

priate and a violation of my right to privacy." For the most part, these contentions were addressed by the Commission in its January 25th ruling. To the extent the appellant/complainant is now raising a constitutional challenge to the discovery request based on a privacy right, her interests in this area are secondary to the employer's interest in being able to determine the basis for the handicap claim.

The various forms of relief which may be granted as a consequence of a parties' failure to comply with an order to compel are set forth in §804.12(2):

(a) If a party... fails to obey an order to provide or permit discovery..., the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

* * *

(b) In lieu of any of the forgoing orders or in addition thereto, the court shall require the party failing to obey the order... to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The appellant/complainant has clearly refused to provide the information as ordered by the Commission. The Commission could order dismissal of all four of the cases which remain and which were the subject of the January 25th ruling. However, the Commission notes that the appellant/complainant is unrepresented in these matters and that while the requested information relates to her claims of handicap discrimination found in two of the cases (93-0053 and 0063-PC-ER), there is no apparent relationship to her other claims at

this time. The respondent's ability to defend against the complainant's other discrimination claims should not be affected by the failure to provide information relating to complainant's medical condition. To the extent the appellant intended to rely upon her medical condition in terms of her appeals from the disciplinary suspensions (Case Nos. 93-0035 and 0050-PC), such a defense is also precluded by this order. Therefore, the Commission will order dismissal of the handicap discrimination claims and bars the appellant from supporting her appeals of the suspensions with evidence relating to her medical condition.

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. Here, the respondent did not specifically request an award of expenses, nor did the appellant/complainant offer any comments as to whether such an award would be appropriate. The parties will be provided an opportunity to submit materials relating to both the appropriateness and amount of any such expenses.

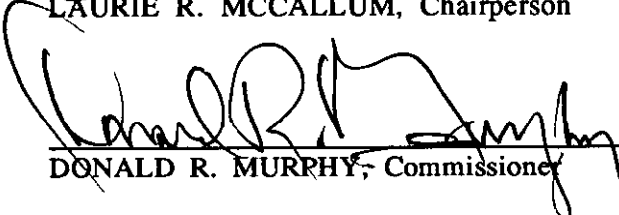
ORDER

Respondent's motion to dismiss is granted as to the claims of handicap discrimination in Case Nos. 93-0053-PC-ER and 93-0063-PC-ER and, as to Case Nos. 93-0035-PC and 93-0050-PC, the appellant is barred from supporting her appeals of the suspensions with evidence relating to her medical condition. The parties have 15 days from the date this ruling is signed in which to submit materials relating to the appropriateness and amount of expenses under §804.12(2)(b). The parties will then have 10 days thereafter to file any response.

Dated: April 19, 1994 . STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:temp-5/94 Mosley


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner