start staff. She made this request verbally and in writing to Dr. Jeremiah Holiday, the interim chief academic officer for the respondent. He agreed the complainant should be transferred and directed her to report for work at Central Services, rather than her typical work location, on June 18, 2019. However, the complainant did not report for work that day because she began her continuous FMLA leave.
7. In September 2019, the complainant and her doctor determined that she would be able to return to work in the near future. The complainant contacted

Dr. Holiday for direction regarding her return to work. He instructed her to contact Tytrice Qaasim in the leave administration department.

8. The complainant contacted Ms. Qaasim as directed and was instructed to have her doctor complete paperwork regarding her return to work. She did so, and her doctor specified she could return to work as of October 28, 2019.

9. Because of the transfer the complainant had requested from her Head Start position, the respondent did not consider the complainant to have a work assignment to which she could return. On October 16, 2019, Ms. Qaasim directed the complainant to contact Kimberley LaMothe in the Talent Management office for an assignment.

10. The complainant emailed Ms. LaMothe and requested an assignment on October 17, 2019. Ms. LaMothe was unsure of where to place the complainant because she had been removed from her assignment and there was no clear assignment into which she could be transferred. The complainant was not a licensed educator and, while she had a degree in social work, she was not properly credentialed to work as a social worker for the respondent. Other roles that the complainant may have been qualified for would result in a greatly reduced salary. Ms. LaMothe sought further instruction from her colleagues, but did not respond to the complainant's request for an assignment.

11. The complainant repeatedly reached out to Ms. LaMothe by phone including calling her on October 21, 22, and 23, 2019. The complainant left messages for Ms. LaMothe but did not receive any response from her.

12. On October 22, 2019, the complainant also called Lonnie Anderson, Ms. LaMothe's supervisor. On the morning of October 23, 2019, the complainant emailed Ms. LaMothe and Mr. Anderson. In her email, the complainant made clear that she had been instructed by Ms. Qaasim to contact Ms. LaMothe for an assignment before returning to work and that she still did not have an assignment. Mr. Anderson called the complainant and informed her that he would have Ms. LaMothe contact her by the end of the day with her assignment. However, the complainant did not receive any further communication from Ms. LaMothe or Mr. Anderson on October 23, 2019.

13. The complainant called Ms. LaMothe on October 24 and 25, 2019, but received no response.

14. The complainant attends the same church as Mr. Anderson. She approached him on Sunday, October 27, 2019, at church to inquire about her assignment because she was expected to return to work the next day but still had no assignment. Mr. Anderson informed her he did not discuss work at church but that she could contact him at work the next day.

15. Although the complainant was released by her physician to report for work on October 28, 2019, she did not report to work that day because the respondent had made it clear that she needed a new assignment, but had not provided her with that new assignment. The complainant did not have work, or a work location, to which she could report.

16. On October 28, 2019, the complainant contacted the Talent Management office by phone at 8:10 a.m. and again at 1:12 p.m. A staff member for the respondent answered the phone but only informed the complainant that school was closed that day. The complainant emailed Mr. Anderson at 2:08 p.m. using her Milwaukee Public Schools email account. She informed him that she still had not received an assignment from the Talent Management office and asked if he could provide her with an update.

17. Mr. Anderson replied to the complainant's email at 2:35 p.m. and directed her to report to Ms. Brown-Gurley in the Office of Academics at the respondent's Central Office. The complainant attempted to login to her email account that evening around 7:00 p.m. to check for a response but found that the respondent had removed her access to her employee portal. She was no longer able to access her email, paycheck stubs, or benefit information. The complainant therefore did not see Mr. Anderson's email.

18. The complainant did not report for work on October 29, 2019 because she had not received any information informing her where to report. She called the Talent Management office and left a voicemail but did not receive a response. Because the respondent had removed her access to the employee portal and had not informed her of her new assignment, the complainant reasonably believed she had been discharged. She contacted the respondent's benefits department to inquire about the status of her health insurance and filed for unemployment benefits.

19. Ms. Frieberg, the staff member for the respondent involved in the complainant's request for accommodations and ERD complaint in February of 2019, was also responsible for staff who were absent from work without leave. Ms. Frieberg was made aware that the complainant had not reported for work as expected by the respondent on October 28, 2019, or any dates thereafter. She directed staff to send a form letter on November 6, 2019, informing the complainant that the respondent considered her to be absent without leave beginning October 28, 2019. The letter directed the complainant not to report for work until Ms. Frieberg made a decision regarding her absenteeism. The letter also directed the complainant to provide a written response and medical documentation by November 13, 2019.

20. The complainant responded to the respondent's November 6, 2019 letter by email and explained that she had missed work for medical reasons prior to October 28, 2019, that she had been directed to contact Talent Management for an

assignment for her return to work, and that she had repeatedly done so but had not received an assignment. The complainant attached several documents and emails she had exchanged with the respondent's staff regarding her leave of absence and her attempts to obtain an assignment.

21. Ms. Freiberg reviewed the complainant's response to her letter. She also asked staff in the Talent Management office about the situation and was informed that the complainant had been directed to report to Ms. Brown-Gurley at the Central Office. Ms. Freiberg believed the Talent Management staff and concluded that the complainant had not reported to work despite being told where and to whom to report. Ms. Freiberg therefore chose to end the complainant's employment with the respondent.

22. The respondent sent the complainant a letter on November 26, 2019 informing her that it considered her to have abandoned her job as of October 28, 2019.

Conclusions of Law

1. The complainant failed to establish that the respondent discharged her because of her disability, within the meaning of the Act.

Memorandum Opinion

The parties stipulated that the complainant was an individual with a disability at all times relevant in this matter. The complainant's disability is anxiety, depression, and migraine headaches.

The complainant demonstrated that she followed the instructions given to her by the respondent's staff regarding returning to work following her leave of absence, and that she provided the respondent with the information it required to facilitate her return to work. The record indicates that the respondent struggled with the decision of what assignment to give the complainant when she returned to work and that, when it did eventually decide to place her in a special assignment working out of its Central Office, it failed to effectively communicate that decision to the complainant. The respondent only communicated the assignment to the complainant by email on the afternoon of the date she was expected to return to work. It then removed her access to her email shortly thereafter and before the complainant had an opportunity to view the message.

The respondent's errors did not end with its failure to actually inform the complainant of her assignment. It then investigated the complainant's absences, but failed to recognize that the complainant was absent because she was not aware she had been placed in an assignment and did not know where to report for work. Ms. Freiberg conducted this investigation and chose to terminate the complainant's employment because of her absenteeism. She did so based on the erroneous belief that the complainant had abandoned her job.

The issue before the commission is whether the respondent's asserted non-discriminatory reason for discharging the complainant is a pretext for discrimination. The focus of a pretext inquiry is whether the employer's stated reason was honest, not whether it was accurate, wise, or well-considered. The commission does not sit as a "superpersonnel department" that reexamines an entity's business decision and reviews the propriety of the decision. Rather, the commission's only concern is whether the legitimate reason provided by the employer is in fact the true one. *Ebner v. Dura Tech* (ERD Case No. CR200504645, LIRC April 23, 2009) (citing *Stewart v. Henderson*, 207 F.3d 374, 378 (7th Cir. 2000)). Here, the commission concludes that the respondent honestly chose to discharge the complainant because of what it viewed as her unexcused failure to report to work. While the evidence establishes that the respondent mishandled the complainant's return to work and effectively prevented her from reporting to work, there is no evidence to support a conclusion that the respondent's actions were motivated by the complainant's disability. The commission finds that the respondent did not act with the requisite discriminatory animus to support a finding of discrimination. Even though it was mistaken about the facts regarding the employee not reporting for work, the respondent's decision to discharge the complainant was based on a legitimate, non-discriminatory reason.

Because the commission agrees with the ALJ that no discrimination was established, the ALJ's decision, as rewritten, is affirmed.

NOTE: The commission consulted with the ALJ who held the hearing to obtain his impressions as to the credibility of the witnesses, based on their demeanor, which were a factor in the appeal tribunal decision. However, the ALJ had no demeanor impressions to impart. The commission agrees with the ultimate decision reached by the ALJ, but has rewritten the decision to reflect the commission's own findings of fact and analysis.

cc: Attorney Rebecca Salawdeh
Attorney Kathleen Headley