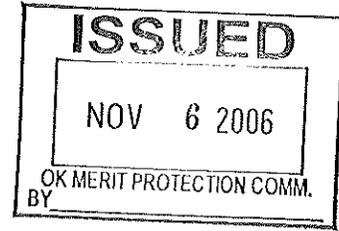


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA

SHARON KIMBRO,)
)
 Appellant,)
)
 v.)
)
 OKLAHOMA EMPLOYMENT)
 SECURITY COMMISSION)
)
 Appellee.)

Case No. MPC-07-020



ORDER OF DISMISSAL

The Prehearing Conference in this case was held on October 25, 2006 at 3:00 p.m., after being postponed once at the request of Appellant ("Kimbro") due to illness and lack of legal representation. On October 25, 2006, Teresa Keller appeared as counsel for Appellee, Oklahoma Employment Security Commission (OESC). Ms. Kimbro did not appear. When after a reasonable time Kimbro still had not appeared, the Prehearing Conference began.

OESC urged its Motion to Dismiss based on Appellant's failure to cooperate in discovery. OESC had earlier noticed Kimbro for a deposition by certified mail, and OESC submitted as an attachment to its motion a copy of the "green card" showing that notice of the deposition had been properly served on Kimbro. Nevertheless, Ms. Kimbro failed to appear at the designated date, place, and time for the deposition.

This ALJ and Ms. Keller waited over twenty minutes for Ms. Kimbro to appear. When Ms. Kimbro did not appear, OESC orally moved to dismiss based on Ms. Kimbro's failure to appear for the Prehearing Conference, pursuant to Merit Rule OAC 455: 10-3-13(a)(2).

Merit Rule OAC 455:10-3-13(a)(2) permits dismissal of a petition for appeal if "the appellant fails or refuses to appear for a scheduled hearing." Appellant without question failed to appear on October 25, 2006, and did not appear within a reasonable twenty-minute waiting period thereafter.

Merit Rule OAC 455: 10-13-1 requires that all parties "shall participate in th discovery process, to the maximum extent possible, without intervention by the Commission." Merit Rule OAC 455: 10-13-11 provides that "the Commission may issue any other such orders which are just" when a party fails to participate in discovery.

Based on OESC's Motions to Dismiss for failure to participate in discovery and on failure to appear for the Prehearing Conference, OESC's Motion for Partial Summary Judgment is found moot. However, OESC's written Motion to Dismiss based on failure to participate in discovery and oral Motion to Dismiss based on failure to attend the Prehearing Conference are **GRANTED**.

Therefore, based on Ms. Kimbro's failure to appear at the Prehearing Conference on October 25, 2006, and her failure to participate in discovery by appearing for a properly noticed deposition by OESC, this case is hereby **DISMISSED WITH PREJUDICE** pursuant to OAC 455:10-3-13(a)(2) and OAC 455:10-13-11.

IT IS SO ORDERED this 6th day of November, 2006.



Maribob L. Lee, OBA #11902
Administrative Law Judge
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