
UTAH LABOR COMMISSION

MICHAEL JOSEPH CHRISTMAN,

Petitioner,

vs.

CONSOLIDATION COAL,

Respondent.

**ORDER SETTING ASIDE
DISMISSAL**

ORDER OF REMAND

Case No. 8-07-0362

Michael Joseph Christman asks the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of his claim against Consolidation Coal ("Consol") under the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-5-107(11) of the Utah Antidiscrimination Act.

BACKGROUND AND ISSUE PRESENTED

Mr. Christman filed a complaint with the Utah Antidiscrimination and Labor Division ("UALD") alleging that during his employment with Consol he was discriminated against based on his disability. After an investigation, UALD dismissed Mr. Christman's complaint. Mr. Christman appealed that decision and requested an evidentiary hearing, as permitted under the Utah Antidiscrimination Act.

According to the scheduling order for this matter, the "petitioner's statement" was due by October 13, 2008. On October 16, 2008, Consol filed a request for dismissal based on Mr. Christman's failure to file his statement by the deadline. October 21, 2008, Mr. Christman called the Labor Commission to inquire about Consol's request to dismiss his case and contended he had faxed a response. On October 28, 2008, due to Mr. Christman's failure to submit a statement, Judge Marlowe dismissed Mr. Christman's claim with prejudice.

On October 28, 2008, Mr. Christman faxed a letter to Judge Marlowe explaining how, as a primary caregiver to his mother, he had not been able to pursue his claim due to his mother's illness and recent death on October 20, 2008. He advised he still wanted to pursue his claim and included a copy of his UALD questionnaire in which he explained his allegations against Consol. On November 10, 2008, Mr. Christman filed a motion for review, asking that, under the circumstances, his claim be reinstated.

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DISCUSSION AND CONCLUSION OF LAW

Although Mr. Christman failed to get his statement into the Commission before the October 13, 2008, filing date, Mr. Christman immediately attempted to contact the Commission to correct the deficiency upon discovery of his mistake. Taking into consideration the personal factors that also took place during the month of October 2008, the Commissioner finds that, under the circumstances of this case, there is good cause for reinstating Mr. Christman's claim. However, Mr. Christman is advised that failure to further abide by deadlines established in the scheduling order may result in later dismissal of his claim.

ORDER

The Commissioner hereby sets aside the dismissal of Mr. Christman's claim and remands it to Judge Marlowe for further adjudicate proceedings. It is so ordered.

Dated this 26th day of March, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.