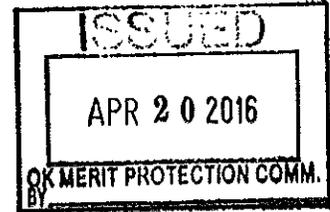


**BEFORE THE MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**



MICHAEL FAULKNER,)
Appellant,)

vs.)

No. MPC 16-069

DEPARTMENT OF MENTAL HEALTH)
AND SUBSTANCE ABUSE SERVICES,)
Appellee,)

ORDER DISMISSING APPEAL

On this 11th day of April, 2016, the above appeal comes for hearing upon the order for the Appellant to personally appear and show cause why his appeal should not be dismissed. Appellee appears through its counsel C. Allen Shaffer, and the Appellant failed to appear or notify the commission regarding any inability to attend. The undersigned finds that the Appellee filed its first Motion to Dismiss this appeal on April 3, 2016, stating that the Appellant had failed to cooperate with the Pre-Hearing Order with respect to furnishing witness and exhibit lists. The undersigned, on April 4, 2016, denied the first Motion to Dismiss and ordered the Appellant to show cause why his appeal should not be dismissed by five o'clock p.m. on the 6th day of April, 2016. The appellant neither responded to the order nor contacted the commission offices to offer

a reason why he had not complied with the Prehearing Order regarding the furnishing of witness and exhibit lists.

The Appellee filed its Second Motion to Dismiss and Motion to Continue on April 6, 2016. Thereafter, on April 8, 2016, the undersigned granted the Appellee's Motion to Continue and denied Appellee's Second Motion to Dismiss. The undersigned then ordered the Appellant to appear personally at the time and place originally scheduled for hearing on the merits to show cause why his appeal should not be dismissed.

OAC 455:10-3-13, regarding dismissal of appeals, provides:

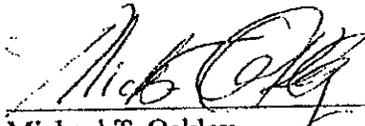
- (a) A petition for appeal, or an issue in a petition for appeal, may be dismissed if:
- (1) it is moot or the appellant has not provided evidence to support the allegations;
 - (2) the appellant fails or refuses to appear for a scheduled meeting;
 - (3) the appellant refuses to accept a settlement offer which affords the relief he or she could reasonably expect if he or she prevailed in the appeal; or
 - (4) it is not timely filed or is not within the Commission's jurisdiction or authority.
- Indeed, the Appellant has thus far failed to provide evidence to support his allegations; however, the undersigned construes that provision to mean that the appeal may be dismissed after the appellant has been given a chance for a hearing. In this instance, Appellee seeks dismissal prior to hearing.

In addition, OAC 455:10-3-19. Sanctions, states:

"The Commissioners, Executive Director or a presiding official may assess sanctions for failure to comply with notice requirements, time schedules, directives or orders. Such sanctions may include, but are not limited to, dismissal of appeals, denial of relief, or costs of the action, as may be warranted."

The undersigned finds that the Appellant has failed to prosecute his own appeal. He failed to cooperate with the Appellee and the Commission by his failure to furnish witness and exhibit lists as ordered. Further, the Appellant failed to provide a telephone number where he could be contacted or respond to emails from the Commission. Finally, he has failed to appear at a hearing in his case.

The Appellant had adequate notice of the Order to Show Cause, as it was set for the exact time and place as the hearing on the merits. The Appellant's failure to appear and show cause why his appeal should not be dismissed and his failure to follow directives are sufficient grounds for dismissal under OAC 455:10-3-13 and OAC 455:10-3-19. This appeal is therefore DISMISSED.



Michael T. Oakley
Administrative Law Judge