
UTAH LABOR COMMISSION

MICHAEL FRANCIS NIEMI,

Petitioner,

vs.

SOS STAFFING,

Respondent.

**ORDER DISMISSING
MOTION FOR REVIEW**

ORDER OF REMAND

Case No. 8-07-0503

Michael Francis Niemi asks the Utah Labor Commissioner to review Administrative Law Judge La Jeunesse’s denial of Mr. Niemi’s motion to compel discovery responses in his claim against SOS Staffing (“SOS”) under the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commissioner 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. Niemi filed a complaint with the Utah Antidiscrimination and Labor Division (“UALD”) alleging that SOS discriminated against him based on his disability and in retaliation for complaining about the alleged discriminatory conduct. After an investigation, UALD dismissed Mr. Niemi’s complaint. Mr. Niemi then appealed that decision and requested an evidentiary hearing with the Adjudication Division, as permitted under the Utah Antidiscrimination Act.

The matter was assigned to Judge La Jeunesse for adjudication and, shortly thereafter, a scheduling order was issued. According to the scheduling order, the discovery cut-off date was set for September 30, 2008. On December 15, 2008, Mr. Niemi filed a motion to compel discovery responses from SOS. Judge La Jeunesse concluded that Mr. Niemi’s motion was untimely and, absent good cause shown, denied the motion.

Mr. Niemi has now filed the present interlocutory motion for review, asking the Labor Commissioner to review his case and Judge La Jeunesse’s denial of his motion to compel.

DISCUSSION AND CONCLUSION OF LAW

The threshold question before the Commission is whether it should engage in interlocutory review of Judge La Jeunesse’s preliminary ruling regarding Mr. Niemi’s discovery request. Interlocutory review of Administrative Law Judges’ preliminary rulings can have the effect of disrupting the adjudicatory process, diminishing the ALJs’ ability to manage hearings, and delaying the final resolution of claims. Furthermore, the issues raised in interlocutory motions for review

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may be satisfactorily resolved or rendered moot by subsequent events. In such cases, consideration of an interlocutory motion for review serves no useful purpose, but diverts resources from other cases that are ready for Commission review. In light of these considerations, the Commissioner will engage in interlocutory review only if the advantages from deciding the issues presented will clearly outweigh the interruption of the hearing process and the other costs of piecemeal review.¹ As a practical matter, interlocutory review is appropriate only in unusual cases.

The Commissioner does not view this matter as the type of “unusual case” that warrants interlocutory review. Consequently, the Commissioner declines to further consider the arguments presented until the adjudicative process is finished and remands the matter to Judge La Jeunesse to complete the adjudicative process.

ORDER

The Commissioner remands the matter to Judge La Jeunesse for completion of the adjudicative process. It is so ordered.

Dated this 30th day of March, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

¹ Charles H. Koch, Jr., Administrative Law and Practice (1985), § 6.75

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Any party may ask the Labor Commissioner to reconsider this Order. Any such request for reconsideration must be received by the Labor Commissioner 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.