



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 II

July 20, 2016

To:

Hon. Faye M. Flancher
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Winn S. Collins
Brian Keenan
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Joseph E. Sabol
316 Harrison Street
Marquette, MI 49855-3316

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

2015AP1467

Joseph E. Sabol v. LIRC (L.C. # 2014CV1233)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Joseph Sabol appeals pro se from a circuit court order affirming a decision of the Labor and Industry Review Commission that an administrative law judge correctly determined that the University of Wisconsin System (UWS) and the University of Wisconsin Colleges (UW Colleges) neither discriminated against him on the basis of age nor retaliated against him when he was not hired for one of four assistant professor positions. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Since 2004, Sabol has been pursuing his claims that he was discriminated against on the basis of age and was unlawfully retaliated against by UWS and UW Colleges when he was not selected for one of four assistant professor of chemistry positions for which he applied.

In the age discrimination proceeding, LIRC affirmed the administrative law judge's decision that Sabol was not denied employment due to age discrimination. Sabol's aggregate application score was not high enough to warrant further consideration, some of his reference letters contained negative or otherwise unhelpful comments about his performance in past positions, he had numerous short-term teaching assignments, and he appeared to be more focused on research than teaching. One of the successful applicants for the four positions was only two years younger than Sabol, who was forty-eight years old when he applied for the assistant professor positions. LIRC concluded that Sabol did not experience age discrimination in the hiring process.

In the retaliation proceeding, LIRC reviewed the administrative law judge's decision that the failure to hire Sabol did not arise from a desire to retaliate against him for complaints he filed with the State Personnel Commission against a previous employer, UW-Eau Claire. LIRC found that Sabol did not demonstrate that any member of the Chemistry Department Executive Committee who screened the position applications was aware that Sabol filed previous employment-related complaints and declined to move his application forward for that reason.

On judicial review, WIS. STAT. §§ 227.52-227.57, the circuit court affirmed LIRC's decisions in both proceedings.

On appeal, Sabol challenges LIRC's decisions in both proceedings. The circuit court reviewed LIRC's decision, which is also our charge on appeal. *Currie v. DILHR*, 210 Wis. 2d

380, 386, 565 N.W.2d 253 (Ct. App. 1997). The circuit court's decision is thorough and well-considered. Accordingly, we adopt the circuit court's decision as the decision of this court. *See* WIS. CT. APP. IOP VI(5)(a) (Oct. 14, 2003) (court of appeals may adopt circuit court opinion). The circuit court's order affirming LIRC is summarily affirmed.

Sabol also challenges the circuit court's order denying his motion to sever the Board of Regents of the University of Wisconsin System from the judicial review proceeding because the board did not file a notice of appearance and statement of position within twenty days of service of the judicial review petition. WIS. STAT. § 227.53(2). The board was served on May 21, 2014, and filed its notice of appearance and statement of position on November 25, 2014.

As stated in *Wagner v. State Med. Examining Bd.*, 181 Wis. 2d 633, 644, 511 N.W.2d 874 (1994), a circuit court has discretion to create a remedy for an untimely filing under WIS. STAT. ch. 227. On appeal, Sabol does not convince us that the circuit court erroneously exercised its discretion when it declined to dismiss the board from the judicial review proceeding due to its late notice of appearance and statement of position.²

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

² Sabol's circuit court motion, captioned "Motion to Sever," argued that the circuit court lacked competency to address any request for relief relating to the board. To the extent Sabol's reply brief in this court denies that his motion challenged the circuit court's competency to act vis-à-vis the board, that assertion is at odds with the motion he filed. Therefore, we do not address this argument.