

**State of Connecticut
Office of Public Hearings
c/o Commission on Human Rights and Opportunities**

Michael Noon : OPH/WBR 2011-167

v.

Connecticut Department of Corrections : May 10, 2012

Order of dismissal of the complaint

Pursuant to Section 4-61dd-15 (c) of the Regulations of Connecticut State Agencies (the regulations), the undersigned presiding human rights referee on her own motion hereby dismisses Michael Noon's whistleblower complaint (the complainant) (the complaint) against the Connecticut Department of Corrections (the respondent) due to his failure to attend the lawfully noticed initial hearing conference without just cause.

Discussion

On April 4, 2012 the Office of Public Hearings (OPH) issued a Notice of Contested Case Proceeding, Initial Conference and Hearing (the notice) with respect to the whistleblower retaliation complaint against respondent that complainant filed on July 25, 2011 pursuant to Connecticut General Statutes § 4-61dd. The notice was sent to the parties by certified mail, return receipt requested. Complainant's signed acknowledgment of receipt was received at OPH on April 10, 2012; respondent's on April 15th.

Section II A of the notice, captioned "The Initial Conference," informs the parties that the purpose of the conference is to establish procedures and set the schedule for processing the complaint. It gives them the option to participate in the initial conference telephonically, provides procedures pursuant to which they may do so and sets the date and time for that conference. In this case the parties were notified that the initial hearing conference would be held on May 2, 2012 at 10:00 a.m. at 25 Sigourney Street, Hartford, Connecticut.

Subsection II C of the notice, "Duty to Appear at Duly Noticed Hearings and Conference" indicates that attendance at the duly noticed initial hearing conference is mandatory and alerts the parties to the consequences of failing to appear absent a showing of good cause. For complainants, the notice warns, such a failure can result in dismissal of the complaint. This warning is specifically reiterated in section IX of the notice, "Default and Dismissal" which also references the regulations at §4-61dd-15, the

section pursuant to which a presiding referee is authorized to issue such orders, either upon motion of a party or sua sponte.

Taken as a whole, the notice is comprehensive in describing the administrative process pursuant to which OPH adjudicates complaints, and explicit in describing the parties' obligations to comply with that process. The following sections of the notice are of particular relevance: section V which sets forth the procedure for requesting continuances, section VI describing filing and service requirements, including certification of service, and section VII explaining the procedure for filing a motion to appear at a conference telephonically.

On April 17, 2012, Assistant Attorney General Nancy A. Brouillet filed an appearance, an answer and eight special defenses to the complaint, along with the required certification of service on complainant.

At 10:00 a.m. on May 2, 2012, I convened the duly noticed initial hearing conference. Respondent, through its staff attorney, Nancy B. Canney as well as assistant attorney general Brouillet, attended. Complainant did not. After providing approximately forty-five (45) minutes to account for unforeseen circumstances that might have resulted in complainant's delay, I adjourned the conference.

Given the policy in favor of having cases heard on their merits, I refrained from immediately dismissing the complaint, choosing to give complainant latitude, though unrequired, and a reasonable amount of time within which to file an explanatory pleading referencing some good cause for his failure to appear, and to request a continuance.

Noting both that sufficient time, generously given, has elapsed, and that in order for our processes to work as intended parties cannot be allowed to decide for themselves what hearings to attend or which procedures to follow without incurring adverse consequences, notice of which was adequately and repeatedly provided, I have hereby dismissed the complaint.

It is so ordered this 10th day of May 2012.

Ellen Bromley
Presiding Human Rights Referee

cc.

Michael Noon
Nancy A. Brouillet, AAG-via fax only
Nancy C. Canney, Esq.-via fax only