

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. AB OSAB 97-019
NANCY L. BURGESS,)	(Discrimination Complaint/)
Complainant,)	PACIFIC GRAND AOA/Burgess/
)	97-005)
vs.)	
)	
PACIFIC GRAND AOA,)	
Respondent,)	
)	
and)	
)	
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
Appellee.)	
_____)	

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DECISION AND ORDER

This Occupational Safety and Health case is before the Board on appeal by NANCY L. BURGESS ("Complainant") from the April 29, 1997 decision of the DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS ("Director"). In that decision, the Director determined that there was insufficient evidence to sustain Complainant's discrimination complaint against PACIFIC GRAND AOA ("Respondent").

Complainant appealed the April 29, 1997 decision on May 14, 1997.

On May 26, 1998, Respondent filed a motion to dismiss Complainant's appeal.

For the reasons stated below, we grant Respondent's motion to dismiss.

FINDINGS OF FACT

1. On May 14, 1997, Complainant appealed the Director's April 29, 1997 decision.

2. The Board issued a pre-trial order on September 5, 1997, that established the various discovery and witness identification deadlines.

3. Trial in the above-entitled matter was scheduled for July 10, 1998.

4. Both Complainant and Respondent were represented by legal counsel on appeal.

5. Pursuant to the Board's pre-trial order, the Director and Respondent timely filed their unnamed and live witness identification lists. Complainant did not file any unnamed or live witness identification lists.

6. On June 12, 1998, Complainant's counsel filed a motion to withdraw as counsel. A hearing on the motion was scheduled for June 19, 1998.

7. Meanwhile, Complainant's deposition was scheduled for June 18, 1998. At Complainant's request, the deposition was rescheduled to June 24, 1998. Complainant, via her counsel, confirmed the date, time, and place of the deposition in a letter dated June 17, 1998.

8. On June 19, 1998, Complainant's counsel withdrew his motion to withdraw as counsel.

9. By letter dated June 22, 1998, Complainant confirmed the date, time, and place of the deposition with her

attorney. A copy of the letter was sent to Respondent's attorney's office, via facsimile transmission.

10. On June 22, 1998 and June 23, 1998, Complainant, on her own, called Respondent's attorney's office, seeking confirmation of the date, time, and place of the deposition. Respondent's attorney declined to speak with Complainant directly, but did confirm the date, time, and place of the deposition with a June 23, 1998 letter to Complainant's attorney, via facsimile transmission.

11. On June 23, 1998, Respondent's attorney received a handwritten letter from Complainant via facsimile transmission. The letter indicated that Complainant had discharged her attorney and was no longer represented. Complainant advised Respondent's attorney that a new attorney would be contacting her. Complainant did not request a continuance of the deposition and did not otherwise indicate in the letter that she would not appear for the June 24, 1998 deposition.

12. Respondent's attorney sent a copy of the June 23, 1998 letter to Complainant's attorney via facsimile transmission. Complainant's attorney was apparently unaware that Complainant had discharged him.

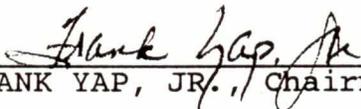
13. On June 24, 1998, Complainant failed to appear for her deposition. Complainant's former counsel and Respondent's counsel entered their appearances for the deposition. Complainant's former counsel requested a continuance of the deposition until Complainant secured new counsel.

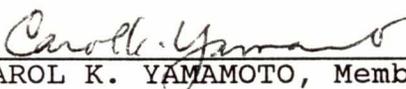
14. We find that Complainant has not complied with the Board's pre-trial order, has prevented or frustrated Respondent's efforts to obtain discovery in this case, and has failed to prosecute her appeal.

CONCLUSIONS OF LAW

Based on the foregoing, and pursuant to §12-47-22, §12-47-31 and §12-47-48 of the Board's Rules of Practice and Procedure, we conclude that Complainant's appeal of the Director's decision shall be dismissed.

Dated: Honolulu, Hawaii, JUL 01 1998.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Nancy L. Burgess
Complainant

Melanie S. Mito, Esq.,
for Respondent

J. Gerard Lam, Esq.,
for Appellee

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

