State of Wisconsin

Labor and Industry Review Commission

Lynn M. Gnirk, Complainant **City of Elroy,** Respondent ERD Case No. CR201901649 EEOC Case No. 26G201900994C	**Fair Employment Decision**[1] **Dated and Mailed:** July 8, 2026 gnirkly_rsd.doc:102

The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Katy Meter Lounsbury, Chairperson

/s/

Michael H. Gillick, 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 because she previously filed a discrimination complaint with the Equal Rights Division of the Department of Workforce Development (hereinafter "ERD"), in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge (hereinafter "ALJ") for the ERD held a hearing and issued a decision finding that the complainant did not establish probable cause to believe that the respondent discriminated against her as alleged. 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 agrees with the decision of the administrative law judge, and adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

In her petition for commission review, the complainant asserts that the ALJ's decision is not supported by the record created at the hearing; however, she does not specify which of the ALJ's findings of fact or conclusions of law she believes are in error. Further, she argues that she was prevented from fully presenting her case and implicitly contends that the ALJ was biased against her. The commission has carefully reviewed the record, including listening to the digital recording, to determine whether the ALJ's findings and conclusions are supported and whether the ALJ improperly limited the complainant's opportunity to fully present her case. Considering the record created at the hearing, the commission concludes that the ALJ's findings and conclusions are supported by the competent evidence and the complainant's opportunity to fully present her case was not improperly limited. Moreover, the commission has made its own decision in the case based on its independent review of the evidence in the record, and it has done so without bias. The commission has arrived at the same findings of fact and conclusions of law as the ALJ and affirms the decision.

While the complainant established that she engaged in statutorily protected activity when she filed a discrimination complaint against the respondent in 2018 and suffered an adverse employment action when she was not hired for the open utility clerk/administrative assistant position in 2019, she failed to prove that a causal connection exists between the two. *Kannenberg v. LIRC*, 213 Wis. 2d 373, 571 N.W.2d 165 (Ct. App. 1997). The respondent articulated a legitimate, nondiscriminatory reason for its hiring decision. The city administrator testified that she and the city clerk reviewed the applications and recommended to the Finance and Personnel Committee and the Common Council two candidates who were better qualified for the position than the complainant. They both had recent, relevant work history, including cash handling, listed on their applications, and their personalities during their interviews appeared to be well suited to the public-

facing position in the small, three-person office. After the first recommended candidate declined the offer of employment, the Common Council approved hiring the second recommended candidate, who accepted.

Although the complainant argued that the respondent chose not to hire her in retaliation for the discrimination complaint she filed in 2018, she failed to show that the respondent's articulated reason for the adverse action was a pretext for unlawful retaliation. It is evident from the record that the respondent believed the personalities of the city administrator and the complainant would clash. The city administrator testified that she and the city clerk would be working closely with the new utility clerk/administrative assistant and collegiality was very important. The city administrator further testified that she found the complainant to be unfriendly and unapproachable based on the wording in the complainant's email accompanying her employment application and the city administrator's understanding of the complainant's reputation in their small community. Indeed, a clash of personalities alone, without some evidence that such conflict is based on discriminatory animus, does not support the complainant's allegation that she was the victim of retaliation.

Here, the complainant failed to present any evidence beyond mere suspicion that the respondent refused to hire her because she had previously filed a complaint under the Act. The complainant's suspicions alone are insufficient to meet her burden to establish probable cause to believe that she has been discriminated against as alleged. The commission therefore affirms the ALJ's decision.

cc: Atty. Lori M. Lubinsky