

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2008

David R. Schanker
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. 2007AP497

Cir. Ct. No. 2006CV2906

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KAREN ROSNECK,

PETITIONER-APPELLANT,

v.

**STATE OF WISCONSIN, UNIVERSITY OF WISCONSIN-MADISON AND
LABOR AND INDUSTRY REVIEW COMMISSION,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Karen Rosneck appeals an order affirming a decision by the Labor and Industry Review Commission (the commission). We affirm.

¶2 In 2002, Rosneck filed a complaint with the Personnel Commission alleging that her employer, the University of Wisconsin—Madison, discriminated against her on the basis of age or sex, contrary to WIS. STAT. § 111.321 (2005-06).¹ The complaint was eventually transferred to the Department of Workforce Development (DWD). The department’s initial determination was that there was no probable cause to proceed. Rosneck sought further review, which resulted in a hearing before an administrative law judge (ALJ), who found no probable cause. A further appeal resulted in review by the commission, which modified and affirmed the earlier decision. Rosneck sought judicial review in circuit court under WIS. STAT. ch. 227, *see* WIS. STAT. § 111.395, and the court affirmed the denial.

¶3 The dispositive issue is whether the commission erred in concluding that Rosneck did not establish probable cause at the proceeding before the ALJ. The burden to show probable cause is on the complainant. *Boldt v. LIRC*, 173 Wis. 2d 469, 476, 496 N.W.2d 676 (Ct. App. 1992). The term “probable cause” is defined as “a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe, that a violation of the act probably has been or is being committed.” WIS. ADMIN. CODE § DWD 218.02(8). In a judicial review under WIS. STAT. ch. 227, we review the agency decision directly, not the circuit court’s decision. *Stoughton Trailers, Inc. v. LIRC*, 2006 WI App 157, ¶15, 295 Wis. 2d 750, 721 N.W.2d 102, *aff’d*, 2007 WI 105, ___ Wis. 2d ___, 735 N.W.2d 477.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 The commission's conclusion regarding age discrimination, as described in its memorandum decision, was based on two reasons. The first was that, for Rosneck to show probable cause that age was a reason she was treated less favorably than the four candidates who were selected for interviews, she would have to show that the members of the search committee had reason to be aware that she was older than those candidates, and that she failed to show this. According to the commission, the ages of three of those candidates were not reflected in their application materials, or otherwise reflected in the record. The commission's second reason was that the record further shows that the four interview candidates were all more qualified than Rosneck.

¶5 As to sex discrimination, the commission again relied on two reasons. The first appears to be that, because the gender of two of the interview candidates was not apparent from their names or application materials, the selection of two candidates who could have been female was evidence that the committee lacked intent to discriminate on the basis of sex. In addition, the commission repeated its finding that Rosneck was not as strongly qualified.

¶6 Rosneck's brief on appeal does not challenge the commission's findings about the committee's unawareness of the age or sex of the candidates it selected. Instead, she spends the bulk of the brief discussing her qualifications relative to the four interviewees, and raises various other issues about an intern program, comments in the media by the manager who ultimately made the hiring decision, the lack of opportunities for career advancement, statistical information about other hires, and failure to follow certain practices or procedures. However, even if we were to agree with Rosneck as to all of these issues, the commission's findings regarding the search committee's lack of awareness would remain as a basis for its decision. In the absence of an argument from Rosneck on that point,

she has failed to demonstrate that the commission erred, and we need not address the other issues.

By the Court.—Order affirmed.

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

