

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANA STELLINGWORTH, Appellant,

vs.

WISCONSIN STATE PUBLIC DEFENDERS OFFICE, Respondent.

Case ID: 501.0001

Case Type: PA

DECISION NO. 36954

Appearances:

Dana Stellingworth, N869 Red Tail Lane, Merrill, Wisconsin, appearing on his own behalf.

Anfin Jaw, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the Wisconsin State Public Defenders Office.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

The day before the long scheduled Dana Stellingworth appeal hearing, the Wisconsin State Public Defenders Office sought the permission of Commission Examiner Raleigh Jones to allow all of its witnesses (aside from Stellingworth) to testify via telephone. No explanation or justification for the request was provided. Wisconsin Admin. Code § ERC 94.03(6)(b) gives an examiner discretion to allow telephone testimony. Examiner Jones properly exercised that discretion by denying the request in the instant circumstances. The presumption is that witnesses will testify in person so that the decision maker can assess their demeanor and credibility and adverse parties can effectively engage in cross examination. While on rare occasions there can be valid reasons for telephone testimony (or the parties may mutually agree that such testimony is appropriate), Stellingworth objected to the request and no justification was provided.

Given the circumstances confronting Examiner Jones, he elected to cancel the hearing. The Public Defenders Office asked that the hearing be rescheduled. Stellingworth moved for a “default judgment.” While there may be circumstances in which a State refusal or inability to proceed might warrant such action, the circumstances before us fall short of the mark. While the Public Defenders Office was at fault for the late breaking timing of its request and the resultant hearing cancellation, its actions do not warrant the relief sought by Stellingworth.

NOW, THEREFORE, it is

ORDERED

The motion for default judgment is denied and there will be no telephonic testimony permitted at the rescheduled hearing.

Signed at the City of Madison, Wisconsin, this 12th day of June, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner