

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

NATALIE GOLDENBERG, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 12-1524  
 )  
 DEPARTMENT OF CORRECTIONS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, a final hearing in the above-captioned matter was convened on July 17, 2012, by video teleconference at sites in Fort Myers and Tallahassee, Florida, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Todd Evan Studley, Esquire  
Florida Department of Corrections  
501 South Calhoun 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 and apparent intent to withdraw her request for an administrative hearing.

PRELIMINARY STATEMENT

On November 16, 2011, Petitioner, Natalie Goldenberg (Petitioner), filed a discrimination complaint with the Florida Commission on Human Relations (Commission). The complaint alleged that Respondent, Department of Corrections (Respondent), had committed unlawful employment practices against Petitioner. Following an investigation, the Commission issued its determination of no cause, finding no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner timely filed a Petition for Relief, requesting an administrative hearing to contest the Commission's determination. The Commission referred the case to the Division of Administrative Hearings (DOAH) on April 24, 2012, and the case was set for hearing on July 17, 2012.

In accordance with the Order of Pre-hearing Instructions, Respondent timely filed its witness list and proposed exhibits, which were served on Petitioner. Petitioner did not file a witness list or proposed exhibits.

Attempts by the undersigned's office to contact the Petitioner were unsuccessful, with several voice mail messages left in an effort to verify whether Petitioner intended to participate in the administrative hearing she had requested. Finally, on the day before the hearing, Petitioner telephoned and informed a secretary that she wanted to withdraw her request for

a hearing. Petitioner stated that she had mailed a letter to DOAH to that effect one week earlier (but which, to this date, has not been received). Petitioner was advised to file a written statement confirming that she was withdrawing her hearing request. Because of the shortness of time before the scheduled hearing, Petitioner was told to file the statement at DOAH by facsimile right away and to also send the statement by facsimile to counsel for Respondent. Petitioner indicated she intended to do so. However, Petitioner did not file anything at DOAH. Therefore, the hearing was convened as noticed.

At the hearing, counsel for Respondent and several witnesses for Respondent appeared in Tallahassee. Additional witnesses for Respondent appeared at the Fort Myers site. In addition, a court reporter was present in Fort Myers to record the proceedings. Petitioner did not appear at the scheduled hearing. The undersigned informed those present of the information regarding Petitioner set forth above. Counsel for Respondent offered that he had received by facsimile, after 5:00 p.m., on July 16, 2012, a typed, unsigned letter, apparently from Petitioner stating that she wished to cancel the hearing scheduled for July 17, 2012.

The undersigned called a brief recess to ensure that there had been no attempts by Petitioner to contact DOAH or to file anything. No word having been received from Petitioner in any form, 25 minutes after the scheduled start time, the undersigned

announced that the hearing was adjourned and a recommended order of dismissal would be entered based on Petitioner's failure to appear and apparent intent to withdraw her hearing request.

At the undersigned's request, the unsigned letter sent by Petitioner to counsel for Respondent was filed by Respondent at the conclusion of the hearing on July 17, 2012, so that it would be part of the record.

#### FINDINGS OF FACT

1. The Notice of Hearing in this case was issued on May 22, 2012, setting the hearing for July 17, 2012, at 9:30 a.m., by video teleconference at sites in Tallahassee and Fort Myers, Florida.

2. Also, on May 22, 2012, an Order of Pre-hearing Instructions was entered.

3. Respondent timely complied with the pre-hearing requirements by filing a witness list and exhibit list and tendering its proposed exhibits, all of which were served on Petitioner. Petitioner did not file or exchange a witness list, exhibit list, or proposed exhibits.

4. Petitioner spoke by telephone with a secretary at DOAH on July 16, 2012, the day before the scheduled hearing, and indicated that she had sent a letter withdrawing her hearing request; however, to this day, no such letter has been received. Petitioner was advised to send another written statement

confirming that she was withdrawing her hearing request, and she indicated she would do so by facsimile that day. However, no such facsimile was received by DOAH.

5. After hours on July 16, 2012, a typed, but unsigned letter, was sent by facsimile to counsel for Respondent. The letter appears to have been sent by Petitioner and states that she wished to cancel the hearing scheduled for July 17, 2012.

6. Petitioner did not make an appearance at the scheduled hearing at the start time or within 25 minutes after the scheduled start time.

7. While it would have been better practice for Petitioner to file a written, signed statement with DOAH to withdraw her hearing request, it is found that Petitioner intended to withdraw her hearing request, and that is why Petitioner did not appear at the scheduled hearing. Petitioner should have made her intentions clear sufficiently in advance of the scheduled hearing to avoid the inconvenience and expense of convening a hearing by video teleconference and assembling all of those who were prepared to go forward.

CONCLUSIONS OF LAW

8. 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. (2012).

9. Petitioner has the burden of proving the allegations in her petition by a preponderance of the evidence. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); § 120.57(1)(j).

10. As found above, Petitioner belatedly communicated her intent to withdraw her request for an administrative hearing, too late for the scheduled hearing to be cancelled. Petitioner did not appear at the hearing to attempt to prove the allegations in her petition.

11. Petitioner has failed to meet her burden of proof to establish her claim that Respondent engaged in unlawful employment practices.

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 in this case.

DONE AND ENTERED this 3rd day of August, 2012, in  
Tallahassee, Leon County, Florida.



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ELIZABETH W. MCARTHUR  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of August, 2012.

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.