

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

IN RE: OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 1174-2018:

ROBERTA WILKINSON,)	
)	
Charging Party,)	
)	ORDER VACATING
vs.)	HEARING DATE AND
)	NOTICE OF
BIG D'S TAXI SERVICE,)	INTENT TO DISMISS
)	
Respondent.)	

* * * * *

On July 24, 2017, Charging Party Roberta Wilkinson filed a Charge of Discrimination with the Montana Human Rights Bureau (HRB) alleging discrimination in the area of employment on the basis of age. After investigation, HRB certified the complaint for a contested case hearing on January 19, 2018.

On January 26, 2018, the Office of Administrative Hearings (OAH) issued a Notice of Hearing directing the parties to file and serve their respective Appearance and Preliminary Prehearing Statements within 20 days of the date of the notice¹.

The Notice of Hearing included the following information:

EACH PARTY MUST FILE A WRITTEN APPEARANCE AND PRELIMINARY PREHEARING STATEMENT IN THIS MATTER WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE. Your appearance and preliminary prehearing statement must state the name, address, and telephone number of your attorney or indicate that you have no attorney. You must also identify your contentions of fact and law, witnesses, exhibits, relief sought, admitted facts, and prehearing

¹ On February 2, 2018, OAH received Flathead County's Sheriff's Return of Service stating that Respondent had been served with the Notice of Hearing and accompanying documents on January 30, 2018. On February 5, 2018, OAH received Wilkinson's Acknowledgment of Service.

motions. Failure to file an appearance and preliminary prehearing statement may result in dismissal of the charging party's complaint or default of the respondent. An appearance and preliminary prehearing statement form is attached for your convenience.

Charging Party filed her preliminary prehearing statement on February 5, 2018. Respondent did not file its preliminary prehearing statement until June 25, 2018.

The February 8, 2018, Order Setting Contested Case Hearing Date and Prehearing Schedule issued in this matter also contained the following language: "The parties must file final lists of exhibits and witnesses, contentions, requests for relief, proposed uncontested facts and identification of any discovery to use at hearing by June 22, 2018." The Scheduling Order also contained the following language:

The parties must comply with this prehearing schedule. This order does not alter or extend the deadline set in the Notice of Hearing for filing a Preliminary Pre-Hearing Statement. For good cause, the parties may seek changes in this schedule. Good cause requires notice to the Hearing Officer before the deadline to be changed. Before filing a motion to request a change in the schedule, the moving party must contact the other party(ies) and determine whether the motion would be opposed and to determine a mutually agreed upon new date in either case. Good cause to extend the hearing date exists if the parties file a joint motion for the extension and the extension would not require conclusion of administrative proceedings or dismissal. Mont. Code Ann. § 49-2-512(2)(b). Failure to comply with an order of the Hearing Officer or to participate in a prehearing conference may result in sanctions. Sanctions include dismissal of the charge, default of Respondent or other appropriate action, as a prerequisite of continuing to prosecute or resist the complaint.

On June 13, 2018, the legal secretary for OAH e-mailed Darrell Hegel, Respondent's representative, and attached the Appearance and Preliminary Prehearing Statement form, which she reminded him had not yet been submitted, even though it was due February 20, 2018. She also attached the Order Setting Contested Case Hearing Date and Prehearing Schedule, reminding him of upcoming deadlines, the final prehearing conference date and time, and the hearing date and time.

On June 13, 2018, the legal secretary for OAH e-mailed Charging Party and attached the Order Setting Contested Case Hearing Date and Prehearing Schedule which the hearing officer issued February 8, 2018, reminding her of upcoming deadlines, the final prehearing conference date and time, and the hearing date and time.

As of the date of this Notice of Intent to Dismiss, neither party has filed a final list of exhibits and witnesses, contentions, requests for relief, proposed uncontested facts and identification of any discovery to use at hearing.

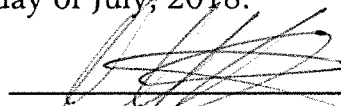
At the final prehearing conference held telephonically on July 9, 2018, both parties were totally unaware that a final prehearing conference had been scheduled, and admitted that they had completely disregarded and not read the Order Setting Contested Case Hearing Date and Prehearing Schedule, and had no recollection of any scheduled dates or deadlines other than the hearing previously scheduled for July 17, 2017.

The Hearing Officer does not believe it is appropriate to consider default against Respondent at this point in time given that both parties have been derelict in following the orders of this tribunal. To that end, the Hearing Officer is hereby issuing a notice of intent to dismiss the matter. Before dismissal of a complaint, in which HRB has made a reasonable cause finding, on any basis other than a decision on the merits, the Hearing Officer is required to give notice to the HRB of the proposed dismissal, to permit HRB an opportunity to intervene or seek redesignation for the limited purpose of obtaining appropriate affirmative relief. Admin. R. Mont. 24.8.734(6). This allows HRB the opportunity to work with Respondent regarding any affirmative relief necessary to satisfy HRB's statutory obligation to prevent illegal discrimination from recurring.

THEREFORE, the hearing date presently set for July 17, 2017, is hereby VACATED, and notice is given that, unless by the close of the business day on August 1, 2018, a party files and serves an objection to dismissal, with good cause shown, or HRB files and serves a motion to intervene and redesignate the charges in this case as a commissioner complaint, the Hearing Officer will dismiss the complaint. Should HRB timely request a reasonable additional time before dismissal to reach an agreement with respondent or to file and serve a motion to intervene, such motion will be granted.

///

DATED this 11th day of July, 2018.


Chad R. Vanisko, Hearing Officer
Office of Administrative Hearings
Department of Labor and Industry

* * * * *

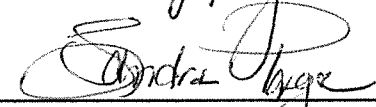
CERTIFICATE OF MAILING

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:

ROBERTA WILKINSON
115 SPRING CREEK DRIVE
KALISPELL MT 59901

BIG D'S TAXI SERVICE
ATTN: DARRELL HEGEL
PO BOX 2001
WHITEFISH MT 59937

Signed this 11th day of July, 2018.


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

cc: Marieke Beck, Bureau Chief
Human Rights Bureau

Timothy Little, Attorney
Human Rights Bureau

WILKINSON.NOITD