



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF)
)
John Rodriguez,)
Complainant)
and)
)
Illinois Department of Employment)
Security,)
Respondent)

CHARGE NO.: 2000 CF 1246
EEOC NO.: 21BA00575
ALS NO.: 11441

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Motion I”) and on Complainant’s Motion by Plaintiff, John Rodriguez, Requesting Leave of Court, That the Court Consider Entering Summary Judgment (“Motion II”). Motion I was filed on March 6, 2001 and Complainant filed no written response to it, even after being reminded and admonished to do so on several other occasions during which this matter was before the Commission. Motion II was filed on April 9, 2001. The entire text of Motion II follows:

Now comes Plaintiff, John Rodriguez, by and throughout a pro se representation, and pursuant to the Illinois Cod. Of Civ. Pro. 735 ILCS 5/2-1005(a), hereby move this Court for the entry of judgement (sic) on grounds that there exists no genuine dispute as to any material fact, and that Plaintiff, John Rodriguez, is entitle to judgment as a matter of law.

Wherefore, Plaintiff, John Rodriguez, pray that the Court enter judgment in favor of Plaintiff, with respect to all of Plaintiff’s claims.

There were no supporting memorandum, affidavits or exhibits of any kind accompanying Motion II and, it should be noted, Respondent filed Motion I in lieu of filing an answer which

means that there has been no opportunity as yet to place any issues in dispute. Respondent filed a response to Motion II on April 27, 2001, but Complainant did not file a reply. Oral argument was conducted on both motions on May 15, 2001 and the matter is now ready for decision.

Findings of Fact

1. Respondent was properly served with notice of this matter, and timely filed a Motion to Dismiss asserting that the Commission does not have subject matter jurisdiction over the complaint. Respondent has been represented by counsel throughout the pendency of this matter.

2. Complainant filed his original charge with the Department of Human Rights (Department) on December 13, 1999 and his first amended charge was filed on January 6, 2000, after which an investigation was duly instituted and concluded. On December 8, 2000, less than 365 days after the original charge was filed, the Department issued a Notice of Dismissal for Lack of Substantial Evidence (“Notice”) encompassing all of the counts of Complainant’s charge. On its face, the Notice included the date by which a “request for review” by the Department’s general counsel was to be filed, January 12, 2001. No “request for review” was filed by Complainant.

3. On December 29, 2000, Complainant, who has proceeded *pro se*, filed a “Complaint of Civil Rights Violation” directly with the Commission, utilizing the form the Commission provides for that purpose. On the form, Complainant indicated that his mailing address is Post Office Box 479452, Chicago, Illinois 60647-9452.

4. Although Complainant claims that he has not received numerous documents related to this case through the mail, including Motion I and Respondent’s response to Motion II, he persists in maintaining that the above post office box is the address he wishes to use for

material filed in this case. In response to inquiry, he has conceded that he is not the owner of this post office box, but he has refused to provide a different address.

5. Although one order issued by an administrative law judge was sent to a wrong address, all other documents served by both the Commission and Respondent were properly served by mailing to the address provided by Complainant.

Conclusions of Law

1. Complainant is an “aggrieved party” and Respondent is a “public employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(G), respectively.

2. The Commission does not have jurisdiction over the parties and the subject matter of this action. Therefore, the complaint filed by Complainant on December 29, 2000 must be dismissed.

Discussion

For whatever reason, Complainant has chosen to follow his own compass with regard to his allegations against Respondent at least from the time that his charge was dismissed by the Department and throughout the pendency of this case at the Commission. He is determined not to observe dates that have been set for the orderly progression of this case through the investigative and adjudicatory system put in place by the Illinois Human Rights Act. The Act specifies a process that is intended to provide fairness and justice to all complainants and respondents who are brought into the system through the filing of charges of civil rights violations. In passing the Act, the legislature established a system that enables both the complainant and the respondent to present all relevant evidence regarding charges that are filed

so that informed decisions about the validity and legal sufficiency of those charges can be determined fairly both in the Department and at the Commission.

If a complainant chooses not to follow the prescribed path, the Commission simply will not have jurisdiction to receive evidence and decide the case on its merits. It is often stated that time limits and other requirements regarding the proper filing of charges and complaints are jurisdictional because this is an administrative proceeding that does not have its genesis in the common law. Except in very limited circumstances that do not apply to this case, consideration of equitable principles or the desire of a party to have the Commission simply assert its jurisdiction generally cannot be permitted. Here, Complainant chose to ignore his right to request a review of the initial finding by the Department that his charges be dismissed. He must accept the consequences of his failure to act, *i.e.*, that the Commission does not have, and never had, jurisdiction over his complaint, and the time for requesting review in the Department has long ago expired. The purported complaint must now be dismissed.

Some note must be made of Complainant's persistent assertion that the proceedings before the Commission (and, presumably, the Department as well), have been deficient and unfair because he has not received most of the documents filed either by the agencies or the Respondent. In response to questions from me on several different occasions, Complainant has always confirmed his address as being the post office box noted above. He has further revealed that he is not the owner of this box, but he will not provide any other address for service of materials related to his case. Therefore, he must bear the responsibility if, in fact, mail properly directed to him in accord with the rules and procedures of the Commission and the Department has not been given to him. I would note that he also is well aware of his right to inspect the case file maintained at the Commission and has done so on more than one occasion.

Because the Commission does not have jurisdiction over this matter, Motion II must be denied as being moot. I will also note, however, that Motion II (as well as a companion motion for a finding of default that was denied earlier in the history of this case) only asserted that there was no material fact remaining for determination and did not provide any factual or legal argument to support such a finding. Even when requested to do so, Complainant refused to file any additional written material or to even submit any substantive oral argument in support of his motions or in opposition to Motion I. Therefore, even if there was jurisdiction to examine Motion II in greater detail, it would likely be denied for lack of any factual or legal grounds to do otherwise.

Recommendation

It is recommended that this case be dismissed with prejudice because the Commission lacks jurisdiction to adjudicate this complaint. Further, Complainant's motion for summary decision is denied with prejudice as being moot in accord with the finding that the Commission lacks jurisdiction.

ENTERED:

May 16, 2001

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION