

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0061011796:

ASHLEY BEELER,)	Case No. 115-2007
)	
Charging Party,)	
)	
vs.)	DISMISSAL ORDER
)	
NEW HUNAN RESTAURANT,)	
)	
Respondent.)	

* * * * *

Pursuant to the default order of October 27, 2006, the hearing examiner convened a telephonic status conference in the above matter on November 2, 2006, at 9:00 a.m. Charging party Ashley Beeler is acting on her own behalf in this proceeding. In violation of the default order, sent to her address of record on October 27, 2006, she did not provide a new telephone number and her telephone number of record was again out of service. J. Dennis Corbin represents respondent New Hunan Restaurant. He was available at his office number of record. Pursuant to the prior orders in this case, Beeler's failure again to participate in the scheduled telephone conference, her failure to show good cause to set aside her default and her failure to keep the Hearings Bureau advised of her current telephone number together justified dismissal of the case. In keeping with the practice of the Hearings Bureau regarding failure to appear in telephone proceedings scheduled by orders and notices, the hearing examiner advised counsel for the restaurant that unless the Hearings Bureau heard from Beeler before the close of business on November 2, 2006, a dismissal order would issue on November 3, 2006.

At approximately 9:27 a.m. local time today, Beeler called the Hearings Bureau from Miles City to ask about the hearing she thought was to begin this morning at 9:00 a.m. The legal secretary taking that call, Sandra Prebil, obtained a Miles City telephone number for Beeler. At that time, the Hearings Bureau scheduled another telephone conference, which the hearing examiner convened at 11:00 a.m.

Beeler admitted receiving all of the pertinent notices and orders, and did not clearly indicate when she received, at the Glendive mailing address which until this telephone conference was her address of record in this case, the earlier orders in this

case. She told the hearing examiner that she did not pick up her more recent mail, which the hearing examiner understood to mean the October mailings, until "two days ago." The hearing examiner is not convinced that it was only two days ago that Beeler received the "Order Setting Contested Case Hearing Date and Prehearing Schedule," mailed to her Glendive address on August 11, 2006, just four days after she was personally served, at the same Glendive address, with the notice of hearing in this case by the Dawson County Sheriff's office.

The facts involved in this default appear clear. On November 25, 2005, Ashley Beeler filed a complaint charging illegal discrimination in employment by New Hunan Restaurant, her employer, in laying her off from her job because of her pregnancy.

On July 20, 2006, the Human Rights Bureau certified Beeler's complaint for contested case hearing. By a notice of hearing dated July 24, 2006, the Hearings Bureau assigned this case to this hearing examiner, named the parties, described the hearing procedures and rules and adopted the Montana Rules of Civil Procedure and Evidence for these proceedings. The notice of hearing was served upon the restaurant on July 26, 2006, and served upon Beeler on August 7, 2006. J. Dennis Corbin appeared on behalf of the restaurant on August 10, 2006. Beeler appeared on August 25, 2006.

Among the notices given to the parties in the documents served upon with the notice of hearing was a notice that each party had an ongoing duty to supplement or correct information provided to the department if the information provided was no longer complete and correct.

Beeler's complaint came to the Hearings Bureau with her mailing address and current telephone number listed as, respectively, 604 Mitchell Drive, Glendive, Montana, and (406) 939-2229. Before her call to the Hearings Bureau, Beeler had never provided any supplementation of that information to the Hearings Bureau.

The scheduling order of August 11, 2006, set the hearing to start on November 2, 2006, and last for not more than 2 days. That order also set a telephonic final prehearing conference, which the hearing examiner would initiate by calling both parties or their attorneys, on October 26, 2006, at 8:00 a.m., local time. That order also included a notice that failure to comply with an order of the hearing examiner or to participate in a prehearing conference could result in sanctions including dismissal, default or other appropriate action, as a prerequisite of continuing to prosecute or resist the complaint.

In October 2006, the Hearings Bureau discovered that the only telephone number in Beeler's contested case file was out of service. When the hearing examiner attempted to call her for the final telephonic prehearing conference, on October 26, 2006, that phone number was still out of service. During the final telephonic prehearing conference, the restaurant moved for and the hearing examiner entered Beeler's default and issued a default order on October 27, 2006. That order was mailed to both parties at their respective addresses of record--604 Mitchell Drive in Glendive for Beeler, counsel's office address for the restaurant.

In that default order the hearing examiner noted that (1) Beeler was in default because she was unavailable for the final prehearing conference; (2) instead of convening the hearing in Miles City at 9:00 a.m. on November 2, 2006, the hearing examiner would convene a telephone conference at that time and date and (3) Beeler had to provide a current phone number before the conference was convened. The default order further noted that unless Beeler made herself available by timely providing a number AND showed good cause for her failure to be available for the final prehearing conference, the hearing examiner would dismiss this case.

In her explanation during the second telephone conference this morning, November 2, 2006, Beeler failed to show good cause to set aside her default for failure to appear at the final telephonic prehearing conference. It is incredible that Beeler never received until October 30, 2006, a scheduling order issued in early August, just four days after sheriff's service of notice of this hearing was made upon Beeler at the Glendive address to which the scheduling order was mailed. If that is true, Beeler failed to exercise reasonable care over her own business matters, for which she must bear the consequences. The Human Rights Bureau has not filed a motion to intervene before the initial telephonic status conference convened today, November 2, 2006, and did not appear and participate in that conference.

Because Beeler is in default, she may not present evidence in support of her complaint and therefore this contested case proceeding is dismissed because the allegations of the complaint are not supported by a preponderance of the evidence. Mont. Code Ann. § 49-5-509(3)(c).

Dated: November 3, 2006.



Terry Spear, Hearing Examiner

Notice of Rights to Object and to File a Civil Complaint

Any party dissatisfied with the department's dismissal of this complaint may seek review before the Montana Human Rights Commission (in informal proceedings under Mont. Code Ann. § 2-4-604) by filing objections within 14 days of service of this order upon the parties, plus 3 days for service by mail. FILE ANY SUCH OBJECTIONS (an original and 6 copies) BY NOVEMBER 20, 2006, with the Human Rights Commission, c/o Katherine Kountz, Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. At the same time, file a single copy of your objections with Terry Spear, Hearings Bureau, Department of Labor and Industry, P.O.Box 1728, Helena, Montana 59624-1728, and with all other parties of record. File all submissions subsequent to the objections with the Human Rights Commission, care of Katherine Kountz at the above address. DO NOT FILE SUBSEQUENT SUBMISSIONS with the hearing examiner.

WITHIN 90 DAYS OF THIS ORDER, plus 3 days for service by mail (BY FEBRUARY 4, 2007) OR WITHIN 90 DAYS OF AN ORDER FROM THE COMMISSION AFFIRMING THIS DISMISSAL, THE CHARGING PARTY MAY COMMENCE A CIVIL ACTION IN DISTRICT COURT PURSUANT TO MONT. CODE ANN. § 49-2-509(5).

Certificate of Service

I served copies of this document by U.S. Mail, postage prepaid upon:

ASHLEY BEELER and
915 N. FOURTH
MILES CITY MT 59301

ASHLEY BEELER
604 MITCHELL DRIVE
GLEN DIVE MT 59330

J DENNIS CORBIN
PO BOX 338
MILES CITY MT 59301

Certified this 3rd day of November, 2006.

Sandra Prebil
Legal Secretary, Hearings Bureau
Department of Labor and Industry

cc: Marieke Beck, HRB Counsel, Kathe Kountz and Kathy Helland, HRB