

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KIMBERLY D. DOTSON,)
)
 Petitioner,)
)
 vs.) Case Nos. 09-2386
) 10-10017
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, an administrative hearing in the above-captioned matters was convened on January 24, 2011, in Tallahassee, Florida before Lawrence P. Stevenson, a duly-appointed Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No appearance

For Respondent: Kim M. Fluharty-Denson, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue is whether this case should be dismissed based on Petitioner's failure to appear at the hearing.

PRELIMINARY STATEMENT

On April 29, 2009, Petitioner, Kimberly D. Dotson, filed a Petition for Relief with the Florida Commission on Human Relations (FCHR). The petition alleged that Respondent, the Department of Financial Services, had committed unlawful employment practices against her. FCHR referred the case to the Division of Administrative Hearings on May 5, 2009, and the case was set for hearing on July 29, 2009. The case was continued four times over the course of the next nine months. On April 21, 2010, an order was entered that placed the case in abeyance, pending the investigation of a retaliatory termination complaint that Petitioner had filed and that FCHR was then investigating. The case remained in abeyance for the next six months.

On October 29, 2010, Petitioner filed a second Petition for Relief, alleging that Respondent had terminated her employment in retaliation for her filing the initial Petition for Relief. FCHR referred the case to the Division of Administrative Hearings on November 2, 2010. An Order of Consolidation was entered on November 17, 2010. Also on November 17, 2010, a Notice of Hearing was issued that set the consolidated proceedings for hearing on January 24 and 25, 2011.

On January 19, 2011, Petitioner filed a letter that purported to inform this tribunal of the reasons why she could

not attend the scheduled hearing. Her reasons consisted of a series of appointments she had made with government agencies regarding prospective employment and a foreclosure prevention program. She offered no explanation as to the necessity of making these appointments in conflict with a hearing that had been scheduled for two months. Petitioner also noted the fact that she had lost her legal representation as a reason for continuing the hearing. However, the order granting her counsel leave to withdraw from representing Petitioner had been entered on November 17, 2010, two months earlier. The Department of Financial Services objected to any further continuance of the hearing. By order dated January 20, 2011, the undersigned treated Petitioner's letter as a motion to continue the final hearing and denied the motion.

FINDINGS OF FACT

1. The Notice of Hearing in these consolidated cases was issued on November 17, 2010, setting the hearing for January 24 and 25, 2011, in Tallahassee, Florida. The hearing was scheduled to commence at 9:30 a.m. on January 24, 2011.

2. Also on November 17, 2010, an Order of Pre-hearing Instructions was entered.

3. Neither the Notice of Hearing nor the Order of Pre-hearing Instructions was returned as undeliverable to Petitioner.

4. On January 19, 2011, Petitioner filed a letter at the Division of Administrative Hearings requesting that the hearing be delayed until after February 18, 2011, due to various appointments she had made that conflicted with the hearing dates. This letter indicated that Petitioner was aware of the scheduled hearing dates.

5. By order dated January 20, 2011, the undersigned declined Petitioner's request for failure to state grounds sufficient to warrant a continuance over the objection of Respondent. Several attempts to reach Petitioner by telephone were unavailing.

6. At 9:30 a.m. on January 24, 2011, counsel and witnesses for Respondent were present and prepared to go forward with the hearing. Petitioner was not present. The undersigned delayed the commencement of the hearing by fifteen minutes, but Petitioner still did not appear.

7. The hearing was called to order at 9:45 a.m. Counsel for Respondent entered her appearance and requested the entry of a recommended order of dismissal. The hearing was then adjourned.

8. As of the date of this recommended order, Petitioner has not contacted the Division of Administrative Hearings, in writing or by telephone, to explain her failure to appear at the hearing.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 760.11, Fla. Stat. (2010).

10. Petitioner has the burden of proving the allegations in her petition by a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat. (2010).

11. Petitioner failed to appear at the hearing or provide notice of her inability to attend the hearing. Respondent and its witnesses were present and prepared to go forward on the merits of the case.

12. There is no indication that Petitioner failed to receive notice of the hearing. To the contrary, Petitioner's filing of January 19, 2011, indicated that Petitioner knew the scheduled dates and times of the hearing.

13. There is no showing of an emergency that prevented Petitioner from attending the hearing or contacting the Division of Administrative Hearings to explain her failure to attend the hearing.

14. By virtue of Petitioner's failure to appear, it is concluded that Petitioner no longer contests FCHR's "no cause" determinations in each of the cases in this consolidated

proceeding. Thus, a disputed issue of fact no longer exists in these cases.

15. Petitioner has failed to meet her burden of proof to establish either her claim that Respondent engaged in unlawful employment practices or that Respondent terminated her employment in retaliation for Petitioner's seeking a remedy with FCHR.

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 Petitions for Relief in these consolidated cases.

DONE AND ENTERED this 26th day of January, 2011, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of January, 2011.

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.