

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Mary Blair,

Complainant,

vs.

United Hospitals, Inc.,

Respondent.

ORDER DENYING COMPLAINANT'S  
MOTION FOR SANCTIONS

The above-captioned matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice of and Order for Hearing issued by the Chief Administrative Law Judge on November 9, 1995, and the Complainant's Motion for Sanctions filed in connection with her Motion to Quash. The record with respect to the motion closed on October 1, 1996.

Donald E. Horton and Michelle M. Lore, Attorneys at Law, Horton and Associates, 4930 West 77th Street, Suite 210, Minneapolis, Minnesota 55435-4804, appeared on behalf of the Complainant, Mary Blair. Penelope J. Phillips, Attorney at Law, Felhaber, Larson, Fenlon & Vogt, P.A., 4200 First Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55402-4302, appeared on behalf of the Respondent, United Hospitals, Inc.

Based upon all of the records, files, and proceedings herein, IT IS HEREBY ORDERED that the Complainant's Motion for Sanctions is DENIED.

Dated this \_\_\_\_\_ day of October, 1996.

\_\_\_\_\_  
BARBARA L. NEILSON  
Administrative Law Judge

MEMORANDUM

By letter dated August 23, 1996, the Respondent requested that subpoenas be issued to Pharmacy Corporation of America, the Complainant's current full-time employer, and Lakeview Memorial Hospital, where the Complainant has worked since April, 1992, on a part-time or casual basis. In the letter, a legal assistant to counsel for the Respondent indicated that the records were necessary to enable the Respondent to calculate and/or

verify the Complainant's wage losses and had been requested from counsel for the Complainant but had not been produced to date. Two subpoenas for the production of documents were issued by the Chief Administrative Law Judge on August 28, 1996. The subpoenas directed Pharmacy Corporation of America to provide pharmacy personnel schedules and payroll records for the Complainant from July, 1994, through August, 1996, and Lakeview Memorial Hospital to provide pharmacy personnel schedules and payroll records for the Complainant from April, 1992, to the present. The subpoenas required that the documents be produced for inspection and copying by September 3, 1996.

By letter dated September 19, 1996, counsel for the Complainant notified the Administrative Law Judge and counsel for the Respondent that she objected to the subpoenas and that she would be filing a Motion to Quash seeking the imposition of sanctions under Rule 11. By letter dated September 24, 1996, the Administrative Law Judge directed counsel for the Respondent to send any documents received in response to the subpoenas to the Office of Administrative Hearings where they would be held pending decision of the anticipated Motion to Quash. The Complainant filed a Motion to Quash on September 27, 1996, in which she requested that she be awarded costs and attorney's fees and that sanctions be imposed against the Respondent for acting in bad faith. She contended that, despite a discussion during the Complainant's deposition of the issue, counsel for the Respondent did not contact counsel for the Complainant to attempt to obtain the requested records at any time before seeking the subpoenas. The Complainant also pointed out that the Respondent's subpoena request came long after the close of discovery on June 17, 1996. By letter dated September 30, 1996, the Respondent voluntarily withdrew the subpoenas issued to Lakeview Memorial Hospital and Pharmacy Corporation of America. The Complainant then withdrew her Motion to Quash but not her Motion for Sanctions.

Administrative Law Judges presiding in contested case hearings have only limited authority to impose sanctions, and do not have contempt power or anything approaching Rule 11 powers. The Minnesota Human Rights Act and the rules of the Office of Administrative Hearings authorize the imposition of sanctions if a party in a Human Rights proceeding has intentionally and frivolously delayed any precomplaint or hearing proceedings. See Minn. Stat. § 363.06, subd. 4(8) (1994) and Minn. R. 1400.7050 (1995). Pursuant to the rules, intentional and frivolous delay occurs when a party deliberately delays proceedings for immaterial, meritless, trivial, or unjustifiable reasons. *Id.*, subp. 1(E). Sanctions may include issuance of an order requiring the party to cease and desist from the acts; compelling cooperation during the remainder of the case; dismissing any or all charges or defenses to charges; foreclosing the testimony of specified witnesses or the presentation of evidence on specified issues; requiring that the delay will be taken into consideration in awarding damages or attorney's fees; or imposing any sanctions available in civil cases in the district courts of Minnesota.

Service of the subpoenas by the Respondent in this case had the unfortunate effect of making the Complainant's current employers aware of her pending lawsuit against a prior employer. Counsel for the Complainant made her objection to such disclosure known at the time of the Complainant's deposition, acknowledged that the

Respondent may be entitled to the records, and indicated that she would work with Respondent's counsel in obtaining the records without having to notify the Complainant's current employers about the litigation. Blair Deposition at 50-53. Under these circumstances, counsel for the Respondent would have been well advised to discuss the matter with the Complainant prior to seeking the subpoenas to make sure that cooperative attempts to obtain the requested information had been exhausted. It also would have been appropriate for the Respondent to file a motion to extend the discovery deadline rather than requesting subpoenas to obtain information that should have been obtained during discovery. There has been no showing, however, that the Respondent intentionally or frivolously delayed these proceedings by virtue of the submission of these subpoena requests. Accordingly, the Complainant's Motion for Sanctions has been denied.

B.L.N.