

**FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Pursuant to IC 4-21.5 and the Commission's June 19, 2020 Order: Automatic Adoption and Approval of Certain Non-Final Decisions, this Order is final, having been automatically approved by the ultimate authority.



FILE DATED: Oct 28 2021

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**BEFORE THE INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**



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**John Smith,**

Issued: October 28, 2021

**Complainant,**

Subject to the Ultimate Authority  
of the Indiana Civil Rights Commission

**v.**

**Indiana Department of Corrections,**

Administrative Cause No.:  
ICRC-0321-000815

**Respondent.**

Underlying State Agency Action No.:  
EMra19070365 & 24F-2019-02005

**Hon. Caroline A. Stephens Ryker, Administrative Law Judge.**

Whereas Complainant in this proceeding submitted a Notice of Withdrawal (“Motion”) on October 28, 2021, and the undersigned Administrative Law Judge (“ALJ”) for the Office of Administrative Law Proceedings (“OALP”) has duly considered it, the undersigned ALJ has decided to grant Complainant’s Motion and issue this Order based on the following findings of fact and conclusions of law.

### **JURISDICTION**

The Commission of the Indiana Civil Rights Commission (“ICRC”) has subject matter jurisdiction over employment discrimination complaints based on race that are filed under the Indiana Civil Rights Law (“ICRL”). IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-6. When a finding of cause is made under the ICRL, pursuant to the Commission’s June 19, 2020 Finding of Necessity, the Office of Administrative Law Proceedings (“OALP”) shall appoint an Administrative Law Judge (“ALJ”) to preside over the matter and to conduct a hearing. IND. CODE § 22-9-1-6; IND. CODE § 4-15-10.5-12; IND. CODE § 4-15-10.5-13.

### **ISSUE**

Is Complainant’s Motion effective in dismissing this matter?

### **PROCEDURAL HISTORY**

On March 25, 2021, the ICRC, after conducting a neutral investigation, made a probable cause finding on one of the allegations included in John Smith’s July 11, 2019 complaint that alleged Respondent violated the Indiana Civil Rights Law (“ICRL”) by discriminating against him in the protected area of employment on the basis of race.

### **FINDINGS OF FACT**

1. The Motion was filed on October 28, 2021.
2. As represented in the Motion, Complainant no longer wishes to pursue this matter. As a result, Complainant requests that this matter be dismissed.
3. The Motion was served on all Parties before a Notice of Hearing was issued.
4. There is no evidence of fraud, coercion, duress, or any other reason not to grant the requested dismissal.
5. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such, and this Order’s statement of Procedural History is incorporated into these Findings of Fact.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and the Parties. IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-3.

2. The Parties did not file a “consent agreement” or “conciliation agreement” that requires the approval and signature of a majority of the Commissioners. IND. CODE § 22-9-1-6(o); 910 IAC 1-3-4.
3. A Complainant can withdraw an ICRC complaint by filing a Notice of Withdrawal with the Commission. 910 IAC 1-2-6.
4. A Notice of Withdrawal is a written statement made by the Complainant in which the Complainant requests that the matter be closed. *Id.* The Notice of Withdrawal must be served on all Parties. *Id.*
5. If a hearing has been set, then the majority of the Commission must agree to the withdrawal before the withdrawal is effective in closing the matter. *Id.*
6. However, if a hearing has not been set, then the Notice of Withdrawal filed by a Complainant is immediately effective in closing the matter as of the date of filing. *Id.*
7. Furthermore, on June 19, 2020, the ICRC Commission issued its Order: Automatic Adoption and Approval of Certain Non-Final Decisions (“Commission’s Order”). As detailed in the Commission’s Order (attached as Exhibit A), the Commission, by majority vote, agreed to automatically approve any non-final decision issued by an ALJ in which an ALJ accepts a “Notice of Withdrawal filed by Complainant before a date for a hearing has been set,” provided the Notice of Withdrawal complies with 910 IAC 1-2-6 or in which an ALJ accepts a joint motion to dismiss, provided the Parties waive their right to object to the ALJ’s decision under IAOPA.
8. Complainant filed Complainant’s Motion prior to the setting of a hearing in this matter, and Complainant’s Motion complies with 910 IAC 1-2-6.
9. Accordingly, this matter is dismissed, and pursuant to IC 4-21.5-3-29 and the Commission’s Order, this Order is automatically affirmed as a Final Order disposing of the proceedings. IND. CODE § 4-21.5-3-27(a).
10. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such, and this Order’s Statement of Jurisdiction is incorporated into these Conclusions of Law.

### **DECISION**

1. Complainant’s Notice of Withdrawal is GRANTED.
2. John Smith’s July 11, 2019 Complaint is DISMISSED, with prejudice.
3. Either Party to a dispute filed under IC 22-9 may, not more than thirty (30) days after the date of receipt of the Commission’s final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IND. CODE § 22-9-8-1.

SO ORDERED: October 28, 2021



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Hon. Caroline A. Stephens Ryker, Administrative Law Judge  
Indiana Office of Administrative Law Proceedings  
100 North Senate Ave., Room N802  
Indianapolis, IN 46204  
(317) 234-6689

**Distribution List:**

*The following distribution list includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IND. CODE § 4-21.5-3-18.*

John Smith: 4107 Canapple Drive, Indianapolis, IN 46235

Indiana Department of Corrections & David Fleischhacker: in the care of David Fleischhacker served by email

Zachary Griffin: served by email; 100 North Senate Ave., Room N300, Indianapolis, IN 46204; (317) 232-2628

Chair Slash of the Indiana Civil Rights Commission – ultimate authority and served at [docketclerk@icrc.in.gov](mailto:docketclerk@icrc.in.gov)

EXHIBIT A

**INDIANA CIVIL RIGHTS COMMISSION**  
**ORDER: AUTOMATIC ADOPTION AND APPROVAL OF CERTAIN NON-FINAL**  
**DECISIONS**

On June 19, 2020, the Majority of the Indiana Civil Rights Commission voted, under Indiana Code 4-21.5-3-29, to automatically adopt and approve as a final order any decision issued by an Administrative Law Judge ("ALJ") assigned to a matter under the June 19, 2020 Order: Finding of Necessity in which the assigned ALJ accepts the following:

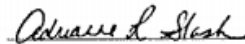
1. A Joint Motion to Dismiss or similar motion in which all parties move for the matter's dismissal and waive their right to file objections to a decision issued by the ALJ under Indiana Code 4-21.5-3-29; and
2. A Notice of Withdrawal filed by Complainant before a date for a hearing has been set, provided the Notice of Withdrawal complies with 910 IAC 1-2-6(A)(i) and 910 IAC 1-2-6(B).

This Order does not apply to any Consent or Conciliation Agreements which require the signature of all approving Commission Members to be effective.

This Order applies with equal force to decisions issued under Indiana Code 22-9, *et. seq.* and Indiana Code 22-9.5, *et. seq.*

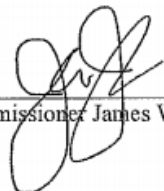
This Order is effective immediately.

SO ORDERED on June 19, 2020 by the majority vote of 4 Commissioners:

  
Chair Adrienne L. Slush

  
Vice-Chair Steven A. Ramos

  
Commissioner Holli Harrington

  
Commissioner James W. Jackson