

State of Wisconsin



Labor and Industry Review Commission

**Christopher Wortman**, Complainant  
440 Colt Drive  
Belleville, WI 53508

**Verascape, Inc.**, Respondent  
155 W. Central Road  
Schaumburg, IL 60195

ERD Case No. CR201902861  
EEOC Case No.

**Fair Employment Decision**

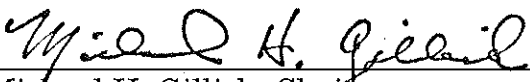
**Dated and Mailed:**


**MAY 18 2021**

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The complainant's petition for commission review is dismissed. Accordingly, this matter is returned to the Equal Rights Division for further proceedings.<sup>1</sup>

By the Commission:

  
Michael H. Gillick, Chairperson

  
Georgia E. Maxwell, Commissioner

  
Marilyn Townsend, Commissioner

<sup>1</sup> Any motions involving timeliness of the appeal of the initial determination should be directed to the Equal Rights Division.

### Procedural History

On October 31, 2019, the complainant filed a complaint with the Equal Rights Division (hereinafter “ERD”) of the Department of Workforce Development alleging that the respondent subjected him to discriminatory terms and conditions of employment based upon his conviction record and disability, and that it terminated his employment based upon his conviction record and disability, in violation of the Wisconsin Fair Employment Act (hereinafter “Act”). On July 29, 2020, an equal rights officer for the ERD issued a split initial determination finding probable cause with respect to the allegation that the complainant’s employment was terminated based upon his conviction record but finding no probable cause regarding the allegations that the complainant was subjected to discriminatory terms and conditions of employment based upon his conviction record or disability or that his employment was terminated based upon his disability. The matter was certified to hearing before an administrative law judge on the issue for which probable cause was found, while the other allegations were dismissed.

The complainant filed an appeal of the portion of the initial determination which found no probable cause and that appeal was assigned to an administrative law judge for consideration. On October 27, 2020, the administrative law judge issued a “Decision on Appeal of Notice of Dismissal” in which she dismissed the complainant’s appeal of the no probable cause findings on the ground that the appeal was not timely filed. The administrative law judge’s decision was accompanied by a “Notice of Appeal Rights” which indicated that the decision was a final one and that the complainant could petition for commission review of the decision within 21 days. The complainant filed a timely petition for commission review of the administrative law judge’s decision pursuant to those instructions in which he alleged that his appeal of the no probable cause portion of the initial determination had in fact been filed in a timely manner.

### Memorandum Opinion

The Department of Workforce Development’s rules set out the procedures by which administrative law judge’s decisions may be appealed to the commission. Wis. Admin. Code § DWD 218.21 provides, in relevant part:

(1) APPEALS LIMITED TO FINAL DECISIONS AND ORDERS. Any party may file a written petition for review of a final decision and order of the administrative law judge by the labor and industry review commission. *Only final decisions and orders of the administrative law judge are appealable. A final decision is one which disposes of the entire complaint and leaves no further proceedings on that complaint pending before the division.* (emphasis added).

The administrative law judge’s Decision on Appeal of Notice of Dismissal issued in this matter was not a “final decision,” as that term is defined in Wis. Admin. Code § DWD 218.21(1). While the decision disposed of some of the allegations raised in

the complaint--specifically, the allegations that the complainant was discriminated against with respect to the terms and conditions of his employment based upon his conviction record and disability and discharged because of a disability--the allegation that the complainant was discharged based upon his conviction record is awaiting resolution by the ERD.<sup>2</sup> Because the administrative law judge's decision is not a final decision, but is still pending before the ERD, it is not appealable to the commission at this time.<sup>3</sup>

For the reasons set forth above, the commission is unable to accept the complainant's appeal. The matter is returned to the ERD so that it can proceed to hearing on the portion of the complaint on which probable cause was found. Once a final decision has been issued by the ERD with respect to that portion of the complaint, the complainant will have an opportunity to file a petition for review by the commission of the entire matter.

cc: Attorney Bruce Davey  
Attorney Cheng Ni

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<sup>2</sup> Once the ERD issues an initial determination finding probable cause, the matter should be certified for hearing and the case assigned to an administrative law judge. *See*, Wis. Admin. Code § DWD 218.08(3). Department records indicate that, as of the date of this decision, the matter has been certified to hearing but that no hearing date has been set.

<sup>3</sup> The fact that the administrative law judge's decision was accompanied by a Notice of Appeal Rights which erroneously indicated that the decision could be appealed in 21 days does not affect the resolution of this matter. *Sigl v. Village of Black Creek*, ERD Case No. CR201102969 (LIRC Oct. 31, 2012).