State of Wisconsin

Labor and Industry Review Commission

John Holmes, Complainant **Schlossmann Subaru City**, Respondent ERD Case No. CR202503186	**Fair Employment Decision** **Dated and Mailed:** July 30, 2026 holmejo_rsd.doc:164

The decision of the administrative law judge is **set aside** and this matter is **remanded** to the Division for further proceedings.

By the Commission:

/s/

Katy Meter Lounsbury, Chairperson

/s/

Michael H. Gillick, Commissioner

/s/

Marilyn Townsend, Commissioner

Procedural History

The complainant filed a complaint with the United States Equal Employment Opportunity Commission (hereinafter "EEOC"), which was cross-filed with the Equal Rights Division (hereinafter "Division") of the Wisconsin Department of Workforce Development, alleging that the respondent discriminated against him based upon his race and color, and in retaliation for having engaged in protected conduct. The EEOC dismissed the complaint and, on November 3, 2025, the Division sent the complainant a letter by certified mail to his last known address, along with a separate copy by regular mail, asking him if he no longer wished to pursue his complaint or, alternatively, whether he would like the Division to conduct a review of his complaint. The letter stated that the complainant's response must be received within 20 days of the date the letter was mailed or the complaint would be dismissed. On November 20, 2025, the Division received the certified letter back from the U.S. Postal Service with a stamp indicating that it was unclaimed.

On December 4, 2025, at which point the Division had received no response from the complainant, it issued a Notice of Dismissal dismissing the complaint for failure to respond to a certified letter within the specified time. The complainant filed an appeal of the dismissal, in which he argued that he never received the Division's certified letter. The appeal was assigned to an administrative law judge, who 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 has determined that a remand is appropriate.

Memorandum Opinion

Wisconsin Stat. § 111.39(3), commonly known as the "20-day letter" statute, provides:

> The department shall dismiss a complaint if the person filing the complaint fails to respond within 20 days to any correspondence from the department concerning the complaint and if the correspondence is sent by certified mail to the last-known address of the person.

Although the statute contains no "good cause" provision or exception to the rule requiring dismissal when a 20-day letter is sent by certified mail to the correct address and is not answered in a timely fashion, the commission has recognized a limited exception to dismissal of the complaint in situations where the complainant did not receive the correspondence from the Division through no fault of his own. *See*, *Unseth v. County of Vernon*, ERD Case No. 200404469 (LIRC June 30, 2005). Further, because due process considerations require that a complainant receive a hearing on his or her assertion that notice of the department's certified mail was never received, the commission will generally remand under those circumstances.

See, *for example*, *Love-Minor v. Froedtert Hospital*, ERD Case No. CR202401794 (LIRC Feb. 19, 2026), and cases cited therein.

In his petition for commission review the complainant argues that he never received the 20-day letter for reasons that were beyond his control. Specifically, the complainant states that he lives in an older building and that the mailbox is damaged, so that the mail is accessible to everyone in the building. In support of this assertion, the complainant has sent a photograph of the damaged mailboxes. The complainant requests that his case be reopened.

The commission believes that further hearing is warranted in this matter. While the certified letter was returned to the Division as "unclaimed," there is nothing in the case file indicating when delivery of a certified letter was attempted by the U.S. Postal Service or that the complainant ever received notification (i.e. a signed certified receipt) that there was a certified letter waiting for him to pick up at the post office. Further, although, as the administrative law judge points out, the copy of the letter that was sent by regular mail was not returned to the Division as undeliverable, that fact alone does not establish receipt, particularly given the complainant's explanation regarding the damage to his mailbox. Nor is the commission persuaded that receipt of the letter sent through regular mail would satisfy the statutory requirement of notification via certified mail. Finally, the commission does not agree with the administrative law judge that the fact the complainant received notification that his complaint was dismissed negates his assertion that the 20-day letter was not received; the complainant is not asserting that no mail ever reaches him, but instead is claiming that there are ongoing problems with receipt of his mail.

For the reasons above, the commission remands this matter for further proceedings before the Division on the question of receipt of the department's correspondence. If, after hearing, it is shown that the complainant did not receive the 20-day letter for reasons that were unrelated to any action or inaction on his part, the complainant's request to reopen his case should be granted.