

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 1142-2018:

FARON SIERS,)	HRB Case No. 0170377
)	
Charging Party,)	
)	ORDER DISMISSING
vs.)	WITH PREJUDICE
)	
CASEY'S CORNER CONVENIENCE)	
STORE #10,)	
)	
Respondent.)	

* * * * *

On January 22, 2018, Faron Siers by and through her attorney filed a Request for Withdrawal of Charge of Discrimination signed by the Charging Party and dated January 8, 2018. Siers' attorney indicated in the cover letter included with the filing that Siers intends to pursue her remedies under Title VII of the Civil Rights Act of 1991 in Federal Court and does not wish to pursue the matter currently before the Office of Administrative Hearings (OAH).

On January 25, 2018, the Hearing Officer issued a Notice of Intent to Dismiss allowing the Montana Human Rights Bureau (HRB) an opportunity to intervene or to seek redesignation for the limited purpose of obtaining appropriate affirmative relief pursuant to Admin. R. Mont. 24.8.734(6). HRB subsequently sought and was granted an extension of the deadline set in the Notice of Intent to Dismiss. Ultimately, HRB declined to intervene but reserved the right to intervene in any future proceedings should the interests of the department be implicated.

On February 20, 2018, Casey's Corner Convenience Store #10 (Casey's Corner) by and through its attorney filed its Response to Notice of Intent to Dismiss indicating it did not object to the dismissal of the matter. Casey's Corner argued the matter should be dismissed with prejudice thereby foreclosing Siers from seeking any remedies under Title VII of the Civil Rights Act of 1991 or the Montana Human Rights Act or any other legal theory related to the alleged claims of discrimination and retaliation.

On March 7, 2018, Siers filed her Response to Notice of Intent to Dismiss in which she noted, "Both Charging Party and Respondent are aligned in this matter, there is no reason for the Office of Administrative Hearings not to dismiss the Charging Party's complaint with prejudice. Charging [P]arty further requests that the Office of Administrative Hearings contact the EEOC and provide a right to sue letter as soon as possible."

Siers clearly wishes not to pursue what remedies are available to her at this stage of the administrative process. As Respondent noted in its response when addressing the requirement that a party exhaust its administrative remedies, a complainant has a duty to "pursue [h]er administrative claim with diligence and in good faith" and that "abandonment or failure to cooperate in the administrative process prevents exhaustion and precludes judicial review." *Greenlaw v. Garrett*, 59 F.3d 994, 997, 1000 (9th Cir. 1995).

The effect of a dismissal with prejudice has been described as follows:

A dismissal with prejudice has the effect of a final adjudication on the merits favorable to defendant and bars future suits brought by plaintiff upon the same cause of action. Such a dismissal constitutes a final judgment with the preclusive effect of "res judicata not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit."

A dismissal with prejudice arising out of an agreement of the parties is an adjudication of all matters contemplated in the agreement, and a court order which memorializes this agreement bars further proceedings.

...

Nemaizer v. Baker, 793 F.2d 58, 60-61 (2d Cir. 1986)(citations omitted), quoting *Heiser v. Woodruff*, 327 U.S. 726, 735, 66 S. Ct. 853, 857, 90 L. Ed. 970 (1946).

The doctrine of res judicata, or claim preclusion, bars the filing of claims which were raised or could have been raised in an earlier proceeding. When claim preclusion does not apply to bar an entire claim or set of claims, the doctrine of collateral estoppel, or issue preclusion, may still prevent the relitigation of particular issues which were actually litigated and decided in a prior suit. *I.A. Durbin, Inc. v. Jefferson Nat'l Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986); *Kaspar Wire Works, Inc. v. Leco Eng'g and Mach., Inc.*, 575 F.2d 530, 535, et seq. (5th Cir. 1978).

Given Siers' stated agreement with Respondent's contention that the matter should be dismissed with prejudice, it is therefore ordered that the matter is hereby DISMISSED WITH PREJUDICE. OAH is not in a position to contact the EEOC on behalf of Siers and her attorney to obtain a right to sue letter. Any questions about EEOC procedure should be directed to the appropriate EEOC Field Office.

DATED this 19th day of March, 2018.



Caroline A. Holien, Hearing Officer
Office of Administrative Hearings
Department of Labor and Industry

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows, as well as by email to the indicated email address(es):

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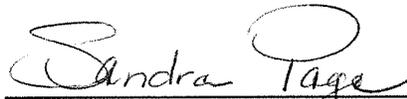
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The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by means of the State of Montana's Interdepartmental electronic mail service.

MARIEKE BECK, BUREAU CHIEF
HUMAN RIGHTS BUREAU

TIMOTHY LITTLE, ATTORNEY
HUMAN RIGHTS BUREAU

Signed this 19th day of March, 2018.



Legal Secretary, Office of Administrative Hearings
Montana Department of Labor and Industry