

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

KATHLEEN SUITER, Complainant,)	
)	
and)	CASE NO. 8446
)	
MARION INDEPENDENT SCHOOL DISTRICT,)	
Respondent,.)	
)	

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Proposed Decision and Order

Complainant Kathleen Suiter filed this prohibited practice complaint October 26, 2011. Ms. Suiter alleged that respondent Marion Independent School District violated Iowa Code sections 20.9(2)(a), (c) and (d). This dispute centers on a teaching performance review. Ms. Suiter’s complaint asks the PER Board to expunge the performance review from her file and “such other relief that would place [her] status quo ante.”

On February 8, 2012, the School District filed its answer denying it committed a prohibited practice.

On January 8, 2013, the undersigned administrative law judge was assigned as hearing officer. Pursuant to notice this ALJ held a contested case hearing on February 22, 2013, at the City of Marion Public Library.

Attorney Brett Nitzsche represented the School District; Ms. Suiter, who was pro se, failed to appear.

The hearing was scheduled to begin at 10:30 a.m. Usually this ALJ would wait up to fifteen minutes for a party who arrives late and is unavoidably

delayed. In this case, because of recent inclement weather, this ALJ extended the start of the hearing until 11:08 a.m. Before going on the record this ALJ checked his email and telephone messages to see if Ms. Suiter had left a message. This ALJ also called the PER Board office in Des Moines to see if Ms. Suiter had called there. Finally, this ALJ checked with the librarian at the entrance desk to determine if Ms. Suiter had called the library with any message. In sum, Ms. Suiter had called no one.

When the hearing began, this ALJ made a brief record regarding the circumstance of Ms. Suiter's failure to appear.

Next, counsel for the School District asked this ALJ to enter a default judgment against Ms. Suiter and, in the alternative, affirmatively find that Ms. Suiter failed to meet her burden of proof and dismiss this prohibited practice complaint (PPC).

FINDINGS OF FACT

1. Ms. Suiter had notice of this contested case hearing both by regular mail and by email. Nevertheless, she failed to appear and made no effort to inform the School District or this ALJ of her intent or reason not to appear.

2. The School District's answer denied all of Ms. Suiter's allegations.

3. There is no evidence in the record to support Ms. Suiter's complaint.

CONCLUSIONS OF LAW

Even though Ms. Suiter had notice of the contested case hearing, she neither appeared, nor made any effort to ask for a continuance, nor explained her absence.

PER Board Rule 621—2.3(1) provides:

If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

The School District's attorney asked this ALJ to proceed with the hearing and find that Ms. Suiter failed to meet her burden of proof. That is exactly what this ALJ concludes is appropriate under these circumstances: this ALJ finds that Ms. Suiter has failed to meet her burden of proof.

There is one final issue to address. A few days prior to the hearing, both by email and regular mail, Ms. Suiter sent the PER Board a document she captioned: "Answer to Ordered Hearing Prohibited Practice Complaint." The gist of this document asked this ALJ to find that because the School District had filed its answer more than ten days after she filed her PPC, that the PER Board should deem her allegations admitted. In that event, Ms. Suiter further contended she should prevail without the need for a hearing.

In response to Ms. Suiter's email, this ALJ informed Ms. Suiter that this ALJ would take up her request at the upcoming hearing. Although Ms. Suiter did not subsequently attend the hearing; nevertheless, this ALJ will address briefly this issue.

The pertinent PER Board rules provide:

621–3.5(20) Answer to complaint.

3.5(1) *Filing and service.* Within ten days of service of a complaint, the respondent(s) shall file with the board a written answer to the complaint, and cause a copy to be delivered to the complainant by ordinary mail to the address set forth in the complaint. The answer shall be signed by the respondent(s) or the designated representative of the respondent(s).

* * * *

3.5(4) *Admission by failure to answer.* If the respondent fails to file a timely answer, such failure may be deemed by the board to constitute an admission of the material facts alleged in the complaint and a waiver by the respondent of a hearing.

Initially, this ALJ notes that the “admission” language contained in Rule 3.5 (4) is permissive, not mandatory. Next, Rule 3.5(4) was enacted to prevent delays in the adjudication of issues presented to this agency, and not to preclude the PER Board from hearing a case on its merits. *AFSCME/Iowa Council 61, On Behalf of Charles Lex, and State of Iowa (Iowa Dept. of Defense, Iowa Dept. of Personnel)*, PER Brd. 5011 at pp. 11-12 (Jan. 8, 1995). Finally, the PER Board has consistently held:

The application of subrule 3.5(4) is within the Board's discretion, which will not be exercised on a complainant's motion in the absence of an allegation and showing of prejudice.

Iowa Central Community College, and Iowa Central Community College Classified Employees Assoc., PER Brd. 6051 at p.3 (Sep. 10, 1999) (citations omitted).

In this case the School Board filed its answer on February 9, 2012, more than a year prior to the instant hearing on February 22, 2013. This ALJ

cannot perceive what prejudice Ms. Suiter can claim under these circumstances. What is more, she has neither asserted any prejudice nor presented any evidence of prejudice. Accordingly, Ms. Suiter's request to have this ALJ deem her allegations admitted is overruled.

ORDER

For these reasons, this ALJ sustains the School Board's motion. Ms. Suiter's complaint is DISMISSED.

DATED at Des Moines, Iowa, this 26th day of February, 2013.



Robert D. Wilson
Robert D. Wilson
Administrative Law Judge

Original filed

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