

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAKE DULLER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0586

Case Type: PA

DECISION NO. 39959-B

Appearances:

Jake Duller, 650 Spring Street #7201, Sun Prairie, Wisconsin, appearing on his own behalf.

Michelle Zaccard, Attorney, Department of Corrections, Office of Legal Counsel, 3099 E. Washington Ave., Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

ORDER DISMISSING PETITION FOR REHEARING

On October 16, 2023, the Wisconsin Employment Relations Commission issued a Decision and Order concluding that the State of Wisconsin Department of Corrections (DOC) had not abused its discretion when it did not hire Jake Duller due to several Letters of Expectation he had received during previous DOC employment.

On November 21, 2023, the Commission issued an Order Granting Petition for Rehearing to allow Duller the opportunity to establish that the evidence of alleged race and sex discrimination he referenced in an October 23, 2023, Petition for Rehearing is “sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence” as required by Wis. Stat. § 227.49(3)(c).

The parties thereafter exchanged argument and the matter became ripe for Commission consideration on July 19, 2024.

Having considered the matter, the Commission is persuaded that the evidence Duller contends he can offer as to alleged race and sex discrimination is not “sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.”

NOW, THEREFORE, it is

ORDERED

The Petition for Rehearing is dismissed.

Issued at Madison, Wisconsin, this 19th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING ORDER
DISMISSING PETITION FOR REHEARING

On May 18, 2023, Jake Duller filed an appeal with the Wisconsin Employment Relations Commission asserting that the State of Wisconsin Department of Corrections (DOC) had wrongfully failed to hire him. A hearing on his appeal was held on August 17, 2023.

Duller's attack on the DOC decision was limited to the hiring review process DOC followed and the DOC decision not to have him progress further in the hiring process. On October 16, 2023, the Commission issued a decision rejecting Duller's contentions and concluding that DOC had not abused its discretion by its action.

In his Petition for Rehearing, Duller asserted that he had discovered evidence that DOC had discriminated against him based on status as a black male. More specifically, Duller asserted that DOC had hired a white female and white male with worse disciplinary records than his. In subsequent correspondence, he added a contention that a male of unidentified race with a worse disciplinary record has also been hired.¹ DOC disputes many of Duller's assertions but for the purposes of determining whether this matter should proceed to an evidentiary hearing, the Commission accepts Duller's contention as true.

As to Duller's contention of potential DOC race discrimination, the Commission concludes that Duller has not established that the DOC wardens who reviewed Duller's application paperwork knew his racial identity. Further, there is no contention that it was the same wardens who made the subsequent hiring decisions that Duller references or that DOC's personnel needs and hiring standards remained static between the time of the Duller decision and the subsequent hiring decisions Duller references. Lastly, it is by no means clear that Duller could not have sought and discovered the evidence he cites prior to the August 17, 2023 hearing.

As to Duller's contention of potential DOC sex discrimination, the Commission concedes that the DOC wardens who reviewed his application paperwork could reasonably infer from his name that he was a male. But as was true for the sex discrimination contention referenced above, there is no contention that it was the same wardens who made the subsequent hiring decisions that Duller references or that DOC's personnel needs and hiring standards remained static between the time of the Duller decision and the subsequent hiring decisions Duller references. Lastly, it is by no means clear that Duller could not have sought and discovered the evidence he cites prior to the August 17, 2023, hearing.

Given the foregoing, the Commission is persuaded that the evidence Duller contends he can offer as to alleged race and sex discrimination is not "sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence." Therefore, the Commission has dismissed the Petition for Rehearing.

¹ Duller also continues to make the same process and factual arguments he made to the Commission when attacking the Proposed Findings of Fact, Conclusion of Law and Order. As evidenced by its October 2023 adoption of the Proposed Decision, the Commission did not find those arguments persuasive then and still does not do so now.

Issued at Madison, Wisconsin, this 19th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman