



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)		
)		
HEATHER PULLEN,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	2000SF0739
)	EEOC NO:	21BA08088
HH&S ENTERPRISES d/b/a BETHALTO)	ALS NO:	S-11613
DEPOT & WING WALKER AMERICAN)		
CLASSICS & ANDREW HAYES, OWNER,)		
)		
Respondents.)		

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act. On September 20, 2001, an Order was entered which set this matter for a hearing on the issue of damages after Respondent had been previously held to be in default. However, after neither Complainant nor Respondent appeared for the damages hearing, an Order was entered which required the parties to file a motion by a date certain that explained their failure to appear at the damages hearing. Neither party has filed a motion, although the time for filing the motion has expired.

Findings of Fact

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

1. On July 28, 2000, Complainant, Heather Pullen, filed a Charge of Discrimination against Respondents HH & S Enterprises, d/b/a Bethalto Depot & Wing Walker American Classics, and Andrew Hayes, alleging that she was the victim of sexual harassment.

2. On March 6, 2001, the Department of Human Rights served Respondents with a Notice of Default based upon Respondents' failure to file a verified response to the Charge of Discrimination.

3. On June 11, 2001, the Department of Human Rights filed with the Human Rights Commission a petition for hearing to determine Complainant's damages. On July 11, 2001, the Commission granted the Department's petition, and transmitted the matter to the Administrative Law Section for a hearing on Complainant's damages.

4. On September 20, 2001, an Order was entered which set the hearing on damages for November 6, 2001.

5. On November 6, 2001 an Order was entered which reflected the fact that neither Complainant nor Respondent appeared at the damages hearing and directed both parties to file an appropriate motion which explained why she or he failed to appear at the hearing. The Order further cautioned that if, by November 16, 2001, neither party filed a timely motion establishing good cause for that party's failure to appear, a Recommended Order and Decision would be issued that recommended that the Respondent be found in default on the issue of liability, but that Complainant receive no damages due to her failure to appear at the damages hearing.

6. Neither party has filed any pleading in response to the November 6, 2001 Order as of the date of this Recommended Order and Decision.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent, HH & S Enterprises, d/b/a Bethalto Depot & Wing Walker American Classics, is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. Respondent Andrew Hayes is an “employee” and a “person” as those terms are defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

4. As a consequence of the default order entered on July 11, 2001, all of the allegations contained in Complainant’s Charge of Discrimination are deemed admitted.

5. As a consequence of both parties’ failure to appear at the scheduled damages hearing, as well as Complainant’s failure to file any motion in response to the Order of November 6, 2001, Respondent should be held in default on the Charge of Discrimination, but Complainant should receive no damages.

Determination

The Commission should confirm its finding of liability against Respondent due to the entry of the default order, but award Complainant no damages due to her failure to appear at the damages hearing or provide any reason for her failure to do so.

Discussion

On July 11, 2001, the Commission entered an order finding Respondent to be in default on the issue of liability due to Respondent’s failure either to file a verified response to the Charge of Discrimination or to file a request for review of the Department’s notice of default. Subsequently, the Commission entered an Order, which set the matter for a hearing on damages for November 6, 2001. However, neither Complainant nor Respondent appeared at the hearing, and an Order was entered on November 6, 2001 requiring the parties to file whatever motion she or he deemed appropriate that explained their non-appearance. The Order expressly provided that if neither party filed a timely motion establishing good cause for that party’s failure to appear, a Recommended Order and Decision would be issued recommending that the default judgment on the issue of liability be sustained against Respondent, but that

Complainant receive no damages as a result of her failure to appear for the damages hearing.

Accordingly, because Complainant has failed to appear at the damages hearing, and has not filed a motion to continue the matter or otherwise explained her absence, it appears that Complainant has abandoned her claim. In such a situation, The Commission has allowed the default finding to stand, but denied Complainant any damages. See for example, **Lash and World Travel Agency**, ___ Ill. HRC Rep. ___, (1986CF2960, June 10, 1991).

Recommendation

For all of the above reasons, it is recommended that the July 11, 2001 default order against Respondent stand, but that Complainant receive no damages arising out of the default order.

HUMAN RIGHTS COMMISSION

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

ENTERED THE 7th DAY OF JANUARY, 2002.