

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STEVEN BELL,)
)
 Petitioner,)
)
 vs.) Case No. 05-0563
)
 WAL-MART,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was convened in this cause on December 1, 2005, in Jacksonville, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Antwoine L. Edwards, Esquire
Peter Corbin, Esquire
Ford & Harrison, LLP
225 Water Street, Suite 710
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Petitioner charged that Respondent Employer had committed an unlawful employment practice by racial discrimination.

PRELIMINARY STATEMENT

The procedural history of this case is reserved to the Findings of Fact, infra.

FINDINGS OF FACTS

1. This cause was referred to the Division of Administrative Hearings on or about February 17, 2005, following a "Determination: No Cause" by the Florida Commission on Human Relations and the filing of a timely Petition for Relief by Petitioner.

2. Final Hearing was originally noticed on March 2, 2005, for June 1, 2005.

3. Following numerous continuances requested by one or both parties or occasioned by problems arising out of service of discovery by Respondent upon Petitioner, a Notice of Hearing was issued on August 26, 2005, for December 1, 2005, in Jacksonville, Florida.

4. On November 14, 2005, an Amended Notice of Hearing, amended only as to location within the City of Jacksonville was entered and served.

5. Two days before December 1, 2005, which was the date that had been scheduled for final hearing since August 26, 2005, Petitioner telephoned the office of the undersigned to orally request a continuance. The undersigned's secretary advised him the request must be made in writing.

6. The very day before the scheduled hearing, Petitioner filed a "Motion for Extension With Cause," which was essentially a request for a continuance based on Petitioner's allegedly having been unable to obtain legal counsel and unable to engage in discovery using subpoenas. This pleading also indicated that Petitioner had received the November 14, 2005, Amended Notice of Hearing and that he was aware of the new location for the final hearing.

7. Petitioner's Motion was untimely, pursuant to Florida Administrative Code Rule 28-106.210. The record of the Division does not indicate that Petitioner ever applied for any type of subpoena and does indicate that Petitioner had many months in which to obtain an attorney.

8. Because there was no time for a written order to be entered before the final hearing date, the undersigned, through her secretary, advised Petitioner that his Motion was denied as without good cause and that he should appear for the hearing the following day.

9. At the time and place appointed, the final hearing was convened on December 1, 2005. Respondent was represented by a corporate agent, witnesses, and legal counsel, all of whom had traveled some distance to be there. After waiting 30 minutes, neither Petitioner, nor any attorney on his behalf, had appeared. The undersigned "sounded the docket" outside the

hearing room, and Petitioner was not there, either. It was further determined that Petitioner had not telephoned the office of the undersigned to indicate any reason he could not physically attend the final hearing.

10. After 40 minutes, Respondent orally moved to dismiss.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties to this proceeding, in accordance with Section 120.57(1) and Chapter 760, Florida Statutes.

12. Petitioner bears the initial burden of proof and duty to go forward in this case.

13. When a petitioner fails to appear and present a case, there is no prima facie case for the respondent to defend against. Furthermore, in this case, Petitioner's failure to appear is the equivalent of a voluntary dismissal of the Petition for Relief.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief and Charge of Discrimination herein.

DONE AND ENTERED this 7th day of December, 2005, in
Tallahassee, Leon County, Florida.

S

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of December, 2005.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.