



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
JOSEPHINE BISCH,)	
)	
Complainant,)	CHARGE NO: 1997SF0886
)	EEOC NO: 21B972551
and)	ALS NO: S-10369
)	
BRIDGESTONE/FIRESTONE, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me on an amended status report by Respondent requesting that this matter be dismissed due to an adverse ruling against Complainant in federal court. On February 9, 2001, Complainant was directed to file a response to the amended status report by February 28, 2001. Complainant has not filed a response as of the date of this Order and has failed to file any request seeking additional time in which to file a response.

Contentions of the Parties

Respondent contends that the instant case should be dismissed since the federal court dismissed with prejudice an identical cause of action alleging the same facts, and Complainant failed to file an appeal from that order.

Findings of Fact

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

1. On May 20, 1997, Complainant filed on her own behalf a Charge of Discrimination alleging that she was the victim of race and sex discrimination when Respondent failed to hire her as a Lab Assistant.

2. On February 23, 1998, the Department filed the instant Complaint on behalf of Complainant alleging that Complainant was the victim of race and sex discrimination when Respondent failed to hire her as a Lab Assistant.

3. On April 15, 1999, Complainant filed a motion to stay the instant case pending the receipt of a right to sue letter in order to proceed against Respondent in federal court.

4. On May 10, 1999, an Order was entered which granted Complainant's motion for stay based upon the representations of Complainant.

5. On October 13, 1999, an Order was entered which noted that Complainant had obtained the necessary right to sue letter from the EEOC and had filed a Title VII action against Respondent alleging race and sex discrimination due to Respondent's failure to hire Complainant as a Lab Assistant.

6. On February 9, 2001, Respondent filed an amended status report alleging that: (1) Complainant filed a discrimination case against it on July 21, 1999, alleging race and sex discrimination in Respondent's failure to hire Complainant as a Lab Assistant; (2) sometime during the end of 2000, the District Court dismissed Complainant's case with prejudice due to Complainant's failure to comply with certain orders issued by the District Court and her failure to prosecute her claim; and (3) Complainant failed to file an appeal from the District Court's Order.

7. On February 9, 2001, an Order was entered which required Complainant to file a response by February 28, 2001 to the allegations made in the amended status report urging that this case be dismissed due to the existence of the dismissal order entered by the District Court.

8. Complainant has not filed a response to the amended status report as of this date and has not filed a motion seeking leave for more time in which to file a response.

Conclusions of Law

1. The Commission will not search the record to find a reason to deny a motion where the motion otherwise appears to be valid on its face.
2. The doctrine of *res judicata* bars the relitigation of a claim that a court of competent jurisdiction has decided on its merits in an earlier proceeding.
3. All requirements for application of *res judicata* are present where: (1) the parties to this action are the same as the parties to the federal action; (2) both cases arise out of the same set of facts; and (3) the unappealed dismissal order in the federal case was an adjudication on the merits.

Determination

This matter should be dismissed with prejudice due to the fact that the federal court dismissed with prejudice Complainant's identical action alleging the same facts as the case before the Commission.

Discussion

This case presents the question regarding the appropriate treatment to be given when a federal court has dismissed with prejudice an identical discrimination claim alleging the same facts that are present in a claim before the Human Rights Commission. According to Respondent, the only appropriate action is a dismissal of the instant cause of action with prejudice since the federal court's dismissal order constitutes a decision on the merits. After reviewing the pleadings and the record in this case, I agree with Respondent that dismissal is warranted in this case.

In **Hauversburk and Prudential Home Mortgage Co.**, ___ Ill. HRC Rep. ___ (1994SF0022, July 16, 1998), the Commission considered a similar question when a complainant attempted to proceed on her claim before the Commission after a federal court had dismissed a similar federal action against the respondent on grounds that the federal claim had not been timely filed. In arguing that the complainant's cause of action

before the Commission should be dismissed on *res judicata* grounds, the respondent maintained that the complainant could not proceed on her Human Rights Act claim since the federal court's dismissal order constituted a final judgment on the merits of complainant's identical federal action. In agreeing with the Respondent, the Commission in **Hauversburk** observed that a federal court dismissal with prejudice is as conclusive of the rights of the parties as if the lawsuit had been prosecuted to a final adjudication adverse to the complainant. (See, also, **Bank of America v. Jorjorian**, 303 Ill.App. 184, 185, 24 N.E.2d 896, 897 (1st Dist. 1940), and **Keim v. Kalbfleisch**, 57 Ill.App.3d 621, 373 N.E.2d 565, 568, 15 Ill.Dec. 219, 222 (5th Dist. 1978).) Moreover, the Commission determined that it did not matter that the federal court did not consider the merits of complainant's case prior to entering the order dismissing her federal cause of action since the dismissal was one with prejudice. **Hauversburk**, Slip op. at p. 5.

A similar result is required here. Complainant sought and was granted her request to stay the instant Human Rights Act claim pending resolution of her claim against Respondent in federal court. As a part of her request, Complainant asserted that the Human Rights Act claim and the federal action were identical discrimination claims arising out of the same operative facts. Thereafter, Complainant proceeded with her claim in federal court until the federal court entered an order, which dismissed Complainant's case with prejudice based on her failure to abide by certain District Court orders and her failure to otherwise prosecute her case. Thus, under these circumstances, it appears that all of the requirements for a dismissal of Complainant's Human Rights Act claim based upon an application of *res judicata* have been met since: (1) Complainant and Respondent are the same parties in both the federal Title VII action and the instant Human Rights Act claim; (2) both lawsuits make allegations of race and sex discrimination arising out of Respondent's failure to hire Complainant for a Lab

Assistant position; and (3) the unappealed federal court dismissal with prejudice constitutes a final judgment on the merits.

Too, it should be noted that Complainant has not filed any pleadings in response to Respondent's amended status report or has otherwise sought leave to file a response which would contest any of the assertions made with respect to Respondent's request to dismiss contained in the amended status report. Moreover, it is axiomatic that the Commission will not search the record to find a reason to deny a request to dismiss a cause of action where, as here, the motion appears valid on its face. (See, **Jones and Burlington Northern Railroad**, 25 Ill. HRC Rep. 101 (1986).) Here, it is enough to say that Respondent is entitled to a dismissal of the instant case based on the doctrine of *res judicata* given the uncontested facts contained in the amended status report and the instant record.

Recommendation

Based upon the above, I recommend that Respondent's request to dismiss contained in its amended status report be granted, and that the Complaint and underlying Charge of Discrimination of Josephine Bisch be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED THE 1st DAY OF MAY, 2001