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LORELI S. ELVORD,

Complainant,

v.

Secretary, DEPARTMENT OF
TRANSPORTATION,

Respondent.

Case No. 95-0126-PC-ER

* * * * *

RULING
ON MOTION
TO
COMPEL

This matter is before the examiner on respondent's motion to compel filed on March 19, 1996. The case was filed with the Commission on August 30, 1995. The initial complaint included a 26 page handwritten attachment describing various conditions of employment. Complainant waived the investigation and a prehearing was held on November 16, 1995. During that conference, a hearing was scheduled for April 25 and 26, 1996, and the parties agreed to the following statement of issue and notation:

Whether complainant was discriminated against on the basis of race or sex (including sexual harassment) or retaliated against for engaging in activities protected by the Fair Employment Act by respondent as alleged in the charge she filed with the Commission on August 30, 1995. (Note: complainant indicated at the conference that she intended to file an amendment to her charge. In the event that such an amendment is filed and there is no objection to such amendment by respondent, then the allegations in such amendment will become part of the issue here.)

On February 9, 1996, respondent submitted interrogatories and a request for production of documents to complainant. After not having received a response, respondent contacted complainant on March 12, 1996 and was advised that complainant had given the discovery requests to Attorney Steve Porter who, on March 13th, advised respondent he had not decided whether he was going to represent complainant. Mr. Porter did not comply with respondent's request that he advise respondent by March 18th as to whether he was representing complainant.

After receiving respondent's motion to compel on March 19th, the undersigned contacted complainant to determine whether she was represented by counsel and to schedule a telephone conference regarding respondent's motion. During a telephone call on March 20th, complainant indicated Mr. Porter was not going to be handling the case, that she would seek other counsel and that respondent's counsel had agreed to allow her until March 29th to respond to the discovery request. The undersigned scheduled a telephone conference for March 22, 1996, regarding various other questions the complainant raised regarding the case. On March 21st, Attorney Susan Cotten¹ contacted the Commission by telephone and said she was unable to participate in the March 22nd telephone conference. Efforts by respondent's counsel, Mr. Wisner, and Ms. Cotten to reschedule that conference were unsuccessful and on March 29th, the examiner rescheduled the conference for April 2nd. The conference was held on April 2nd. It became apparent that complainant still had not responded to the discovery request. The letter summarizing the results of that conference reads, in part:

Complainant agreed to hand-deliver a response to respondent's discovery request by April 5, 1996. The response will be as thorough as possible but complainant may need to supplement it. Respondent acceded to this schedule.

The parties agreed the hearing would proceed on April 25th.

On April 5th, Ms. Cotten called the examiner to say she was unable to complete the discovery response by April 5th and would have to get it to respondent on Monday, April 8th. She also stated she had left a message to that effect with respondent.

At 8:00 a.m. on April 9th, respondent's counsel telephoned the examiner and stated he had still not received anything from complainant regarding the case. The examiner tried to telephone Ms. Cotten at 8:14 a.m. and left a message on her answering machine. When there was no response by 9:40 a.m., the undersigned left a second message, indicating he would have to hear respondent's motion to compel on an *ex parte* basis.

¹During a telephone conversation with the examiner on March 29th, Ms. Cotten stated she was representing the complainant and would send in a letter to that effect.

Based upon respondent's motion,² the information in the case file, and the statements made by respondent during a telephone conversation with the examiner on April 9, 1996, in which respondent explained its need for the requested materials and explained that complainant had failed to meet the original time requirements as well as two subsequent extensions to which complainant had agreed, the motion to compel shall be granted.

ORDER

Respondent's motion to compel is granted. Complainant is required to provide respondent with a full response to respondent's February 9, 1996, discovery request no later than 10:00 a.m. on April 11, 1996.³

Dated: April 9, 1996 STATE PERSONNEL COMMISSION



KURT M. STEGE, Hearing Examiner

KMS:kms
K:D:temp-4/96 Elvord

²Respondent's motion was for an order compelling discovery under §804.12(1), Stats., rather than a motion for sanctions under §804.12(4), Stats.

³The examiner also summarized this order in a message he left for Ms. Cotten on her answering machine at 10:00 a.m. on April 9, 1996.