

STATE OF NEW JERSEY
 OFFICE OF THE ATTORNEY GENERAL
 DEPARTMENT OF LAW & PUBLIC SAFETY
 DIVISION ON CIVIL RIGHTS
 OAL DKT. NO. CRT 15896-2013N
 DCR DKT. NO. EM05HB-63666

Nilsa Quesada,)
)
 Complainant,)
)
 v.)
)
 JFK Medical Center,)
)
 Respondent.)

Administrative Action

**FINDINGS, DETERMINATION
 AND ORDER**

APPEARANCES:

Nilsa Quesada, complainant *pro se*.

Dena B. Calo, Esq. (*Genova Burns Giantomasi & Webster*, attorneys) for respondent.

Farng-Yi D. Foo, Deputy Attorney General (*John J. Hoffman, Acting Attorney General of New Jersey*, attorney) monitoring on behalf of the New Jersey Division on Civil Rights.

BY THE DIRECTOR:

The New Jersey Office of Administrative Law (OAL) has returned this matter to the New Jersey Division on Civil Rights (DCR) in accordance with the procedures set forth in N.J.A.C. 1:1-3.3, because Nilsa Quesada (Complainant) failed to appear at a scheduled proceeding before the Honorable Michael Antoniewicz, Administrative Law Judge (ALJ), on May 12, 2014. For the reasons explained below, the Director administratively dismisses this matter.

On February 21, 2013, Complainant filed a verified complaint with the DCR alleging that her former employer, JFK Medical Center (Respondent), discriminated against her based on gender and disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On April 26, 2013, Respondent issued an answer to the complaint, denying all allegations of discrimination. In the midst of DCR's ensuing investigation, Complainant asked that the matter be transmitted to the OAL for a hearing in accordance with N.J.S.A. 10:5-13, N.J.S.A. 52:14B-1 to -21,

and N.J.S.A. 52:14F-1 to -13. DCR complied. The matter was stamped "Received" by the OAL on November 1, 2013.

On December 9, 2013, the ALJ held a telephone prehearing conference and issued a prehearing order the next day. The matter was scheduled for a June 5, 2014 hearing. In a letter dated April 28, 2014, the ALJ notified the parties that he would hold an in-person prehearing conference on May 12, 2014. Complainant failed to appear at that prehearing conference. There is no indication that Complainant ever contacted the OAL to explain her failure to appear.

On May 14, 2013, the OAL announced that it was returning the matter to DCR. It notified Complainant that she could provide DCR with a written explanation for her failure to appear within thirteen days.

After the case was returned, DCR learned that Complainant's current mailing address was different than the address on the OAL service list. In a June 17, 2014 letter, DCR notified Complainant that she could provide DCR with a written explanation for her failure to appear within thirteen days, and enclosed a copy of the May 14, 2014 notice from OAL. As of the date of this Order, Complainant has not submitted an explanation for her failure to appear at the prehearing conference.

The New Jersey Legislature has authorized the OAL to regulate the conduct of contested cases by developing and administering "uniform standards and procedures." See N.J.S.A. 52:14F-5(e), (g). See also, In Re Uniform Admin. Proc. Rules, 90 N.J. 85 (1982); In Re Shelton College, 109 N.J. Super. 480 (App. Div. 1970). Under the OAL's enabling legislation, N.J.S.A. 52:14F-1 to-13, and the Uniform Administrative Procedure Rules, an ALJ has certain powers designed to facilitate the expeditious and just resolution of contested cases. See, e.g., N.J.A.C. 1:1 - 14.1 to -14.14. See also In Re Uniform Admin. Proc. Rules, supra, at 106. That includes the power to return a matter to the transmitting agency if a party fails to appear at a scheduled OAL proceeding. N.J.A.C. 1:1-14.4(a) provides:

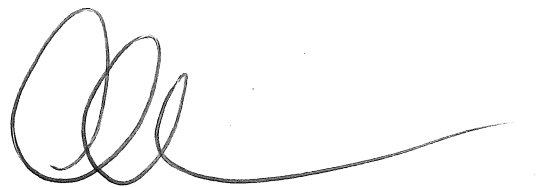
If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall . . . direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

Upon returning the matter to the transmitting agency, the OAL Clerk must notify the parties of the non-appearing party's right to submit a written explanation to the head of the transmitting agency within thirteen days of the Clerk's notice. N.J.A.C. 1:1-3.3 (c). The transmitting agency, in turn, must determine whether any explanation for a party's failure to appear warrants re-transmitting the matter to OAL for a hearing. N.J.A.C. 1:1-3.3(b), N.J.A.C. 1:1-14.4(a).

Here, Complainant failed to appear at a May 12, 2014 conference after the ALJ sent her a letter notifying her of the conference. On May 14, 2014, the OAL Clerk notified the parties of the Complainant's right to submit a written explanation to the DCR Director within thirteen days. Accordingly, the OAL properly returned this matter to the DCR. Despite a follow-up notice from DCR, Complainant has not submitted an explanation for her failure to appear or requested that this matter be returned to OAL for a hearing. Because there is nothing in the record to warrant re-transmitting this matter for a hearing, the Director hereby administratively dismisses Complainant's verified complaint.

DATE:

8-4-14



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS