

1. On April 30, 2015, the Department of Human Rights filed a Complaint on behalf of Complainant, alleging that Respondent failed to promote Complainant to a management position because she was pregnant.

2. On June 22, 2015, an Order was entered which required the parties to serve discovery requests on the opposing party by July 22, 2015 and set the matter for a future telephone conference call.

3. On October 9, 2015, both parties appeared at a telephone conference call. At the conclusion of the telephone conference call, an Order was entered which granted Complainant's request for an extension of time to and including November 9, 2015 to serve responses to Respondent's discovery requests.

4. On January 7, 2016, both parties appeared at a telephone conference call. During the conference call, Complainant's counsel indicated that Complainant had yet to serve responses to Respondent's discovery requests. At the conclusion of the telephone conference call, Complainant was directed to serve responses to Respondent's discovery requests by February 29, 2016.

5. On April 5, 2016, both parties appeared at a telephone conference call. During the conference call, Complainant's counsel indicated that Complainant had not served responses to Respondent's discovery requests, and counsel requested additional time to serve responses to Respondent's discovery requests. At the conclusion of the conference call, an Order was entered which directed Complainant to serve responses to Respondent's discovery requests on or before May 5, 2016 and directed both parties to appear at a telephone conference call scheduled for June 21, 2016.

6. On June 21, 2016, a conference call was conducted in which only Respondent's counsel appeared. During the conference call, Respondent's counsel indicated that Complainant had not served responses to any of Respondent's discovery requests. At the

conclusion of the conference call, Respondent was given a deadline for filing any motion to compel.

7. On July 5, 2016, Respondent's counsel filed a motion to compel. In the motion, counsel for Respondent stated that Complainant had failed to serve responses to any of Respondent's discovery requests, although Complainant had been directed to do so in Orders dated October 9, 2015, January 7, 2016, and April 5, 2016. Complainant did not file a response to this motion.

8. On July 21, 2016, an Order was entered which granted Respondent's motion to compel and directed Complainant to serve responses to Respondent's discovery requests on or before August 4, 2016. The Order also contained a caution to Complainant that: (1) she could not continue to ignore Commission directives; and (2) based upon her past failure to serve responses to Respondent's discovery requests, as well as her counsel's failure to appear at a prior scheduled telephone conference call, she risked the entry of a future order dismissing the instant case with prejudice should she fail to abide by the July 21, 2016 Order.

9. On August 15, 2016, Respondent filed the instant motion to dismiss this case for want of prosecution, after noting that Complainant had not served any responses to its discovery requests.

10. Complainant has not filed a response to Respondent's motion to dismiss as of the date of this Order.

Conclusions of Law

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

2. Respondent 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. A complaint may be dismissed when a party fails to substantially comply with any order entered under 56 Ill. Admin. Code, Ch. XI, §5300.720 concerning discovery, or otherwise engages in conduct which unreasonably delays or protracts proceedings.

4. An administrative law judge may issue a recommended order dismissing a case with prejudice as a sanction for the failure of a party to prosecute her case, to file a required pleading or otherwise to comply with the terms of the Human Rights Act, the rules of the Commission or a previous order. 775 ILCS 5/8A-102(I)(6)

5. Complainant failed to comply with Respondent's discovery requests as required by the Commission's procedural rules and by Orders entered in this case.

6. Complainant has unreasonably delayed and protracted the proceedings in this matter.

Discussion

Section 5300.750(e) of the Commission's Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.750(e)) permits a recommendation of dismissal whenever a party engages in conduct that unreasonably delays the proceedings. In this regard, the Commission has previously found that a party's failure to provide discovery responses or abide by Commission orders directing responses to outstanding discovery requests can constitute unreasonable delay for purposes of issuing sanctions under section 5300.750(e). (See, for example, *Best and Allstate Insurance Co.*, IHRC, ALS No., S-11269, May 13, 2003.) Indeed, Illinois courts, in noting the importance of discovery obligations in civil litigation, have become less tolerant of violations of discovery orders, even at the expense of deciding a case on the basis of the sanction imposed, rather than on the merits of the litigation. (See, *Shapira v. Lutheran General Hospital*, 199 Ill.App.3d 479, 557 N.E.2d 351, 356, 145 Ill.Dec. 581, 586 (1st Dist., 2nd Div., 1990).)

Here, Respondent maintains that dismissal of Complainant's Complaint is warranted where Complainant has failed to serve responses to any of its discovery requests that were submitted to her in September of 2015 and has ignored four Orders that extended deadlines for

serving responses to said requests. The instant record supports Respondent's argument in this regard, where I note that the deadline for Complainant to serve responses to Respondent's discovery requests was extended in Orders dated October 9, 2015, January 7, 2016, April 5, 2016 and June 21, 2016. Moreover, the record shows that: (1) counsel for Complainant failed to appear at a scheduled telephone conference call on June 21, 2016; and (2) the language of the July 21, 2016 Order expressly warned Complainant that she could not continue to ignore Commission directives to serve responses to discovery requests, and that she risked the entry of a future order dismissing the instant case with prejudice should she fail to abide by the Order of June 21, 2016.

Accordingly, under these circumstances, Complainant's continued refusal to abide by Commission directives can only be viewed as an indication either that she no longer cares about pursuing her claim, or that she agrees with Respondent's contention that this matter should be dismissed. In any event, Complainant's conduct renders it difficult for the Commission to take any action with regard to this case except to dismiss it, even though Complainant raised serious allegations of discrimination based on her pregnancy in the instant Complaint. (See, for example, *Paredes and Loretto Hospital*, IHRC, ALS No. 4853, June 15, 1995.)

Recommendation

For all of the above reasons, I recommend that Respondent's motion to dismiss the instant case be granted, and that the Complaint and the underlying Charge of Discrimination of Kealiah J. Randolph be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED THE 6TH DAY OF JULY, 2017