

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO. CRT 8537-01
DCR DOCKET NO. EM25HL-42220-E
DECIDED: March 31, 2003

JOSEPH BUTTIGLIERI,)
)
 Complainant,)
)
 v.)
)
 NEW JERSEY HIGHWAY)
 AUTHORITY,)
)
 Respondent.)

ADMINISTRATIVE ACTION
FINDINGS, DETERMINATION
AND ORDER

APPEARANCES:

Joseph A. Buttiglieri, complainant, pro se

Maurice J. Nelligan, Jr., Esq. and John D. Miller, III, Esq., for the respondent
(Apruzzese, McDermott, Mastro & Murphy, attorneys)

BY THE DIRECTOR:

I. INTRODUCTION

This matter is before the New Jersey Division on Civil Rights (Division) pursuant to a verified complaint filed by the complainant, Joseph A. Buttiglieri (Complainant), alleging that the respondent, New Jersey Highway Authority (Respondent), discriminated against him on the basis of his physical handicap, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

On February 20, 2003, the Honorable Robert S. Miller, Administrative Law Judge (ALJ), issued an initial decision dismissing Complainant's complaint. The ALJ based his determination on Complainant's failure to comply with an order requiring him to respond to Respondent's discovery requests. Complainant has neither filed exceptions to the ALJ's initial decision nor

contacted the Division for an extension of time for filing exceptions. Based on his independent review of the record, the Director adopts the ALJ's conclusion and dismisses the verified complaint in this matter.

II. PROCEDURAL HISTORY

On February 3, 1997, Complainant filed a verified complaint with the Division alleging that Respondent discriminated against him on the basis of his physical handicap in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49. Specifically, Complainant alleged that Respondent refused to hire him to a permanent Toll Collector, Class I position because of his physical handicap, post-surgical removal of a herniated disc. Respondent filed an answer to the verified complaint denying Complainant's allegations.

On June 9, 1999, at the completion of its investigation, the Division issued a finding of probable cause crediting Complainant's allegation that Respondent unlawfully discriminated against him on the basis of his physical handicap. After attempts to conciliate this dispute failed, the Division transmitted the matter to the Office of Administrative Law (OAL) for a hearing as a contested case. On February 20, 2003, the ALJ issued an initial decision¹ dismissing the complaint. The Director's final determination in this matter is due on April 11, 2003.

III. THE ALJ'S DECISION

Procedural History and Findings of Fact

The ALJ set forth the following detailed factual and procedural history which formed the basis for his decision to dismiss this matter. This case was transmitted to the OAL for a hearing on November 20, 2001. On January 28, 2002, Respondent served 23 interrogatories and a demand for production of documents on Complainant and the Division. On January 30, 2002, the ALJ issued a prehearing order establishing a deadline of June 1, 2002 for completion of discovery, and setting a date for plenary hearing. By letter dated June 10, 2002, the Division requested that the

¹Hereinafter, "ID" shall refer to the written initial decision of the ALJ.

ALJ return this matter to the Division for closure, pursuant to N.J.A.C. 1:1-3.3(a), “because Complainant has failed to cooperate in the prosecution of this matter.” Four days later, the Division advised the ALJ that Complainant had just contacted it and, therefore, the Division was requesting that the matter remain with the OAL for prosecution (ID 3). On June 21, 2002, the ALJ modified the original prehearing order, extending discovery until August 31, 2002. By notice dated June 25, 2002, the OAL scheduled a plenary hearing in this case for January 6, 7, and 8, 2003.

On August 14, 2002, Respondent served seven supplemental interrogatories on Complainant. By letter dated August 29, 2002, the Deputy Attorney General representing the Division in this matter advised Respondent and the ALJ that Complainant had decided that he did not want to rely on the Division of Law to prosecute this case, and that pursuant to N.J.S.A. 10:5-16, he was attempting to obtain private counsel. Subsequently, Respondent inquired about the status of Complainant’s efforts to obtain private counsel and its outstanding discovery. On October 8, 2002, the Deputy Attorney General confirmed that the Division of Law would not be prosecuting Complainant’s case and that she believed he was still seeking counsel. As of the date of the initial decision, Complainant had failed to provide responses to any of Respondent’s discovery requests, and had failed also to advise the ALJ whether he had obtained counsel.

On November 21, 2002, Respondent filed a motion to dismiss the complaint or, alternatively, for summary decision based on Complainant’s failure to respond to its discovery. The return date of the motion was December 16, 2002. No answering papers or brief were filed by or on behalf of Complainant and he failed to seek an extension of time or otherwise communicate with the ALJ.

By letter dated January 2, 2003, the ALJ gave Complainant a final opportunity to answer Respondent’s interrogatories and to comply with its document request, and the hearing scheduled for January 6, 2003 was adjourned (ID 4). Also on January 2, 2003, the ALJ issued an order requiring Complainant to respond to Respondent’s outstanding discovery requests by January 31, 2003. In a letter dated February 6, 2003, Respondent advised the ALJ that Complainant had failed to comply with the ALJ’s order compelling discovery (ID 5).

The ALJ found that Complainant has been given numerous opportunities, including several extensions of time, to respond to Respondent's "reasonable discovery requests," and that Complainant has failed to provide even minimal discovery or documentation. Ibid. The ALJ noted that, as a result of Complainant's failure or refusal to comply with Respondent's discovery requests, this matter has been scheduled for hearing and adjourned on three separate occasions (ID 4). Moreover, the ALJ found that Complainant's failure to comply with Respondent's discovery requests and his disregard of the ALJ's January 2, 2003 order were willful and deliberate, and have caused Respondent to be severely prejudiced (ID 5).

Legal Conclusions

The ALJ noted that the Uniform Administrative Procedure Rules permit a judge to dismiss an action for unreasonable failure to comply with an order of the judge, N.J.A.C. 1:1-14.14, and that the Supreme Court has approved of such sanctions as essential to the expeditious conduct of administrative hearings, In re Administrative Procedure Rules, 90 N.J. 85, 106 (1982). Citing Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc., 139 N.J. 499 (1995), the ALJ concluded that, under exceptional circumstances, the willful and deliberate disregard of discovery orders may warrant the dismissal with prejudice of a plaintiff's complaint (ID 6). The ALJ further determined that such exceptional circumstances exist in this case. Thus, based on this record, the ALJ granted Respondent's motion and ordered Complainant's claim be dismissed. Ibid.

IV. THE DIRECTOR'S DECISION

The Supreme Court has upheld rules promulgated by the OAL that are essential to the proper conduct of administrative hearings in contested cases. In re Uniform Administrative Procedures, supra, 90 N.J. at 106. Such rules necessarily involve empowering judges to control the conduct of the proceedings by setting reasonable time schedules, and imposing sanctions for a party's non-compliance. Ibid. Thus, an administrative law judge may impose certain sanctions, including dismissing an action, for a party's unreasonable failure to comply with any order. N.J.A.C. 1:1-14.4.

Discovery rules in particular are designed “to further the public policies of expeditious handling of cases, avoiding stale evidence, and providing uniformity, predictability, and security in the conduct of litigation.” Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc., *supra*, 139 N.J. at 512, quoting Zaccardi v. Becker, 88 N.J. 245, 252 (1982). In order to be effective, courts must be prepared to impose appropriate sanctions for violations of discovery rules and orders. Olivieri v. Porter Hayden Co., 241 N.J. Super. 381, 387 (App. Div. 1990). Moreover, although the ultimate sanction of dismissal with prejudice is a drastic one and should be imposed sparingly, the Supreme Court has instructed that dismissal is appropriate where a litigant deliberately obstructs full discovery since such misconduct “corrupts one of the fundamental precepts of our trial practice—the assumption by the litigants and the court that all parties have made full disclosure of all relevant evidence in compliance with the discovery rules.” Abtrax Pharmaceuticals, Inc. v. Elkins-Sinn, Inc., *supra*, 139 N.J. at 514, 521.

The record shows that Complainant has consistently refused to reply to Respondent’s discovery requests or otherwise cooperate in the prosecution of his claim. Respondent first served its interrogatories and a demand for production of documents on January 28, 2002. On January 30, 2002, the ALJ issued a prehearing order establishing a deadline for completion of discovery by June 1, 2002, and scheduling hearing dates on August 9, 12, and 13, 2002. Because Complainant did not comply with Respondent’s discovery request, and for a time failed to stay in contact with the Division of Law, the ALJ subsequently modified that order by extending discovery until August 31, 2002, and rescheduling the hearing for January 6, 7 and 8, 2003. On August 14, 2002, Respondent served supplemental interrogatories on Complainant, but he again failed to respond.

On November 21, 2002, Respondent filed a motion to dismiss the verified complaint based on Complainant’s failure to provide discovery. Complainant failed to reply to Respondent’s motion or otherwise contact the ALJ. On January 2, 2003, the ALJ provided Complainant a final opportunity to comply, and issued an order requiring him to answer Respondent’s discovery

demand by January 31, 2003. On February 6, 2003, counsel for Respondent advised the ALJ that Complainant had not complied with the order.

Based on the foregoing, the Director finds sufficient support in the record for the ALJ's recommendation to dismiss Complainant's claim. The record clearly demonstrates that Complainant's failure to comply with Respondent's discovery requests and the ALJ's order compelling discovery were willful and deliberate, and justifies the sanction of dismissal imposed by the ALJ. Therefore, the Director concludes that dismissal of the verified complaint under these circumstances is appropriate under N.J.A.C. 1:14.14, and he adopts the ALJ's decision dismissing the complaint.

V. ORDER

Having given careful consideration to the record, the Director adopts the ALJ's initial decision dated February 20, 2003, and orders that the verified complaint in this matter be dismissed.

DATE: _____

J. FRANK VESPA-PAPALEO, ESQ.
NEW JERSEY DIVISION ON CIVIL RIGHTS