



STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

|  |   |            |            |
|--|---|------------|------------|
| IN THE MATTER OF:                      | ) |            |            |
|  | ) |            |            |
| <b>TERRY L. DALE,</b>                  | ) |            |            |
|  | ) |            |            |
| Complainant,                           | ) |            |            |
|  | ) |            |            |
| and                                    | ) | CHARGE NO: | 2000SF0176 |
|  | ) | EEOC NO:   | 21B993183  |
| <b>MYERSCOUGH CASUAL DINING</b>        | ) | ALS NO:    | S-11356    |
| <b>INC. d/b/a CHEDDAR'S RESTAURANT</b> | ) |            |            |
|  | ) |            |            |
| Respondent.                            | ) |            |            |

**RECOMMENDED ORDER AND DECISION**

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On January 18, 2001, Complainant was directed to contact the Commission by January 26, 2001, for the purpose of providing a telephone number and a time when he could be reached so that he could participate in a telephone conference to discuss discovery issues and to establish a date for the public hearing. Complainant, however, did not comply with the Order of January 18, 2001, and otherwise failed to provide any reason for not attending the January 18, 2001 telephone conference call.

**Findings of Fact**

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

1. On September 27, 1999, Complainant filed a Charge of Discrimination alleging on his own behalf that he was the victim of race discrimination and retaliation.
2. On August 31, 2000, the Department of Human Rights filed the instant Complaint on behalf of Complainant, alleging that Respondent terminated Complainant on the basis of his race and retaliated against Complainant for complaining of race discrimination.

3. On October 10, 2000, Administrative Law Judge Gidcumb entered an Order requiring the parties to participate in a November 9, 2000 telephone conference to set a discovery schedule and to establish a date for the public hearing.

4. On November 9, 2000, Complainant failed to appear for the telephone conference call. On that date Judge Gidcumb entered an Order directing Complainant to contact the Commission by November 16, 2000 to provide a telephone number where he can be reached for a future conference call.

5. Complainant contacted the Commission by the November 16, 2000 due date set forth in the Order of November 9, 2000. On November 16, 2000, Judge Gidcumb entered an Order, which directed the parties to be available on November 29, 2000 for a telephone conference call to set a discovery schedule and establish a date for the public hearing.

6. On November 29, 2000, both parties attended a conference call but agreed to postpone the setting of a discovery schedule and the establishing of a public hearing date in order to give Complainant more time to find an attorney. On November 30, 2000, Judge Gidcumb entered an Order, which re-set to December 12, 2000, the telephone conference set a discovery schedule and to establish a public hearing date.

7. On December 12, 2000, the Commission received a telephone report that Complainant was meeting with his counsel on that day. Accordingly, the telephone conference call was postponed to December 19, 2000 in order to accommodate Complainant's counsel. The December 12, 2000 Order, though, further provided that should Complainant's counsel for some reason decline to represent Complainant, Complainant was to participate in the December 19, 2000 telephone conference call.

8. On December 19, 2000, a clerk from the Commission called the telephone number provided by Complainant and an unknown individual answered the phone stating that Complainant had been involved in an automobile accident and thus

could not participate in a telephone conference call. That same day, an Order was entered which continued the matter to January 18, 2001, with a caution to Complainant that should he not be able to attend the telephone conference, he should provide the Commission with a status report indicating any medical or other reason for his inability to attend the telephone conference.

9. On January 18, 2001, a clerk from the Commission attempted to contact Complainant for purposes of conducting the previously scheduled telephone conference call, but was unable to reach anyone at the telephone number provided by Complainant. Accordingly, an Order was entered that same day which directed Complainant to provide the Commission with a telephone number and a time when he could be reached by January 26, 2001. It also cautioned Complainant that the failure to abide by this Order could risk a future order recommending that the matter be dismissed with prejudice for failure to prosecute his claim.

9. Complainant has not contacted the Commission subsequent to the entry of the January 18, 2001 Order.

#### **Conclusions of Law**

1. A complaint may be dismissed when a party engages in conduct, which 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 attend scheduled telephone conferences or to contact the Commission with a telephone number where he could be reached as directed by Commission Orders.

3. The appropriate sanction for complainant's failure to advance his case is dismissal of the Complaint and the underlying Charge of Discrimination.

### **Determination**

The Complaint and the underlying Charge of Discrimination should be dismissed with prejudice due to Complainant's failure to attend a previously scheduled telephone conference call and for his failure to provide the Commission with a telephone number and a time when he could be reached.

### **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 Wesco Spring Company**, 40 Ill. HRC Rep. 266 (1988), and **Washington and Gateway Western Railway**, \_\_\_ Ill. HRC Rep. \_\_\_ (1992SN0630, May 29, 1996).

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay the instant proceedings. Specifically, Complainant was directed to make himself available for a telephone status call on three different occasions, yet Complainant did not attend any of these conference calls due to allegations that he was in the midst of obtaining counsel or that he incurred unspecified personal injuries. Moreover, when Complainant failed to attend the January 18, 2001 telephone conference call or provide a reason for his failure to attend, he was directed to provide the Commission with a current telephone number and a time in which he could be reached. However, Complainant did not comply with the January 18, 2001 Order in spite of the fact that Complainant was expressly warned in this Order that the failure to comply with the Order could result in the entry of an order recommending that the case be dismissed for failure to prosecute. Complainant's failure to abide by Commission

directives has resulted in an unreasonable delay and renders it difficult for the Commission to take any action with regard to this case except to dismiss it. See, for example, **Foster and Old Republic General Services Inc.**, \_\_\_ Ill. HRC Rep. \_\_\_ (1990CA2290, November 8, 1993).

**Recommendation**

Accordingly, I recommend that the instant Complaint and the underlying Charge of Discrimination of Terry L. Dale be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 17<sup>th</sup> DAY OF APRIL, 2001.