

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TOMMY L. BROWN,	)	
	)	
Complainant,	)	CASE 14146-U-98-3508
	)	
vs.	)	DECISION 6592-A - PECB
	)	
KING COUNTY,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
	)	
	)	

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The complainant did not make an appearance at the hearing in this matter.

Alex E. Golan, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On September 18, 1998, Tommy L. Brown filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that King County (employer) discharged him in reprisal for his processing of a grievance that resulted in his reinstatement from a previous discharge. Brown further alleged that the employer discriminated against him for filing charges.

By an order issued under WAC 391-45-110 on February 8, 1999, the "discrimination for filing charges" allegation was dismissed.<sup>1</sup> The

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<sup>1</sup> King County, Decision 6592 (PECB, 1999). Brown failed to respond to a deficiency notice which informed him that his claim of discrimination for filing charges would fail unless he provided facts sufficient to state a cause of action for unfair labor practice proceedings. Nothing further was received from Brown.

employer was directed to answer the allegations of interference and discrimination, and they were referred to Examiner Frederick J. Rosenberry for further proceedings under Chapter 391-45 WAC.

An order dismissing the interference and discrimination allegations is now appropriate, because neither Brown nor the person he listed on the complaint form as his representative appeared at the evidentiary hearing scheduled for this matter.

#### BACKGROUND

Initially, a hearing in this matter was scheduled for April 21, 1999. The employer filed its answer on March 1, 1999, denying the material allegations of the complaint.

On April 16, 1998, the employer and Brown's representatives requested a continuance to allow them additional time to resolve the dispute. They advised the Examiner that Brown had been reinstated through a grievance processed under the applicable collective bargaining agreement, and that the parties were attempting to negotiate a resolution to the discrimination claim. The Examiner offered the parties a structured settlement procedure to be conducted under WAC 391-45-260(1), which is titled "Settlement Conference". On May 14, 1999, a member of the Commission staff was assigned to facilitate the settlement discussions.

The employer advised the settlement facilitator that it desired to meet with Brown and his representative before convening a settlement conference, and that was acceptable to Brown's representative. When the settlement facilitator inquired about the parties' progress, on June 8 and August 6, 1999, he was advised that Brown

and his representative had canceled meetings with the employer a few days before they were to occur.

Accordingly, it appearing the settlement was not likely, an amended notice of hearing was issued on August 24, 1999, setting the hearing to be held at the Commission's Kirkland office, beginning at 9:00 a.m. on Friday, October 15, 1999. Conforming to standard agency procedure, that notice of hearing was served on both Brown and on his representative, at the addresses listed on the Commission's docket records.

The employer presented itself at the Commission's Kirkland office on October 15, 1999, but neither Brown nor anybody representing him appeared at the time set for the hearing. The Examiner waited until 9:40 a.m. to convene the hearing, and then noted on the record that neither an appearance nor a request for a continuance had been made by or on behalf of Brown. The employer entered an appearance, and it offered exhibits establishing that: (1) the discharge of Brown which was the subject of this proceeding had been reversed; (2) that Brown was reinstated and made whole on December 22, 1998; and (3) that Brown resigned his employment on July 27, 1999. Those documents were admitted in evidence.

In reviewing the documents offered by the employer, the Examiner noted that Brown's resignation form showed the same street address as was listed in the Commission's docket records, but a different apartment number. The Examiner attempted, without success, to contact Brown by telephone.

The Examiner next contacted the person listed on the complaint form as Brown's consultant, by telephone. The Examiner's conversation with Jackson is summarized as follows:

- Jackson commented that he could not say whether he still represented Brown, because neither Brown nor an answering machine responded when Jackson attempted to telephone Brown three weeks before the hearing date;
- Jackson acknowledged that he had received the amended notice of hearing, but could not state whether Brown had received it;
- Jackson could not verify whether the address listed for Brown on the Commission's docket records was still accurate, and
- Jackson acknowledged that he had not informed the Commission about any change in his status as representative of Brown.

The employer moved for dismissal of the complaint. The Examiner declined to make an immediate ruling on that motion.

#### DISCUSSION

The person filing a complaint charging unfair labor practices with the Commission bears the burden of prosecuting the complaint, and the burden of proof. WAC 391-45-270. In Town of Steilacoom, Decision 6109 (PECB, 1997) the Examiner dismissed an unfair labor practice complaint where the complainant's representative neither appeared at the hearing nor requested a continuance.<sup>2</sup>

A complainant is also responsible for informing the Commission of address and representation changes. In City of Seattle, Decision

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<sup>2</sup> When contacted at his residence, the complainant's representative in Steilacoom claimed he was ill. Those facts were more favorable to that complainant than the situation here, where the Examiner was unable to contact Brown, and no extenuating circumstances have been offered.

4556-A (PECB, 1994) the filing of an untimely appeal was not excused because of delay in complainant's receipt of order, where the complainant had failed to inform the Commission of her current address. If Brown has moved his residence or terminated his representative since filing his complaint, he failed to send that information to the Commission.

Brown has not complied with his responsibilities: He failed to appear personally at the hearing; his indicated representative did not appear at the hearing on his behalf; neither Brown nor his representative asked for a continuance of the hearing. The Examiner concludes that Brown has abandoned his complaint. See, City of Seattle, Decision 6702 (PECB, 1999).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED.

Issued at Olympia, Washington, this 11th day of April, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



FREDERICK J. ROSENBERRY, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC-391-45-350.