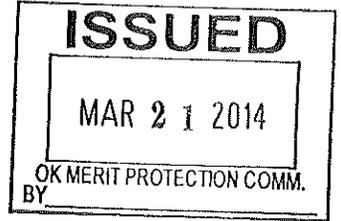


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

THEODORE S. SUTTON,)
Appellant,)
)
v.)
)
OKLAHOMA CORPORATION)
COMMISSION,)
Appellee.)
)

Case No. MPC 12-248



FINAL ORDER

THE ABOVE STYLED AND NUMBERED CAUSE came on at the Merit Protection Commission (hereinafter “MPC”) before the undersigned Administrative Law Judge, Lydia Lee. The Appellant, Theodore Sutton (hereinafter “Sutton”), appears by and through his attorney, Jim Priest. The Appellee, Oklahoma Corporation Commission (hereinafter “OCC”), appears by and through counsel, David Lee.

Appellant Sutton was a probationary employee of OCC, appealing the termination of his employment within the probationary period. Sutton filed an “Alleged Violation” appeal alleging that his termination was in retaliation for his Whistleblower complaints about FSLA violations.

FINDINGS OF FACT

1. This appeal was filed by Appellant on June 21, 2012. Negotiations and discovery proceeded over the next 8 months. A Prehearing Conference was held on March 25, 2013, the issues were defined and deadlines were set. The administrative hearing was set for June 17 and 18, 2013. Due to ongoing discovery disputes, a Status Conference was held on June 17, 2013 and the hearing dates were continued to August 14 and 15, 2013. An Order on the privilege log was issued on July 29, 2013. The Appellant requested a continuance and the hearing was rescheduled for September 18 and 19, 2013. Each party filed Motions and the hearing was again continued to allow responses to those motions to be filed. The hearings were rescheduled for November 15 and 18, 2013. The Appellant requested that those dates be modified and the hearing was rescheduled for November 18 and 20, 2013. On November 8, 2013, an Order was issued ruling on the pending

Motions. Also on November 8, the Appellee requested the hearing be continued and the Appellant expressed no objection to the granting of the continuance. The administrative hearing was once again continued to January 2 and 3, 2014. An additional request by the Appellant to modify the hearing dates was denied.

2. On January 2, 2014, the ALJ appeared at the MPC for the administrative hearing as scheduled. Neither of the parties were present and no witnesses appeared. At approximately ten minutes prior to the beginning time of the hearing, Appellee contacted the staff of the MPC by telephone to advise that the matter had been settled. Counsel for the Appellant confirmed the settlement. Neither party requested a continuance of the hearing nor filed proper notifications or pleadings regarding this settlement. The hearing was stricken as settled, pursuant to the oral representations of the parties.
3. This type of last minute behavior is unprofessional and discourteous to this tribunal, and especially to the ALJ assigned to this matter, who spent several hours on January 1 reviewing the record of this case. Furthermore, the MPC docket and the MPC courtroom were reserved and held open for those two days, depriving others of the opportunity to use those facilities.
4. Two weeks later on January 15, 2014, the Appellant filed a motion to place the matter back on the docket, stating that the “settlement negotiations” had not resolved the case.
5. Appellee filed a Motion to Enforce the settlement of this case. Appellant filed a Response, objecting to the Motion and asserting that there was “no meeting of the minds” regarding settlement.

DISCUSSION

The parties had over 18 months in which to “negotiate” a settlement of this matter. Numerous continuances were requested and granted, which allowed the parties sufficient time to engage in settlement negotiations. It appears that no genuine attempt was made to resolve this matter until December 31, 2013 – two calendar days and one business day before the scheduled hearing. Furthermore, each party indicated that the “matter had been settled” on January 2, 2014 when they failed to appear for the hearing. No conditions or caveats were indicated to this settlement. If there were details remaining to be resolved, either party could have indicated this. Neither did. By waiting to the last possible date to propose this settlement, the Appellant, who has the burden in this matter, left these details to chance. This ALJ and MPC were not asked to

approve this settlement, nor was there a request for a continuance to work out these details. Rather, the parties simply failed to appear at the scheduled date and time.

Appellee argues that the matter was settled and the oral settlement should be enforced. Appellee cites case law to support its position and urges that the terms and conditions were agreed to. According to the Appellee's exhibits, the only issue that was not accepted was related to the expired travel claim. The travel claim was not included in the December 31 settlement discussions, but was brought up by the Appellant at 9:50 am on January 2 – almost an hour after the hearing was stricken. Furthermore, it appears to be moot because Appellant had received the monies and no further travel claim was due. For some unknown reason, Appellant waits until January 15 to disavow the agreement and cease settlement discussions (See Appellee's Motion to Enforce, Exhibit 7). The Appellant does not include any further information on this in his Response.

Appellant argues that the "settlement" was void because the damage amount was not paid within 10 days of the agreement. This is not persuasive. The very actions of the Appellant in failing to execute the agreement kept these funds from being paid within that time frame. Appellant also alleges that OCC inserted additional terms that weren't discussed. It appears that Appellant requested those "objectionable" terms to be deleted and OCC agreed and revised the agreement. Therefore the settlement and terms as agreed on December 31 were included in the final agreement accepted and agreed to on January 3, 2014 (See Appellee's Motion to Enforce, Exhibit 5). It appears that Appellant simply changed his mind after the agreement was made. Finally, Appellant argues that the MPC is not a place to force employees to settle a case on terms not agreed to. Again, this is something that Appellant should have considered before failing to appear at the scheduled hearing on January 2, 2014.

Appellant is the appealing party and has the burden to properly prosecute this case. His failure to appear at the designated time and place for this hearing opened the door to the potential for dismissal of the appeal. He also failed to file an appropriate Motion or other pleading to allow additional time to "negotiate" a settlement. This matter had been continued over four times after various motions for continuance were filed by the parties. Appellant seems to be very experienced in these types of motions and he knew or should have known the consequences of his actions in failing to appear after stating that the matter had been "settled".

As a result of his actions in failing to appear at the scheduled hearing, if Sutton does not wish to accept the "settlement" that he agreed to, his appeal should be dismissed.

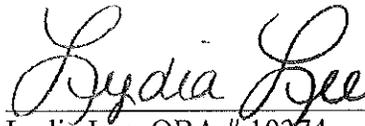
CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause and the filing of the Petition for Appeal was timely.
2. Any finding of fact or discussion herein which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. OAC 455:10-9-2 (f)(2) states that the burden of proof in an adverse action appeal shall be upon the Appellant, who must prove his or her case by a preponderance of the evidence.
4. OAC 455:10-9-2 (b) requires that each party shall be present, on time and prepared for the hearings. This rule further provides that failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.
5. OAC 455:10-9-2 (e)(4) states that a request for continuance shall be filed no less than 3 calendar days prior to the scheduled hearing, but allows for a lesser period of time “for good cause shown”.
6. OAC 455:10-3-17 states that a request for continuance shall be *filed in writing* and shall include the cause for the request and a statement of agreement or disagreement by the other party. It also provides that continuances shall be granted only in those instances where extraordinary circumstances exist and good cause has been shown.
5. The parties have previously requested and were granted numerous continuances in this matter and were given an ample and generous amount of time to resolve this matter and/or prepare for hearing.
6. The preponderance of the evidence shows that Appellant failed to appear for the administrative hearing at the scheduled time and place and also failed to file any type of pleading requesting a continuance or leave to pursue settlement of the matter.
7. Appellant has failed to provide good cause for his failure to appear or for his failure to request a continuance. Appellant is represented by counsel and was aware of the process and procedure as demonstrated by his previous requests for continuances.
8. Pursuant to OAC 455:10-3-13, Appellant’s petition for appeal is dismissed as a result of the Appellant’s failure to appear for the hearing on January 2 and 3, 2014 as ordered.
9. As a result of this dismissal, ruling on the Motion to Enforce is not necessary. Nothing in this Order precludes the parties from completing the proposed settlement, if desired.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Theodore Sutton, MPC 12-248 be DISMISSED.

IT IS SO ORDERED this 19th day of March, 2014.

A handwritten signature in cursive script that reads "Lydia Lee". The signature is written in black ink and is positioned above a horizontal line.

Lydia Lee, OBA # 10374
Administrative Law Judge