

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JAVIER BAUTISTA,
Charging Party/Appellant,

-v-

SELF HELP FAMILY LAW CENTER,
Respondent/Appellee.

CASE NO. 0190149

FINAL AGENCY DECISION

GRANTING THE SELF HELP
FAMILY LAW CENTER'S MOTION
TO DISMISS APPEAL

Charging Party/Appellant Javier Bautista (Bautista) filed a complaint with the Department of Labor and Industry alleging that the Self Help Family Law Center (SHFLC) discriminated against him based on his disability and retaliated against him. The case went before the Department of Labor & Industry's Office of Administrative Hearings (OAH) for contested case proceedings. After OAH proceedings, on January 29, 2021, the Hearing Officer issued a decision (OAH Decision) holding that the SHFLC did not discriminate against Bautista, granting judgment in favor of the SHFLC, and dismissing Bautista's complaint with prejudice.

On February 11, 2021, Bautista emailed an appeal of the OAH Decision to the Human Rights Commission (Commission). On February 16, 2021, Bautista clarified via email that he wanted the Commission to review the hearing transcript as part of the appeal proceedings. Under the Commission's rules, "[i]f review of the transcript has been requested, the appellant shall file an original and an electronic version of the transcript with the commission within 28 days of filing the notice of appeal." ARM 24.9.123(6)(a). "Preparation of the transcript is the responsibility of the party requesting review of the transcript." ARM 24.9.123(7)(b). On February 17, 2021, the Commission issued a Revised Notice of Consideration of Appeal and Filing Deadlines, giving Bautista a deadline of March 11, 2021, to file a transcript and a deadline of April 1, 2021, to file his brief in support of the appeal.

On March 8, 2021¹, Bautista emailed the Legal Secretary to the Commission Annah Howard (Howard) “to ask for an extension in the timeline of the appeal process,” because he required medical treatment. On March 9, 2021, Howard sent an email to Bautista asking for more details about the extension of time required and whether the extension was needed for both the transcript and his brief in support of the appeal. On March 12, 2021, Bautista clarified in an email to Howard that he required an extension for both the transcript and the brief.

On March 29, 2021, the Commission issued an Amended Order Granting Continuance Request for Extension to File Transcript, giving Bautista a deadline of April 26, 2021, to file a transcript and a deadline of May 17, 2021, to file his brief in support of appeal. Because the continuance moved consideration of the matter from May 2021 to July 2021, both Bautista and the SHFLC agreed to waive their statutory right have the Commission hear an appeal within 120 days of the Notice of Appeal pursuant to § 49-2-505(5), MCA. The March 29, 2021 Amended Order further stated that, “[n]o further extensions will be allowed except upon a showing of good cause. See ARM 24.9.113.”

On May 11, 2021, Bautista filed a second Motion for Extension of Time to File Transcript. The May 11, 2021 Motion was signed by Bautista and had a certificate of service showing it was served on counsel for the SLFLC. On May 12, 2021, the SHFLC filed a brief in opposition to the Motion for Extension arguing that Bautista had failed to show good cause for an extension to file the transcript. On May 17, 2021, Bautista filed a reply to the SHFLC’s response.

On May 14, 2021, Bautista sent an email to Howard and counsel for the SHFLC requesting more time to file his brief in support of appeal. Bautista asserted that he had not had time to prepare his brief because he was requesting more time to file the transcript.

On May 17, 2021, Bautista emailed Howard seventeen (17) .PDF documents in three separate emails that he asserted were the transcript of the OAH proceedings. The Commission’s rules contain specific requirements for the preparation of a transcript:

A transcript must be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript must be a verbatim and complete account of all proceedings on the record of the hearing and must be in the *form commonly accepted by the courts of record of this state*. The preparer of a transcript shall *certify that the transcript is a complete and accurate*

¹ An earlier order of the Commission erroneously stated that Bautista asked for his extensions to file the transcript and his brief on March 12, 2021, after the March 11, 2021 deadline for the transcript. However, Bautista sent the initial email to the Commission requesting more time on March 8, 2021.

account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

ARM 24.9.123(7)(a) (emphasis added). The documents provided by Bautista contain no certification that they were complete and accurate. The documents do not indicate who prepared them. The documents lack commonly accepted formatting for transcripts in Montana such as page numbers, line numbers, dates and locations of the proceedings, or an index of terms found in the transcript. The seventeen .PDF documents are not named or numbered in a way that indicates the order of the documents.

On May 20, 2021, the SHFLC filed a Motion to Strike Bautista's May 17, 2021 documents with an affidavit and brief in support. The SHFLC argued that Bautista's May 17, 2021 documents were untimely filed, they were not properly served on the SHFLC as required by ARM 24.9.111(2), and the documents failed to comply with the Commission's rule for transcripts under ARM 24.9.123(7)(a). Counsel for the SHFLC filed an affidavit asserting that, upon reviewing some of the documents, the text did not match the audio recording of the OAH proceedings. Also on May 20, 2021, the SHFLC filed a Response in Opposition to Bautista's request for an extension to time to file his brief arguing that Bautista did not show good cause to warrant more time to file his brief, and that pro se parties must comply with procedural rules. ARM 24.9.104(7).

On June 2, 2021, the Commission denied Bautista's motion for an extension of time to file the transcripts and granted the SHFLC's Motion to Strike the non-conforming fillings. The Commission held that further delay in the filing of the transcript would unduly prejudice the SHFLC because they would have very little time to properly review and verify the transcripts before the July 2021 hearing.

On June 21, 2021, Bautista emailed Howard a request for more time and included a letter from his therapist. Counsel for the SHFLC was not copied on the Jun 21, 2021 email. Nor did he otherwise indicate that he had served a copy of this additional request upon counsel for the SHFLC. In the email, Bautista questioned the neutrality of the Commission, and he asked what mechanism supervises the Commission. In the attached letter, Bautista's therapist asserted that Bautista has diagnosed mental health conditions, and Bautista is being treated for his conditions with verbal therapy and medication. The therapist stated that, "I am requesting that Mr. Bautista be given

more time to file necessary documents in court” – although no specific amount of time was identified or suggested.

On July 2, 2021, the Commission issued a Notice of Time and Place of Oral Argument and Consideration of Appeal to Hearing Officer Decision, setting consideration of the matter for July 23, 2021, at 9:00 a.m. over the Zoom videoconference platform.

On July 11, 2021, Bautista emailed Howard (once again failing to copy counsel for the SHFLC) and argued that the Commission was conflicted from hearing his appeal because the Commission rejected the May 17, 2021 documents and did not accept them as transcripts. Bautista further argued that the Commission did not answer his inquiries about neutrality or supervision as an apparent basis for his conflict argument. Bautista stated that he was having surgery again; however, he made no request for additional time to file his brief.

Not only does the commission ignore my message and requests; but it goes ahead setting time and place to review my appeal. As much as the commission may want to continue with its masquerade and have me play along with it; it is going to be impossible for me. Unfortunately, I will need to have surgery again next week and I am definitely not going to compromise my health. Unfortunately, the commission’s masquerade will need to wait a couple of months. On the other hand, however, this may be good to allow the conflicts of interests to be resolved in the mean time.

Email from Javier Bautista, Charging Party/Appellant, to Annah Howard, Legal Secretary of the Human Rights Commission, [EXTERNAL] *Re: Human Rights Commission Notice of Time and Place* (July 11, 2021, 19:58 MDT).

On July 15, 2021, the Commission issued an order holding that Bautista had shown good cause for one final extension of time. The Commission noted that Bautista had requested more time to file his brief on appeal on May 14, 2021, three days before the May 17, 2021 due date for the brief. The Commission recognized that a hearing on the merits is favored over a procedural dismissal. *See Richardson v. State*, 2006 MT 43, ¶ 68, 331 Mont. 231, 130 P.3d 634. However, the Commission noted that it cannot modify a finding of fact unless it reviews the complete record under § 2-4-621, MCA, and the Commission’s rules specify that “[i]f a party intends to challenge any finding of fact of the hearing officer, the complete record additionally includes the transcript of the hearing[,]” ARM 24.9.123(4)-(5). The Commission therefore held that Bautista was not allowed to challenge any findings of fact in his briefing and argument to the Commission because

he did not file a transcript that conformed with the Commission's rules, and the Commission denied Bautista more time to file a conforming transcript.

In the July 15, 2021 Order, Bautista's opening brief was due July 30, 2021, the SHFLC's Answer Brief was due August 13, 2021, and Bautista's reply was due August 27, 2021. In setting these deadlines, the Commission considered Bautista's representation in his July 11 email that he would be needing to have surgery the following week. However, Bautista failed to provide the Commission with any further information as to how much additional time he would need or the extent of his impairment from or leading up to the alleged surgery that would somehow prohibit him from being able to prepare his brief. In light of what little information Bautista provided, and given that Bautista has been on notice since the Commission's February 17, 2021 Notice of his obligation to prepare an opening brief, Bautista conceivably had more than sufficient time in which to prepare his opening brief by the new July 30 deadline. The Commission's July 15 order also expressly stated that, "**NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED.**"

Later on July 15, 2021, Bautista emailed Howard, again without copying counsel for the SHFLC. Bautista argued that the extension of time in the July 15, 2021 Order was "insufficient," and further argued that the Commission's initial extensions of time were insufficient but provided little to no detail as to *why* the Commission's multiple extensions were insufficient or any detail regarding the progress he had made, if any, in his briefing. Bautista further argued once again that the Commission is not a neutral entity.

Bautista failed to file an opening brief by his July 30, 2021 deadline.

On August 12, 2021, the SHFLC filed a Motion for Summary Denial of Appeal and to Dismiss and Brief in Support (Motion to Dismiss). The SHFLC argued that Bautista's appeal should be dismissed under ARM 24.9.123(6)(b) because Bautista did not file an opening brief. ARM 24.9.123(6)(b) states in relevant part that "[f]ailure to file an opening brief may result in summary denial of the appeal sua sponte or on motion of any party." The SHFLC argued that Bautista's failure to file an opening brief was prejudicial to the SHFLC because they could not adequately prepare their defense or for oral argument.

On August 26, 2021, Bautista emailed Howard, once again without copying counsel for the SHFLC. At the request of the SHFLC, Howard forwarded this email to counsel for the SHFLC. Bautista asserted that the assistive software he used to read the Commission's July 15, 2021 Order

somehow showed that his brief was due on August 27, 2021.² Bautista further explained that he told the Commission he was having surgery, and he could not meet the July 30, 2021 due date for his opening brief. Bautista further stated that, “[a]s I have been explaining for the last months, I do not recognize any legitimacy to the Commission. I am not going to make any legal argument until I am given reasonable guarantees that said arguments will be reviewed by a neutral, independent panel following the rules of democratic law.” Email from Javier Bautista, Charging Party/Appellant, to Annah Howard, Legal Secretary of the Human Rights Commission, [EXTERNAL] *Re: Bautista v. SHFLC – Order Vacating* (August 26, 2021, 7:47 MDT). Bautista attached to the email a copy of the July 15, 2021 Order in .docx format, as it was produced by his assistive software, and he attached a copy of his July 11, 2021 email to Howard.

On August 30, 2021, the SHFLC filed a Reply Brief in support of their Motion to Dismiss. The SHFLC argued that Bautista’s August 26, 2021 email to the Commission was an *ex parte* communication that should not be considered a response to the Motion to Dismiss. The SHFLC noted that Bautista did not serve the August 26, 2021 email, or various other emails and *ex parte* communications, on the SHFLC. The SHFLC asked the Commission to disregard all of Bautista’s *ex parte* communications. The SHFLC nonetheless responded to Bautista’s August 26, 2021 email by asserting that Bautista was granted over five and one half months to file his opening brief – not the two weeks that he asserted – and Bautista’s attachment showing the text of the July 15, 2021 Order clearly showed that his opening brief was due July 30, 2021. Furthermore, the SHFLC argued that Bautista was now refusing to recognize “any legitimacy to the Commission,” and Bautista was effectively abandoning his administrative appeal.

After careful consideration of the record and procedural history in this case, the Commission concludes that the SHFLC’s Motion to Dismiss is well taken. Bautista has been granted numerous opportunities to comply with the Commission’s Rules and the Commission’s Orders. The Commission regularly grants latitude to *pro se* parties, particularly with *initial* requests for extensions of time. Here, Bautista was granted several extensions of time, and he demonstrated that he could file motions and serve opposing counsel, e.g., May 11, 2021 Motion for Extension of Time to File Transcript. However, he continued to email the secretary for the Commission

² The Commission’s July 15, 2021 Order stated Bautista’s opening brief was due July 30, 2021, and his Reply Brief was due August 27, 2021.

without copying counsel for the SHFLC. In addition to not copying the SHFLC on his various emails to the Commission, Bautista has not filed conforming transcripts or an opening brief. Although *pro se* parties are granted certain latitude in proceedings, but it cannot be so wide as to prejudice the other party. *First Bank (N.A.)-Billings v. Heidema*, 219 Mont. 373, 376, 711 P.2d 1384, 1386. The SHFLC has limited means to prepare a defense to his appeal and continuing the appeal would prejudice the SHFLC.

ORDER

IT IS HEREBY ORDERED, that the Self Help Family Law Center's Motion to Dismiss is **GRANTED**, and this matter is **DISMISSED** with prejudice.

Either party may petition the district court for judicial review of this Final Agency Decision in the district where the alleged violations occurred. Mont. Code Ann. §§ 2-4-702 and 49-2-505. This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. Mont. Code Ann. § 2-4-702(2).

DATED this 7th day of September 2021.



Peter M. Damrow, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing ORDER was served on the following persons by U.S. Mail, postage prepaid, on this 7th day of September 2021.

Javier Bautista
1441 Edward L Grant Hwy
Bronx, NY 10452

Jeanine Blaner
Staff Attorney
Montana Supreme Court
P.O. Box 203001
Helena, MT 59602-3001



Annah Howard, Legal Secretary
Montana Human Rights Bureau