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KATRINA MOSLEY,

Appellant/  
Complainant,

v.

Secretary, DEPARTMENT OF  
INDUSTRY, LABOR AND HUMAN  
RELATIONS,

Respondent.

Case Nos. 93-0035, 0050-PC,  
93-0053, 0063-PC-ER

\* \* \* \* \*

RULING  
ON  
DISCOVERY  
MOTION

In a ruling issued on April 19, 1994, the Commission considered the respondent's motion to dismiss the above matters for failure to comply with an order to compel discovery. The Commission granted the respondent's motion in part and provided the parties an opportunity to file materials relating to the appropriateness and amount of expenses under §804.12(2)(b), Stats. After initial filings were received from both parties, they declined to submit any additional materials and waived any hearing.

Respondent requests an award of costs totalling \$468.18. This total represents 8.5 hours by respondent's counsel, at an hourly rate of \$55.08. The hourly rate reflects salary, fringe benefits and a per capita portion of the supplies and services budget for the office which includes respondent's counsel. According to respondent, the 8.5 hours were "required to research and write a letter brief and to draft the motion to compel discovery, the motion to dismiss, and related correspondence."

The language of §804.12(2)(b) indicates that the Commission "shall" award "reasonable expenses, including attorney's fees" caused by the failure to obey an order compelling discovery, unless there is a finding that the failure was substantially justified or unless "other circumstances" make an award unjust.

There is no basis for concluding that the failure to provide discovery was substantially justified. The appellant/complainant simply disagreed with the conclusion that she must provide information relating to her medical

condition, even though she was pursuing claims of handicap discrimination. The Commission rejected the appellant/complainant's arguments when it granted the respondent's motion to compel. Appellant/complainant continued to refuse to provide the materials, so the respondent then filed the motion to dismiss.

The second question is whether there are "other circumstances" which would make an award unjust. The appellant/complainant, who appears pro se, has not suggested any circumstances which would serve as the basis for such a conclusion, other than referring to her own "capital losses and expenses" of over \$20,000 which she has incurred since she filed her initial complaint against respondent. However, it is clear that the remedy already imposed in this matter (dismissal of the handicap claims and barring the appellant from supporting her appeals<sup>1</sup> of two suspensions with evidence relating to her medical condition) constitutes a substantial penalty for the complainant's conduct arising from respondent's discovery efforts.


These comprise special circumstances such that the Commission declines to award expenses caused by the failure to obey the order compelling discovery.

ORDER

Respondent's request for reasonable expenses under §804.12(2)(b), Stats., is denied.

Dated: June 21, 1994

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

KMS:kms  
K:D:temp-7/94 Mosley

  
DONALD R. MURPHY, Commissioner

<sup>1</sup>Case Nos. 93-0035 and 50-PC