



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. Box 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

January 15, 2026

To:

Hon. Michael P. Screnock
Circuit Court Judge
Electronic Notice

Aaron J. Bibb Electronic Notice

Carrie Wastlick
Clerk of Circuit Court
Sauk County Courthouse
Electronic Notice

Michelle R. Franke
3671B Hwy 13
Wisconsin Dells, WI 53965

You are hereby notified that the Court has entered the following opinion and order:

2025AP99

Michelle R. Franke v. Labor & Industry Review Commission
(L.C. # 2024CV153)

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

Summary disposition orders 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).

Michelle Franke appeals a circuit court order affirming a decision of the Labor and Industry Review Commission (LIRC) that dismissed Franke’s discrimination complaint against her former employer. Based on our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ Although we review LIRC’s decision rather than the decision of the circuit court, *Pick ’n Save Roundy’s v. LIRC*, 2010 WI App 130, ¶8, 329 Wis. 2d 674, 791 N.W.2d 216, we conclude that the circuit court’s order identified and applied the proper legal standards to the relevant facts to reach the

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

correct conclusion in reviewing LIRC's decision. We therefore summarily affirm the circuit court order and adopt it as our decision. *See* WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009) (the court of appeals may adopt a circuit court opinion as its own).

Franke was terminated from her position as a bartender by Kalahari Development, LLC. She filed a complaint with LIRC alleging that Kalahari discriminated against her on the basis of race, age, and sex, and in retaliation for her opposing discrimination in the workplace. After reviewing materials submitted by both Franke and Kalahari, an officer for the equal rights division of the department of workforce development issued an initial determination that there was no probable cause to believe that Kalahari violated the Wisconsin Fair Employment Law. Franke appealed this decision, and both she and Kalahari presented testimony at a hearing before an administrative law judge (ALJ), who also concluded that Franke failed to prove probable cause. Franke appealed to LIRC for review of the ALJ's decision, which resulted in LIRC issuing a written decision affirming the ALJ's findings and conclusions. Franke sought judicial review of LIRC's decision, and now appeals the circuit court order affirming that decision.

Much of Franke's briefing to this court consists of arguments that Kalahari's witness was untruthful and that Franke's version of the events is correct. However, it is not the role of a reviewing court to decide the relative credibility of witnesses. As the circuit court explained, judicial review of LIRC's decision is governed by WIS. STAT. § 227.57, which provides that "the court shall not substitute its judgment for that of [LIRC] as to the weight of the evidence on any disputed finding of fact" so long as it is supported by substantial evidence in the record. § 227.57(6). Thus, the assessment of witnesses' credibility and factual findings are matters for LIRC, not for the circuit court or this court. Moreover, as the circuit court noted, "Franke's own testimony did not provide probable cause to believe that Kalahari engaged in unlawful age, sex,

or race discrimination with respect to [her] employment, or that Kalahari discharged her from her employment because she opposed discrimination.” Therefore, even if we were to disregard the testimony of Kalahari’s witness—which, again, is not our prerogative—Franke’s own testimony is insufficient to support a claim of discrimination or retaliation.

Franke also asks this court (as she asked the circuit court) to order law enforcement and the state department of justice to investigate Kalahari. That is not a power that courts have in the context of a WIS. STAT. ch. 227 review.

Because the circuit court aptly addressed each of Franke’s arguments under the correct legal standards, we incorporate the circuit court’s decision, which we attach, into this order and summarily affirm it. *See* WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009) (“When the trial court’s decision was based upon a written opinion or a statement upon the record of its grounds for decision that adequately express the panel’s view of the law, the panel may incorporate the trial court’s opinion … and affirm on the basis of that opinion.”).

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

*Samuel A. Christensen
Clerk of Court of Appeals*

FILED

01-06-2025

Sauk County WI

Circuit Court

2024CV000153

BY THE COURT:

DATE SIGNED: January 6, 2025

Electronically signed by Michael P. Screnock
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

SAUK COUNTY

MICHELLE R. FRANKE,

Petitioner,

v.

Case No. 24-CV-153

LABOR AND INDUSTRY REVIEW COMMISSION

Respondent,

MEMORANDUM OF DECISION

This matter is before the Court for review of the Labor and Industry Review Commission's ("LIRC" or the "Commission") decision, by which it dismissed a Wisconsin Fair Employment Act ("WFEA") discrimination complaint filed by the petitioner, Michelle R. Franke. The Court's review is governed by Wis. Stat. § 227.57. The Commission has filed the administrative record, the parties have presented their arguments, and the case is ready for decision. For the reasons set forth below, the Court finds that the Commission's decision is supported by substantial evidence in the record and was not tainted by any legal or procedural error. Accordingly, the Commission's decision is affirmed.

SUMMARY OF DECISION

Ms. Franke previously worked for Kalahari Development LLC ("Kalahari") as a bartender and she is clearly frustrated with how her employment ended, as well as with how she feels she was treated by Kalahari management during her employment. She believes that Kalahari guests/customers of a certain race were afforded special treatment, in part because those guests would express an entitlement mentality and Kalahari management was unwilling to challenge that mentality. Ms. Franke also feels she was not supported by management when she had an altercation with a group of women who she believed were expressing that entitlement mentality. Ms. Franke also believed that she was given less-than-optimal work assignments and was not permitted to work in areas where bartenders typically earned higher levels of tip income.

Ms. Franke filed a complaint with the Commission alleging that Kalahari discriminated against her on the basis of race, age, and sex, and in retaliation for Ms. Franke opposing discrimination in the workplace, all in violation of the Wisconsin Fair Employment Act. During the Commission proceeding, Ms. Franke expressed frustration that she had to independently investigate the circumstances of her employment and the treatment she received from Kalahari management. Ms. Franke opined that the government should be responsible to investigate these matters. Ms. Franke also would like to see the laws changed to provide a more even playing field between the races within our society. Ms. Franke's thoughts on these matters may be viewed by others as good policy choices, but they are not the issues that the Court is empowered to address or change in the context of this judicial review action. Instead, the Court is tasked with reviewing the Commission's determination that Ms. Franke failed to establish even probable cause to believe that she was discriminated against in the manner alleged in her complaint.

This is not a close call. Ms. Franke's challenge to the Commission's decision is lacking in substance and in legal analysis that engages with the Court's judicial review task. In short, Ms. Franke has failed to muster any credible argument that the Commission's findings fail to support its decision, or that there was any legal or procedural error in its handling of Ms. Franke's complaint. Accordingly, the Commission's decision must be affirmed.

APPLICABLE LAW

Review of the Commission's decision is governed by section 227.57 of the Wisconsin Statutes, which provides:

- "The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion." Wis. Stat. § 227.57(3).
- "The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure." Wis. Stat. § 227.57(4).
- "The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law." Wis. Stat. § 227.57(5).
- "If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall,

however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record." Wis. Stat. § 227.57(6).

Not surprisingly, a robust body of judicial decisions has developed regarding judicial review of agency decisions, like the order issued by the Commission in Ms. Franke's case.

"With regard to [the Commission's] findings of fact, [the reviewing court] will uphold those findings if there is 'credible and substantial evidence in the record on which reasonable persons could rely to make the same findings.'" *Xcel Energy Servs., Inc. v. LIRC*, 2013 WI 64, ¶ 25, 349 Wis. 2d 234, 833 N.W.2d 665, citing *deBoer Transp., Inc. v. Swenson*, 2011 WI 64, ¶ 30, 335 Wis. 2d 599, 804 N.W.2d 658 (quoting *Begel v. LIRC*, 2001 WI App 134, ¶ 5, 246 Wis. 2d 345, 631 N.W.2d 220). "Credible and substantial evidence is that which is 'sufficient to exclude speculation or conjecture.'" *Id.*, ¶ 48, quoting *Bumpas v. DILHR*, 95 Wis. 2d 334, 343, 290 N.W.2d 504 (1980). "The burden of showing the LIRC's decision was not supported by credible and substantial evidence is on the party seeking to set aside LIRC's findings and order." *Id.*, ¶ 48.

As noted above, "the court shall not substitute its judgment for that of the [Commission] as to the weight of the evidence on any disputed finding of fact," which includes the Commission's assessment of the credibility of the witnesses at the hearing. Wis. Stat. § 227.57(6); see also *Id.*; *Milwaukee Symphony Orchestra, Inc. v. DOR*, 2010 WI 33, ¶ 31, 324 Wis. 2d 68, 781 N.W.2d 674 ("[T]he weight and credibility of the evidence are for the agency, not the reviewing court, to determine."). The Commission's findings of fact must be affirmed if they are supported by substantial evidence in the record. *Milwaukee Symphony Orchestra, Inc. v. DOR*, 2010 WI 33, ¶ 31. Substantial evidence is such relevant evidence as a reasonable mind

might accept as adequate to support a conclusion after considering all the record evidence. *Id.* Substantial evidence does not mean a preponderance of the evidence. *Id.* An agency's findings of fact may be set aside only when a reasonable factfinder could not have reached the findings from all the evidence before the agency, including the available inferences from that evidence. *Id.*

It is not required that the evidence be subject to no other reasonable, equally plausible interpretations. *Hamilton v. Department of Industry, Labor, and Human Relations*, 94 Wis. 2d 611, 617, 288 N.W.2d 857 (1980). Where two conflicting views of the evidence both could be sustained by substantial evidence, it is for the agency to determine which view of the evidence it accepts. *See Yao v. Bd. of Regents of Univ. of Wis. Sys.*, 2002 WI App 175, ¶29 n. 3, 256 Wis. 2d 941, 649 N.W.2d 356, quoting *Robertson Transp. Co. v. PSC*, 39 Wis. 2d 653, 658, 159 N.W.2d 636 (1968). When more than one inference reasonably can be drawn, the agency's finding is conclusive. *See Vocation. Tech. & Adult Ed. Dist. 13 v. ILHR Dep't*, 76 Wis. 2d 230, 240, 251 N.W.2d 41 (1977).

Moreover, “[t]he question is not whether there is credible evidence in the record to sustain a finding the commission did not make, but whether there is any credible evidence to sustain the finding the commission did make.” *Unruh v. Industrial Comm.*, 8 Wis. 2d 394, 398, 99 N.W.2d 182 (1959).

FACTUAL BACKGROUND

Ms. Franke worked for Kalahari as a Beverage Bartender from February 2017 until August 2018. Ms. Franke's direct supervisor was LeeAnn Conrado. Traci Jones was Kalahari's Corporate Director of Human Resources and Ms. Jones oversaw all of Kalahari's human resources functions at Ms. Franke's work location.

As of October 2017, Ms. Conrado had been observing some repetitive mistakes and repetitive behaviors by Ms. Franke that Ms. Conrado had been trying to coach her through. Ms. Conrado approached Ms. Jones for advice. Ms. Jones decided that she and Ms. Conrado should develop a document setting forth job expectations for Ms. Franke's bartending position and meet with Ms. Franke to go through those expectations. Ms. Jones, Ms. Conrado, and Ms. Franke met on or around October 27, 2017 for that discussion.

On June 11, 2018, Kalahari received a customer complaint stating that Ms. Franke had been rude to a guest and had refused to serve her. After investigating the matter, Kalahari issued Ms. Franke an "Associate Communication Form" that instructed Ms. Franke: "We need to accommodate any promotions we are running resort wide manager present or not. We cannot inconvenience our guests because of this. Arguing with a guest, and refusing to serve them is unacceptable as well." The Associate Communication Form concluded by indicating that Ms. Franke was receiving a three-day suspension from her employment, and by stating that any "further infractions of this sort will result in disciplinary action up to and including termination."

Subsequent to the events of June 11, 2018, a Kalahari employee reported to Anna Rogers, a Human Resources staff person, a conversation that employee had with Ms. Franke on August 17, 2018. According to the employee, Ms. Franke told her that Ms. Franke was upset about being assigned to work a wedding banquet whose celebrants were black because she believed that black patrons do not tip well. The coworker further stated that Ms. Franke had used a racial epithet "(N word)" during the conversation. On August 31, 2018, Ms. Jones once again met with Ms. Franke to discuss this reported conversation. Jacob Haupt, another Kalahari manager, was also present during the August 31, 2018 meeting. Mr. Haupt's notes from the meeting noted that Ms. Franke was extremely defensive, was interrupting and raising her voice saying she never

used such language, and started diverting the conversation to other things. Ms. Jones told Ms. Franke at the August 31, 2018 meeting that she was terminating Ms. Franke's employment because Ms. Franke was exhibiting repetitive behaviors and repetitive misconduct and was still having trouble getting along with coworkers, so Ms. Jones concluded that it was best for Kalahari and Ms. Franke to part ways with an end to Ms. Franke's employment. Ms. Franke's employment with Kalahari was terminated effective August 31, 2018.

(The foregoing factual background is taken from the Administrative Law Judge's Findings of Fact, which were adopted by the Commission as its own findings. See Fair Employment Decision, dated March 29, 2024, and the Decision and Memorandum Opinion, dated April 23, 2021, all attached to Ms. Franke's Petition for Judicial Review (Doc 1); also in the certified record at Doc 12, pp. 2-12.)

PROCEDURAL BACKGROUND

On September 24, 2018, Ms. Franke filed a complaint with the State of Wisconsin, Department of Workforce Development – Equal Rights Division, alleging that Kalahari violated the Wisconsin Fair Employment Law, Wis. Stats. §§ 111.31 – 111.395, by discriminating against her in work assignment because of her age, in terms and conditions of her employment and by engaging in or permitting harassment because of her race, by engaging in or permitting harassment because of her sex, and by discharging her from her employment because she opposed discrimination within the meaning of the Wisconsin Fair Employment Law. (Doc 13, pp. 451-55 (bates-stamped).)

One year later, on September 25, 2019, after receiving written materials from both parties regarding Ms. Franke's complaint, an Equal Rights Officer for the Equal Rights Division issued a 5-page Initial Determination – No Probable Cause concluding that there is no probable cause to

believe that Kalahari violated the law as alleged in Ms. Franke's complaint. (Doc 12, pp. 336-40.) The Equal Rights Officer summarized the basis for this conclusion in five separate paragraphs:

Based on the information provided, it does not appear that [Kalahari] discriminated against [Ms. Franke] because of her age, race, sex, and terminated her employment because she opposed discrimination.

[Ms. Franke] failed to establish that she was discriminated against in terms or conditions of employment because of age. She did not show how [Kalahari] treated her unfairly due to her age, or provide evidence supporting that [Kalahari] treated employees outside the protected age class favorably. Her argument that she would not have been assigned to the outdoor water parks and bars, if she had not requested it, is not sufficient evidence to support her claim of discrimination on the basis of age.

There is no evidence to support that [Kalahari] treated [Ms. Franke] differently because of her race. [Ms. Franke] failed to establish that she was discriminated against in terms or conditions of employment because of race. Beside her encounters with black customers, where she was accused of using racial slurs, she did not show or provide any evidence to support that race discrimination against her occurred. She did not provide name of coworkers from different races that [Kalahari] treated better or more favorably than her.

[Ms. Franke] failed to establish that [Kalahari] treated her differently because of her sex. She did provide [sic] any evidence to support her claim, and did not provide names of male coworkers that [Kalahari] treated better or more favorably. Further, a female employee reported it her [sic], and the individuals that made the decision to discipline are all females.

In order to violate the prohibition against retaliation, an action or decision must have been made because of an actual, subjective belief that the person retaliated against was raising some kind of claim that discrimination was occurring, or was otherwise engaging in protected activity. [Ms. Franke] did not establish that she was engaged in a protected activity. [Kalahari] has provided non-discriminatory reasons for terminated [sic] her employment. Further, even if [Ms. Franke] disputes [Kalahari's] reasons for terminated [sic] her employment, it does not change the fact that [Kalahari] appears to have considered them legitimate, attributed them to [Ms. Franke], and felt compelled to take action.

(Doc 12, pp. 339-40.)

Ms. Franke appealed the Equal Rights Officer's determination on October 4, 2019, and her matter was certified for a hearing on the issue of probable cause. The originally-scheduled hearing had to be postponed due to the Covid-19 pandemic. (Doc 12, pp. 233-34.)

On January 14, 2021, a hearing was held before Administrative Law Judge Laura Amundson. Ms. Franke, appearing *pro se*, and Ms. Jones, on behalf of Kalahari, both presented sworn testimony at the hearing. Kalahari offered an oral closing argument at the conclusion of

the hearing (Ms. Franke declined to make an oral argument) and the parties agreed to a post-hearing briefing schedule. (Doc 11.) ALJ Amundson issued her Decision and Memorandum Opinion on April 23, 2021, concluding that Ms. Franke “has failed to prove that there is probable cause to believe that [Kalahari] violated the Act by discriminating against her either in terms and conditions of her employment, or by terminating her employment, because of her age, race, sex, or because she opposed discrimination in the workplace.” (Doc 12, p. 8.)

Ms. Franke timely filed a petition for Commission review of the ALJ’s decision. In a written decision dated March 29, 2024, the Commission concluded it “agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.” (Doc 12, p. 3.)

Ms. Franke filed this action on April 18, 2024, seeking judicial review of the Commission’s decision. Her Petition for Judicial Review, on its face, does not identify what errors Ms. Franke alleges the Commission made in its decision. Her petition states:

I wanted it noted that No Lawyer would help me with this case. My government has failed to protect my rights, has failed to investigate properly the numerous complaints I have filed. In this case against Kalahari Resorts, the HR woman is a LIAR. The Lake Delton Police in this case, when I called them about being harassed, threatened, called names, ect. [sic] The police didn’t even show up, Kalahari’s security personnel, when I called them, they just stood there and did absolutely nothing.

I wanted it noted that the HR woman @ Kalahari has tried to silence me. She said to me about the owner of Kalahari Todd Nelson, What she said: “If you say anything about him, you won’t be working here” then she pounded her fist on the desk at me, and lied to the Judge about it.

I wanted it noted that the LIRC issued a decision on March 29th. 2024 [sic] and that decision, I have continually update their office of my address changes. I never received a copy of the decision via (postal mail) I have been waiting 5 years for my government to do something about this case, and the nerve of The LIRC to say they don’t have my correct mailing address when in fact I emailed them on October 11th. 2023 [sic] with my current mailing address. I am enclosing a copy of the email from LIRC.

(Doc 1, p. 3.)

The Commission filed its answer on May 8, 2024. The Commission filed the administrative record on June 7, 2024. The record consists of 462 pages of written material in two parts (Docs 12-13), together with 75 pages of hearing transcript (Doc 11).

Ms. Franke filed a 24-page document titled “Case Brief” on July 9, 2024. On September 6, 2024, LIRC filed a 10-page brief in opposition. Ms. Franke filed a six-page Reply Brief on September 23, 2024.

ANALYSIS

I. The Commission’s Decision is Supported by Its Findings of Fact

Ms. Franke continues to assert that Ms. Jones lied under oath. She had the opportunity to, and did, cross-examine Ms. Jones while Ms. Jones was under oath. The administrative law judge had the opportunity to observe both Ms. Franke and Ms. Jones testify and the administrative law judge reached her factual conclusions, at least in part, on her determination of the credibility of both witnesses. The Commission adopted the administrative law judge’s factual findings as its own. As explained above, the Court is not permitted to substitute its judgment for that of the Commission as to the weight of the evidence on any disputed finding of fact, which includes the Commission’s assessment of the credibility of the witnesses at the hearing. Wis. Stat. § 227.57(6); *Milwaukee Symphony Orchestra, Inc. v. DOR*, 2010 WI 33, ¶ 31, 324 Wis. 2d 68, 781 N.W.2d 674 (“[T]he weight and credibility of the evidence are for the agency, not the reviewing court, to determine.”).

The Commission’s factual findings support its legal conclusion that Ms. Franke failed to establish probable cause that Kalahari engaged in unlawful age, sex, or race discrimination. Quite frankly, the administrative law judge could have reached that conclusion after Ms. Franke testified at the January 2021 hearing, without even taking testimony or evidence from Kalahari.

Despite having the Equal Rights Officer's detailed explanation of the shortcomings of her complaint, Ms. Franke's own testimony did not provide probable cause to believe that Kalahari engaged in unlawful age, sex, or race discrimination with respect to Ms. Franke's employment, or that Kalahari discharged her from her employment because she opposed discrimination. In support of her petition for judicial review, Ms. Franke has not articulated any argument that the Commission's factual findings DO support a finding of probable cause, and the Court cannot discern any such meritorious argument.

In sum, Ms. Franke has not articulated any coherent argument by which the Court could conclude that the Commission's decision was not supported by its findings of fact. And she has not articulated any coherent argument that any of the Commission's findings are not supported by credible and substantial evidence. Without this showing, the Court cannot set aside the Commission's order. Wis. Stat. § 227.57(6).

II. The Commission Did Not Make Any Identifiable Legal or Procedural Error

While Ms. Franke complains that she had to represent herself in the Commission proceeding below, and maintains her belief that the Government should independently investigate what has gone on at Kalahari, she has not identified any legal or procedural error in the Commission's handling of her complaint. The administrative record demonstrates that the Commission gave Ms. Franke every opportunity to keep her complaint alive, even to the point of allowing for an evidentiary hearing so that Ms. Franke could attempt to demonstrate the existence of probable cause, after an Equal Rights Officer determined there was no such probable cause. There is no basis to remand this case to the Commission pursuant to Wis. Stat. § 227.57(4) or to set aside or modify the Commission's decision pursuant to § 227.57(5).

CONCLUSION

For the reasons set forth above, the Commission's order is affirmed pursuant to Wis. Stat. § 227.57(2).

The Court directs LIRC to submit an order consistent with this Memorandum of Decision.