

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP2134

Cir. Ct. No. 2024CV480

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PAMELA J. NEIDLEIN,

PETITIONER-APPELLANT,

V.

LABOR AND INDUSTRY REVIEW COMMISSION,

RESPONDENT-RESPONDENT,

GREENEWAY, INC.,

OTHER PARTY.

APPEAL from an order of the circuit court for Wood County:
GREGORY J. JERABEK, Judge. *Affirmed.*

Before Graham, P.J., Blanchard, and Nashold, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Pamela J. Neidlein appeals the dismissal of her disability discrimination claim under the Wisconsin Fair Employment Act (WFEA). The Labor & Industry Review Commission determined that the WFEA’s 300-day statute of limitations began to run on the date of Neidlein’s discharge from her employment with Greeneway, Inc.¹ See WIS. STAT. § 111.39(1) (2023-24).² We conclude that the evidence before the Commission is sufficient to support this determination. Since it is undisputed that Neidlein filed her discrimination complaint more than 300 days after the discharge date, we affirm the circuit court, which affirmed the Commission’s dismissal of the complaint.

Background

¶2 Neidlein worked for Greeneway as a recreational vehicle technician from May 2012 until March 30, 2022, when Greeneway terminated her employment.

¶3 More than a year before she was discharged from employment, Neidlein alleged that her left shoulder had been injured at work, and she submitted a worker’s compensation claim for that injury. On March 2, 2022, Neidlein underwent an independent medical evaluation with Dr. Kevin Kulwicki. Kulwicki

¹ Although the caption for this appeal previously reflected that the employer was “Greenway, Inc.,” the court has been advised that the correct spelling is “Greeneway, Inc.” The caption is now corrected.

² All references to the Wisconsin Statutes are to the 2023-24 version.

concluded that Neidlein's shoulder condition was not the result of a work-related injury, and was instead due to pre-existing degenerative conditions. Kulwicki's report recommended "temporary work restrictions."

¶4 Neidlein's WFEA discrimination complaint included the following allegations. In March 2022, Neidlein informed Greeneway's owners that "she was being harassed because of her medical condition and the limitations it caused." Neidlein was put on leave without pay while Greeneway investigated her allegations. When Neidlein returned to work on March 21, 2022, she received a written reprimand for attending physical therapy. She was also given menial tasks such as "count[ing] bolts and screws until she could perform all the tasks of her job," even though she asserts that she could have performed many of her regular duties. Greeneway had granted her accommodations to perform the essential functions of her job up until she "complained about discrimination in March 2022."

¶5 Neidlein further alleged the following by way of affidavit. On March 30, 2022, Greeneway owner Lora Ferkey met with Neidlein and told Neidlein that her employment was being terminated. When Neidlein asked why, Ferkey said that Dr. Kulwicki had determined that Neidlein had not been injured at work. Ferkey told Neidlein that she would send Neidlein a letter describing the reasons for discharge and a copy of Kulwicki's report.³

³ Ferkey avers that she also told Neidlein that Neidlein was being discharged because she was unable to perform the essential functions of her job, but Neidlein disputes that Ferkey offered this additional reason for Neidlein's discharge at the March 30 meeting.

¶6 In early April 2022, Neidlein received the letter that Ferkey had promised, which was dated March 31, 2022, and, later, a copy of Kulwicki's report. The letter communicated Kulwicki's determination that Neidlein's injuries were "not work related." It further stated that Neidlein was "not able to meet the physical requirements needed to perform the essential duties of [her] job" and that Greeneway had "no work available for [Neidlein]." Accordingly, the letter stated, Neidlein was "let[] ... go" as of March 30, 2022.

¶7 On January 25, 2023, Neidlein filed a WFEA disability discrimination complaint with the Equal Rights Division of the Wisconsin Department of Workforce Development (the Division). An equal rights officer determined that the complaint was untimely under the WFEA's 300-day statute of limitations because it was filed 301 days after Neidlein's March 30, 2022 discharge. See WIS. STAT. § 111.39(1). Neidlein appealed to an administrative law judge, who affirmed the Division's dismissal.

¶8 Neidlein then appealed to the Commission, arguing that her complaint was timely. According to Neidlein, the statute of limitations did not begin to run on March 30, when she was discharged from Greeneway, but instead it began to run in early April, when she received the letter formally explaining the reasons for discharge and Kulwicki's report. Neidlein asserted that she could not have reasonably inferred that her disability might have been a factor in Greeneway's decision to discharge her until she received these documents. The Commission determined that Neidlein's argument was unpersuasive, and it affirmed the dismissal of her complaint.

¶9 In its decision, the Commission took the position that the facts alleged in Neidlein's own complaint supported the conclusion that "a charge of

discrimination should have been apparent to [Neidlein] on March 30.” Those facts included that, shortly before her discharge, Neidlein had filed a complaint with Greeneway alleging that she was “being harassed because of her medical condition and the limitations it caused,” that she had “received a letter of reprimand for absenteeism due to physical therapy needs,” and that “she was then assigned to take inventory of shop supplies” instead of performing her normal job duties with accommodations. The Commission characterized the formal letter from Ferkey and Kulwicki’s report as “additional evidence ... in support of a possible discrimination claim on the basis of disability,” but stated that the existence of additional evidence “does not change the fact that the statute of limitations began to run on the date of discharge.”

¶10 Neidlein appealed the Commission’s decision to the circuit court, which upheld the Commission’s decision. The court agreed that the allegations in Neidlein’s complaint showed that “[Neidlein] was aware that she was being discriminated against as of the date of her termination” and that evidence obtained after her discharge may have “strengthen[ed] her claim” but that evidence did not “extend her three-hundred-day limitation on filing her complaint.” Neidlein appeals.

Discussion

¶11 On appeal, this court reviews the decision of the Commission and not that of the circuit court. *Stoughton Trailers, Inc. v. LIRC*, 2007 WI 105, ¶26, 303 Wis. 2d 514, 735 N.W.2d 477. The Commission’s findings of fact are conclusive on appeal as long as they are supported by credible and substantial evidence. *Michels Pipeline Constr., Inc. v. LIRC*, 197 Wis. 2d 927, 931, 541 N.W.2d 241 (Ct. App. 1995). “Substantial evidence is less of a burden than

preponderance of the evidence in that any reasonable view of the evidence is sufficient.” **Bernhardt v. LIRC**, 207 Wis. 2d 292, 298, 558 N.W.2d 874 (Ct. App. 1996). The Commission’s legal conclusions are reviewed de novo, but this court gives “due weight” to “the experience, technical competence, and specialized knowledge of the agency” as well as to any “discretionary authority conferred upon it.” WIS. STAT. § 227.57(10)-(11). “The burden of proof in a proceeding to review an agency action is on the party seeking to overturn the action.” **Racine Educ. Ass’n v. Commissioner of Ins.**, 158 Wis. 2d 175, 182, 462 N.W.2d 239 (Ct. App. 1990).

¶12 The parties agree that the “discovery rule” applies for purposes of determining when the statute of limitations started to run on Neidlein’s claim. As the Commission articulated this rule in its decision, the statute of limitations begins to run on a WFEA claim “when the facts that would support a charge of discrimination are apparent or would be apparent to a person with a reasonably prudent regard for his or her rights.”⁴

¶13 Here, the facts alleged in Neidlein’s complaint were the facts that the Commission relied on to conclude that Neidlein’s discrimination claim would have been apparent to Neidlein as of the date of her discharge. Neidlein’s complaint included the following factual allegations. “In March 2022, she

⁴ The parties cite Commission decisions for a test that generally aligns with our supreme court’s expression of the discovery rule in the tort context. See **Nickel v. City of Milwaukee**, ERD Case No. 201600279 (LIRC Sept. 29, 2023) (cited by the Commission); **Anchor v. State**, ERD Case Nos. 200501702, 200504414 (LIRC Jan. 4, 2012) (cited by Neidlein); see also **Pritzlaff v. Archdiocese of Milwaukee**, 194 Wis. 2d 302, 315-16, 533 N.W.2d 780 (1995) (“[T]he discovery rule is so named because it tolls the statute of limitations until the plaintiff discovers or with reasonable diligence should have discovered that he or she has suffered actual damage due to wrongs committed by a particular, identified person.”).

complained to Greeneway officials ... that she was being harassed because of her medical condition and the limitations it caused.” She “was then put on leave without pay ... while Greeneway investigated the discrimination complaints.” Shortly after she returned to work on March 21, 2022, “Greeneway showed its animosity to the need to accommodate [her] disability” when it reprimanded her for attending therapy during work hours. Neidlein’s supervisor required her to work on the menial tasks of counting bolts and screws, which she did “despite her objection ... even though she could have continued to work on preparing [recreational vehicles] for delivery” as she had done before she complained to Greeneway. On March 30, 2022, Neidlein was “summarily terminated” at a meeting during which Ferkey said that Neidlein’s “injury did not occur at work.” There was no “further discussion or interactive dialogue to accommodate [Neidlein’s] disability.”

¶14 Neidlein’s complaint characterizes Greeneway’s March 2022 actions as displays of “animosity ... because of her disability” and “animosity to the need to accommodate [her] disability.” This court agrees that, taking all of Neidlein’s allegations as true, the existence of a discrimination claim would be apparent to a reasonable person in Neidlein’s position at the time she was discharged on March 30, 2022.

¶15 Neidlein contends that her version of the events of March 2022 do not support a charge of intentional disability discrimination. She argues that she could not have appreciated that she had a discrimination claim before receiving the letter from Ferkey, which stated Greeneway’s reasons for terminating Neidlein’s employment, and Dr. Kulwicki’s report. She makes several arguments in support of her position that the statute of limitations did not begin to run until she received those documents in April 2022.

¶16 First, Neidlein relies on *Hilmes v. DILHR*, 147 Wis.2d 48, 433 N.W.2d 251 (Ct. App. 1988). That case states that “[t]he fact of termination is not itself an illegal act,” and that “it is when the employer makes known its decision to discriminate ... that an unlawful employment practice occurs.” *Id.* at 52 (emphasis omitted). Neidlein contends that Greeneway “first made known its decision to discriminate when it provided [her] with” Ferkey’s letter, “which [Neidlein] received on April 1, 2022,” and that, “by reading that letter, in conjunction with [Kulwicki’s report], ... Greeneway’s intent to discriminate due to Ms. Neidlein’s disability was made known.”⁵

¶17 In *Hilmes*, this court determined that the statute of limitations on a WFEA claim began to run not on the date that Hilmes’s termination became effective, but on the day before, when her employer notified her of the imminent termination. *Id.* at 50-53. *Hilmes* does not stand for the proposition that the statute of limitations is indefinitely tolled unless and until an employer explicitly announces its discriminatory intent. Indeed, as the Commission persuasively argues, if that were the law, the statute would never begin to run in any case in which an employer communicated a pretextual reason for unlawful termination rather than admitting discriminatory intent.

⁵ Neidlein attempts to clarify this theory in her reply brief on appeal. She notes that the letter cites to Kulwicki’s determination that her injury was not work related, and then the letter states that she could not perform the essential duties of her job. Neidlein’s clarification is that she is arguing that the determination that she could not perform the essential duties of her job was “false” and “untested.” She contends that “[t]he juxtaposition of those two unsupported statements [in Ferkey’s letter] make manifestly and initially clear to a reasonable person in Ms. Neidlein’s position that Greeneway discriminated on the basis of its intentional animosity because of Ms. Neidlein’s perceived or actual disability.”

¶18 Here, according to Neidlein’s version of events, Greeneway made known its intent to discriminate by its conduct in March 2022, which, Neidlein says, showed animosity toward her “because of her disability.” On March 30, Greeneway’s alleged discriminatory intent culminated in an alleged discriminatory termination. Even if Neidlein did not know with certainty on March 30 that the termination was discriminatory, she alleged a number of facts that occurred before that date that “support[ed] a charge of discrimination” and “should have been apparent to a person with a reasonably prudent regard for ... her rights” as doing so. See *Anchor v. State*, ERD Case Nos. 200501702, 200504414 (LIRC Jan. 4, 2012). Indeed, Neidlein cited these facts in her WFEA complaint precisely because they support her discrimination claim.

¶19 Second, Neidlein argues that she did not have “[e]nough evidence to supply the necessary imprints of discriminatory intent” to prove her case until she received the letter from Ferkey. Neidlein cites no authority for the proposition that the statute of limitations on a claim begins to run only after the plaintiff has gathered all evidence sufficient to prove the claim at trial. Again, if this were the law, the statute would never begin to run on any claim that required discovery to prove any of its elements. As the Commission concluded, Greeneway’s March 2022 treatment of Neidlein, as she described it, constituted evidence supporting a charge of discrimination.

¶20 In her reply brief on appeal, Neidlein contends that this treatment consisted of “prior bad acts” that were “predicated solely on Ms. Neidlein’s worker’s compensation claim” and “unrelated” to the WFEA discrimination claim. She argues that the Commission failed to distinguish between a worker’s compensation claim and a WFEA claim, only the latter of which requires a showing of intent. But, as discussed above, Neidlein herself described

Greeneway's March 2022 conduct as showing "animosity to the need to accommodate [her] disability" and harassment "because of her medical condition," and she herself alleged that "she had complained about discrimination" to Greeneway in March 2022. This is evidence supporting discriminatory intent. That the facts might overlap with those relevant to a potential worker's compensation claim does not change the analysis. These facts support the Commission's conclusion that a reasonable person in Neidlein's position would be on notice of a WFEA claim when she was terminated on March 30, 2022.

¶21 Neidlein also argues that the Commission erred because it relied on "uncorroborated hearsay" in the form of Ferkey's affidavit, in which Ferkey averred that Neidlein's inability to meet the physical requirements of the job was a reason given to Neidlein for her termination at the March 30, 2022 meeting. This argument is not supported by the Commission's decision, which explicitly is "based solely on [Neidlein's] version of events," and does not depend on Ferkey's disputed assertion that Ferkey told Neidlein that she was unable to meet the physical requirements of the job. Any dispute regarding Ferkey's statement at the discharge meeting is irrelevant to the Commission's decision and not a ground for reversal.

¶22 In sum, none of Neidlein's arguments persuade this court that the Commission erred in determining that a reasonable person in Neidlein's position would be on notice of her WFEA discrimination claim on the date her employment was terminated. See *Racine Educ. Ass'n*, 158 Wis. 2d at 182. According to Neidlein's own allegations, in March 2022, she had been harassed for her shoulder condition, reprimanded for absenteeism that her physical disability necessitated, and given objectionable menial tasks because of her disability until she could complete all duties of her job rather than being allowed

to do her job with accommodations. Then, according to Neidlein, on March 30, she was terminated for no legitimate reason that she could discern. A reasonable person would question whether the termination was the result of discrimination at that point, even if evidence strengthening the potential claim came later. Accordingly, Neidlein's complaint was barred by the statute of limitations when it was filed 301 days after the date of termination.

Conclusion

¶23 For all of these reasons, we affirm the circuit court order affirming the agency decision.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

