



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 5/29/01.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)		
)		
RITA MCGUIRE,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	1999SF0756
)	EEOC NO:	21B992428
ATKINSON, DILLINGHAM AND LANE)	ALS NO:	S-11331
)		
Respondent.)		

RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Respondent, Atkinson, Dillingham and Lane, to dismiss this cause of action as a sanction for Complainant’s failure to comply with discovery orders. More than five days have elapsed for filing a response to this motion. No response has been filed, and the absence of a response may be deemed an absence of an objection.

Contentions of the Parties

In its motion, Respondent submits that dismissal of this matter is warranted because Complainant has failed to serve it with responses to outstanding discovery requests even though Complainant has been warned that the failure to do so could lead to an Order dismissing this case for want of prosecution.

Findings of Fact

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

1. On May 5, 1999, Complainant, Rita McGuire, filed an unperfected Charge of Discrimination against Respondent, alleging that she was the victim of sexual harassment. Complainant perfected her Charge on August 25, 1999.

2. On July 18, 2000, the Department of Human Rights filed the instant Complaint of Discrimination, alleging on behalf of Complainant that she was the victim of sexual harassment while employed by Respondent. Complainant is acting *pro se* in this matter.

3. On September 25, 2000, Respondent served written discovery upon Complainant, including Interrogatories and Requests to Produce.

4. On November 7, 2000, counsel for Respondent corresponded with Complainant to determine when Complainant would file responses to outstanding discovery requests.

5. On November 22, 2000, Respondent filed a motion to compel Complainant to respond to all outstanding discovery requests. In this motion, Respondent asserted that Complainant had failed to serve it with any discovery responses and had failed to contact Respondent's counsel to explain the delay.

6. On December 14, 2000, an Order was entered which directed Complainant to file responses to all outstanding discovery responses by January 5, 2001. In the Order, Complainant was cautioned that she could not continue to ignore her responsibility to serve sworn responses to outstanding discovery requests from Respondent, and that a failure to abide by the terms of the Order could lead to an Order dismissing the case for want of prosecution.

7. On January 16, 2001, Respondent filed the instant motion to dismiss, alleging that Complainant had not served Respondent with any responses to discovery requests, and that counsel for Respondent had not received any communication from Complainant regarding when Complainant would serve responses to all outstanding discovery requests. Complainant has not filed a response to this motion.

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 these proceedings by failing to tender responses to outstanding discovery requests, either pursuant to pleadings submitted by Respondent or through a Commission Order directing her to do so.

3. The appropriate sanction for Complainant's failure to advance her 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 advance her case and for her failure to adhere to a Commission Order directing Complainant to comply with all outstanding discovery requests.

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 which 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 failed to tender discovery responses after Respondent served discovery requests on her, and further

failed to serve discovery responses after being directly instructed to do so by the Order of December 14, 2000. Moreover, there is no explanation in the record as to why Complainant failed to comply with the December 14, 2000 Order, even though the December 14, 2000 Order expressly warned Complainant that the failure to tender such discovery responses placed her at risk for the entry of an Order recommending dismissal of this case.

Finally, I find it significant that Complainant has failed to respond to the instant motion to dismiss the case with prejudice, as well as any other prior motion filed by Respondent. This failure, coupled with Complainant's apparent refusal to comply with a prior Commission Order directing Complainant to tender responses to outstanding discovery requests, 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 6, 1993) and **Jones and Burlington Northern Railroad**, 25 Ill. HRC Rep. 101 (1986), where the Commission similarly held that it will not search the record for a reason to deny a dispositive motion where the party opposing the motion has not filed a response and where the motion appears to be valid on its face.

Recommendation

Based upon the above, I recommend that the motion to dismiss this case with prejudice be granted, and that the instant Complaint and the underlying Charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED THE 17th DAY OF APRIL, 2001.

