

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ANDREW CRAWFORD,
Charging Party/Appellant,

HRB CASE NO.0180278

-v-

REMAND ORDER

FRATERNAL ORDER OF THE EAGLES
326,
Respondent/Appellee.

Charging Party Andrew Crawford (Crawford) filed a complaint with the Department of Labor & Industry alleging unlawful discrimination in public accommodation on the basis of disability against Respondent, the Fraternal Order of the Eagles # 326 (FOE). Following an informal investigation, the Department determined that reasonable cause supported Crawford's allegations. The case went before the Department of Labor & Industry's Office of Administrative Hearings. During the prehearing process, FOE moved to dismiss the matter, arguing that Crawford did not comply with the applicable discovery rules. The Hearing Officer issued an Order Granting Respondent's Rule 37 Motion to Dismiss on April 8, 2019, dismissing Crawford's complaint with prejudice.

Crawford appealed the dismissal to the Montana Human Rights Commission. The Commission considered the matter on July 19, 2019. Andrew Crawford appeared and presented oral argument on behalf of himself. Geoffrey Angel, attorney, appeared and presented oral argument on behalf of FOE.

STANDARD OF REVIEW

The Commission reviews a Hearing Officer's imposition of discovery sanctions under Mont. R. Civ. P. 37 for an abuse of discretion. The Commission considers whether the Hearing

Officer acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason, in view of all the circumstances, ignoring recognized principles resulting in substantial injustice. *Culbertson-Froid-Bainville Health Care Corp. v. JP Stevens & Co. Inc.*, 2005 MT 254, ¶ 10, 329 Mont. 38, 122 P.3d 431 (citations and quotation marks omitted).

BACKGROUND

In December 2018, the Crawford's complaint was certified for a hearing before the Office of Administrative Hearings (OAH). Crawford alleged that on March 9, 2018, he entered the FOE in Bozeman with his service dog. The bartender told Crawford that dogs are not allowed inside FOE, and Crawford explained that it was a service dog. Crawford alleged that the bartender said there was no proof that it was a service dog. Crawford alleges that FOE discriminated against him on the basis of his disability.

On December 26, 2018, OAH issued the Order Setting Contested Case Hearing and Prehearing Schedule (Scheduling Order). The Order stated the following:

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 January 18, 2019, FOE moved to dismiss Crawford's claim, arguing that Crawford's rude and threatening behavior at a deposition warranted dismissal. FOE included a recording of the deposition with the motion. On February 1, 2019, Crawford responded and denied that he acted rude or threatening. The Hearing Officer denied the motion, noting that Crawford had acted inappropriately during the deposition and advising Crawford to answer FOE's questions during discovery.

On March 19, 2019, FOE filed a Rule 37 Motion for Sanctions and Brief in Support, alleging inappropriate behavior by Crawford during a second deposition. FOE alleged that Crawford refused to answer questions, and he did not adequately respond to FOE's first or

second set of discovery requests. Crawford responded to the motion and denied acting inappropriately. FOE replied that Crawford refused to disclose information about his disability or need of a service animal, which prejudiced FOE's ability to defend against Crawford's claim of discrimination. FOE asked the Hearing Officer to "dismiss the charge of discrimination with prejudice or impose another appropriate remedy including the cost of this motion and the second deposition." If the matter was not dismissed, the Motion further requested the Hearing Officer to "require Mr. Crawford to respond fully and completely to the first, second and third written discovery request then attend a third deposition[.]" March 15, 2019 Motion to Dismiss, p. 6.

On April 8, 2019, the Hearing Officer issued an Amended Order Granting Respondent's Rule 37 Motion to Dismiss, dismissing Crawford's claim with prejudice. The Hearing Officer determined that "Crawford has chosen to repeatedly engage in disruptive and offensive conduct despite having been warned that such behavior could result in sanctions being imposed." April 8, 2019 Order, p. 8. The Hearing Officer found that Crawford had lengthened the discovery period and delayed the matter, holding that Crawford's actions prejudiced FOE and warranted dismissal of the matter with prejudice.

DISCUSSION

Did the Hearing Officer abuse her discretion when she dismissed Crawford's complaint of discrimination with prejudice as a sanction for Crawford's discovery abuses?

"The methods, scope, and procedures of discovery are those governed and permitted by the Montana Rules of Civil Procedure[.]" Admin. R. Mont. 24.8.749. "The purpose of discovery is to promote the ascertainment of truth and the ultimate disposition of the lawsuit in accordance therewith. Discovery fulfills this purpose by assuring the mutual knowledge of all relevant facts gathered by both parties which are essential to proper litigation." *Cox v. Magers*, 2018 MT 21, ¶ 15, 390 Mont. 224, 411 P.3d 1271 (citations omitted).

Montana courts have recognized a strong preference to resolve matters on the merits of the claim; however, a “pattern of willful and bad faith conduct outweighs the general preference for trial on the merits[.]” *Richardson v. State*, 2006 MT 43, ¶ 68, 331 Mont. 231, 130 P.3d 634. “Achieving a just result—the foundational goal of our courts and legal system—is ‘contingent upon full disclosure.’” *City of Missoula v. Mt. Water Co.*, 2016 MT 183, ¶ 126, 384 Mont. 193, 378 P.3d 1113 (citing *Richardson* ¶ 63). OAH, and the Commission on review, “adheres to the policy that dilatory discovery actions shall not be dealt with leniently. . . . [OAH] must remain intent upon punishing transgressors rather than patiently encouraging their cooperation.” *Mt. Water Co.*, ¶ 127 (citing *Richardson*, ¶ 63).

While the Commission encourages OAH “to make accommodations for parties choosing to represent themselves, such ‘flexibility cannot give way to abuse.’” *Cox*, ¶ 15 (citing *First Bank (N.A.)-Billings v. Heidema*, 219 Mont. 373, 376, 711 P.2d 1384, 1386 (1986)). Pro se litigants are expected to adhere to procedural rules. *Cox*, ¶ 15. “Any latitude given to self-represented litigants ‘cannot be so wide as to prejudice the other party.’” *Cox*, ¶ 15 (citing *Heidema*, 219 Mont. at 376, 711 P.2d at 1386).

A hearing officer may order sanctions against a party for failure to comply with a discovery order or to permit discovery, including the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;

Mont. R. Civ. P. 37(b)(2)(A)(i)-(v).

The Commission reviews sanctions imposed by a Hearing Officer for discovery abuses by considering several factors: whether the sanction relates to the extent and nature of the actual discovery abuse; whether the sanction relates to the extent of the prejudice to the opposing party; whether the sanction is consistent with the consequences expressly warned of by the district court, if a warning was issued; and whether the party disregarded the Hearing Officer's orders and authority. *Cox*, ¶ 27 (citing *Culbertson*, ¶ 14; *Xin Xu v. McLaughlin Research Inst. for Biomedical Sci., Inc.*, 2005 MT 209, ¶ 26, 328 Mont. 232, 119 P.3d 100).

Crawford argues that his underlying Complaint of discrimination against FOE has merit. Crawford asserts that he is disabled, he has a service dog, and he argues that he has records to prove this. Crawford asserts that FOE did not properly follow the Americans with Disabilities Act, and the bartender, who allegedly told him he could not have his dog inside, changed his story during the proceedings.

Crawford further argues that counsel for FOE, Geoffrey Angel (Angel), has lied throughout the proceedings, abused the discovery process by sending Crawford numerous questions and e-mails, and misrepresented Crawford's behavior during depositions and other proceedings. Specifically, Crawford denies that he brought a weapon to the deposition and asserts that he had an empty scabbard on his belt. He denies that he ever acted in a threatening or abusive manner towards anyone. Crawford asserts that Angel has repeatedly maligned him, questioned his disability, and brought up irrelevant past events.

FOE counters that the Hearing Officer's dismissal is not an abuse of discretion. FOE asserts that Crawford did not serve FOE with a prehearing statement or comply with the Scheduling Order that warned of possible sanctions for failure to comply. FOE argues that Crawford's answers to written discovery requests were evasive, non-responsive, and incomplete.

FOE argues that Crawford refused to participate in the first deposition, causing FOE to schedule a second deposition. FOE maintains that these discovery abuses caused delay, extra cost to FOE, and prejudiced FOE's ability to defend against Crawford's claim.

As a preliminary matter, this review is limited to the dismissal of Crawford's claim due to his alleged discovery abuses. Although Crawford argues to the Commission regarding the merits of his underlying claim, and the merits of the underlying claim are not before the Commission at this time and will not be addressed here.

The Commission is limited to consideration of the record before it on appeal, as defined by Commission rule.¹ During oral argument before the Commission, FOE asserted that Crawford did not produce relevant medical records pertaining to his disability and need of a service animal. FOE asserted that, although they subpoenaed medical records from Crawford's primary care physician, they were still missing records essential to the defense of their claim based on Crawford's failure to answer written discovery and disclose the names of his treating physicians. Crawford countered during the hearing that he signed a release allowing FOE to have all the records from his primary care physician, and he tried to provide FOE with what they requested. The record before the Commission on review included FOE's written discovery requests and Crawford's responses, transcripts of two depositions of Crawford, the Hearing Officer's order denying the Motion to Dismiss, and the Hearing Officer's later order granting the Motion to Dismiss. The record and briefing by the parties include limited references to medical records.

¹ "The complete record for the purposes of this rule is comprised of all documents cited or referred to in briefing before the commission." Admin. R. Mont. 24.9.123(5). "The party citing or referring to a document in its briefing is required to attach as an exhibit to its brief the entirety of such document." Admin. R. Mont. 24.9.123(5)(a).

The record did not include the actual medical records or specific descriptions of any medical records that were or were not disclosed by Crawford to FOE during discovery.

Based on the record and argument presented before the Commission, the Hearing Officer's sanction of dismissal was an abuse of discretion. A hearing officer has discretion to determine the appropriate sanction for discovery violations under Mont. R. Civ.

P.37(b)(2)(A)(i)-(v). Although the record reflects that Crawford did not provide complete responses to FOE's written discovery requests, Crawford answered the majority of the questions posed to him during the second deposition. Furthermore, the parties raised questions of fact unresolved by the Hearing Officer's Order regarding what medical records were or were not produced during discovery. Accordingly, the Commission is without an adequate record to determine whether or to what extent Crawford's production, or lack of production, of medical records violated the Hearing Officer's orders and/or prejudiced FOE's ability to defend this matter.

After careful consideration of the complete record before the Commission and the argument presented by the parties, the Commission concludes that the Hearing Officer's sanction of dismissal was an abuse of discretion and excessive in proportion to the discovery violations verifiable in the record. On remand, the Hearing Officer retains the authority to impose sanctions to ensure compliance with discovery obligations under Mont. R. Civ. P.37(b)(2)(A)(i)-(v).

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is REMANDED to the Office of Administrative Hearings for further proceedings consistent with this order.

DATED this 9th day of October, 2019.

A handwritten signature in black ink, reading "Timothy A. Tatarka". The signature is written in a cursive style with a large, sweeping initial "T" and a long horizontal stroke at the end.

Timothy A. Tatarka, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 9th day of October, 2019.

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Annah Howard, Legal Secretary
Montana Human Rights Bureau