

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

JUDITH G. LAVENDER,)

Complainant,)

and)

CHRIS GRABER,)

Respondent.)

CHARGE NO(S): 2008SN1373

EEOC NO(S): N/A

ALS NO(S): S08-0474

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
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JUDITH G. LAVENDER,)	
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Complainant,)	CHARGE NO: 2008SN1373
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)	
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)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Respondent, Chris Graber, to dismiss the instant case for want of prosecution. Complainant has not filed a response to this motion, although the time frame for doing so has expired. In the motion, Respondent contends that *pro se* Complainant has failed to comply with a series of Commission Orders directing her to provide him with responses to his discovery requests. It also notes that an Order was entered on October 15, 2009, which gave Complainant one last opportunity to either serve Respondent with discovery responses by November 6, 2009 or explain why she was unable to respond to said requests. Respondent's counsel reports that Complainant did not serve her with any responses to discovery requests, and Complainant has not responded to the instant motion to dismiss as of the date of this recommended order.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On November 26, 2007, Complainant filed on her own behalf a Charge of Discrimination, alleging that she was the victim of sexual harassment by Respondent, who is a co-worker of Complainant.

2. On November 6, 2008, the Department of Human Rights filed a Complaint on behalf of Complainant alleging that Complainant was the victim of sexual harassment by Respondent.

3. On February 3, 2009, an Order was entered, which established deadlines for submitting and responding to the parties' discovery requests and directed the parties to participate in a telephone conference call on June 23, 2009.

4. On June 23, 2009, an Order was entered, which noted that the Commission was unable to contact Complainant for the scheduled telephone conference call and directed the parties to file written reports regarding the status of discovery.

5. On June 26, 2009, Respondent filed a motion to compel Complainant to respond to Respondent's discovery requests. In the motion, counsel for Respondent stated that Complainant had returned the Interrogatories and Requests to Produce without providing any responses to questions seeking, among other things, Complainant's name, the factual basis for her allegations in her sexual harassment claim, as well as the identity of any other state or federal action concerning the same incidents at issue in the instant sexual harassment claim.

6. On July 7, 2009, Respondent's counsel filed a status report, indicating that: (1) Complainant had failed to respond to any of Respondent's Interrogatories or Requests to Produce documents; and (2) Complainant had failed to contact Respondent's counsel despite counsel's attempts to get Complainant to respond to the outstanding discovery requests.

7. On July 13, 2009, an Order was entered, which granted Respondent's motion to compel and directed Complainant to supply sworn responses to all outstanding discovery requests on or before August 3, 2009. The Order also directed Complainant to contact Respondent's counsel directly if she did not understand what was being asked of her in the Interrogatories or Requests to Produce.

8. On July 31, 2009, an Order was entered, which reflected the fact that Complainant had advised Respondent's counsel that an unspecified medical problem would

prevent her from answering discovery requests by the August 3, 2009 deadline. The Order set August 31, 2009 as a new deadline for serving sworn responses to Respondent's discovery requests and instructed Complainant to file a report with the Commission regarding why she was unable to comply with the August 31, 2009 deadline should she find herself unable to comply with said deadline.

9. On September 15, 2009, Respondent filed another status report, indicating that Complainant had failed to serve his counsel with any responses to Respondent's discovery requests and had not filed any report indicating why she was unable to comply with the August 31, 2009 deadline for serving responses to discovery requests.

10. On October 15, 2009, an Order was entered, which gave Complainant one last opportunity to serve Respondent with responses to his discovery requests on or before November 6, 2009. The Order cautioned Complainant that she risked the entry of a future order recommending that this case be dismissed for failure to prosecute her claim if she failed either to serve Respondent with responses to said requests or provide the Commission with an explanation for failing to do so.

11. On November 29, 2009, Respondent filed the instant status report/motion to dismiss indicating that Complainant had not served Respondent's counsel with either responses to Respondent's discovery requests or a report providing a reason for her failure to do so.

12. Between the date of Respondent's status report/motion to dismiss and the date of this recommended order, Complainant has not provided the Commission with any report regarding her failure to serve sworn responses to Respondent's discovery requests, has not filed a response to Respondent's motion to dismiss the instant case and has not filed any pleading seeking any information regarding the status of her case.

13. All Orders in this case were sent to the same Energy, Illinois address that was listed on Complainant's signed and returned postal card. None of the Orders addressed to Complainant at the Energy, Illinois address have been returned to the Commission.

Conclusions of Law

1. A Complaint may be dismissed when a party engages in conduct that unreasonably delays or protracts proceedings. See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).

2. The Complainant has unreasonably delayed proceedings by failing to comply with Commission directives requiring her to answer discovery requests that would allow this case to proceed to a public hearing.

Discussion

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that a complaint be dismissed where a complainant engages in conduct that unreasonably delays or protracts proceedings. (See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, for example, *Ramirez and Wasco Spring Company*, 40 Ill. HRC Rep. 266 (1988), and *Hariford and Mitsubishi Motor Manufacturing of America*, IHRC, ALS No. 10629, August 16, 2000.

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay these proceedings. Specifically, Complainant failed to provide discovery responses by the deadlines established in the February 3, 2009, July 31, 2009, and October 15, 2009 Orders, even though she was specifically cautioned in the October 15, 2009 Order that her failure to do so could result in a future order recommending that her case be dismissed for want of prosecution. Similarly, Complainant ignored two Orders (i.e., on July 31, 2009 and October 15, 2009) directing her to provide an explanation for her inability to serve sworn responses to Respondent's discovery requests, and she also failed to contact Respondent's counsel regarding any clarification required of Respondent's discovery requests as directed by the July 13, 2009 Order. In this regard, Complainant's conduct in this case, which served to deprive Respondent of the most basic information about her case, renders it difficult for the Commission

to take any action with regard to the case except to dismiss it. See, for example, *Foster and Old Republic General Services, Inc.*, IHRC, ALS No. 5011, November 8, 1993.

Recommendation

Accordingly, I recommend that the Complaint and the underlying Charge of Discrimination of Judith G. Lavender be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 8TH DAY OF FEBRUARY, 2010