

STATE OF WISCONSIN
TAX APPEALS COMMISSION

TERESA A. KLIPSTEIN
W351 S10333 Tuohy Road
Eagle, WI 53119-1868,

DOCKET NO. 04-I-268

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

JENNIFER E. NASHOLD, CHAIRPERSON:

This matter comes before the Commission on the motion of the Wisconsin Department of Revenue (Department) to dismiss the petition for review on the basis that petitioner failed to prosecute her appeal and failed to comply with the orders of the Commission. Wis. Stat. § 805.03.

Petitioner, Teresa A. Klipstein, appears *pro se* and has not submitted a reply to the motion. Attorney Mark S. Zimmer represents the Department and has filed an affidavit with exhibits in support of the motion.

Having considered the entire record, including the motion and affidavit of the Department, the Commission hereby finds, rules, and orders as follows:

FACTS

1. Under date of February 9, 2004, the Department issued to petitioner an assessment in the amount of \$5,068.10 based upon its disallowance of petitioner's

filing status, dependent credits, Earned Income Credits, and Homestead Credits for years 1999, 2000, and 2001.

2. By letter dated March 30, 2004, petitioner filed a petition for redetermination with the Department.

3. By notice dated September 27, 2004, the Department denied the petition for redetermination.

4. On November 29, 2004, petitioner filed a timely petition for review with the Commission.

5. By letter dated January 24, 2005, the Department informed petitioner that, after review of the documents petitioner had submitted, it was allowing her filing status, dependent credits, Earned Income Credits, and half of the rent for Homestead Credits for the period under review, and would adjust her assessment downward to \$1,012.00.

6. When petitioner did not respond to its January 24, 2005 letter, the Department sent petitioner a letter dated February 16, 2005, which included a settlement stipulation.

7. On April 15, 2005, the Commission issued a Notice of Telephone Scheduling Conference, scheduling a conference for June 14, 2005. The Notice informed petitioner:

NOTICE TO PETITIONER

Unless included with the petition for review, AT LEAST ONE WEEK PRIOR to the time stated in this notice, you or your representative shall notify the Commission (in writing or by telephone) of the area code and telephone number where you or your representative can be reached for the telephone conference. If the Commission is unable to reach you or your representative by

telephone, the conference will proceed, and the petition for review will be subject to dismissal, pursuant to Wis. Stat. §§ 802.10(7) and 805.03. (Emphasis in original.)

8. On June 14, 2005, the Commission held the telephone scheduling conference, at which petitioner failed to appear. Her telephone number of record was disconnected. The Commission issued a Status Conference Memorandum on June 15, 2005, which set another telephone conference for 10:30 a.m. on June 27, 2005 and further stated, in part:

. . . It is Ms. Klipstein's responsibility to keep the Commission informed of her current phone number and address. If Ms. Klipstein again fails to appear at the June 27, 2005 status conference, the Commission will entertain a motion to dismiss her appeal.

9. Petitioner did not provide a current telephone number to the Commission and did not appear at the time of the June 27, 2005 telephone status conference. Petitioner contacted the Commission later that day, and the telephone conference reconvened. During the conference, petitioner's cell phone disconnected, and she never called back.

10. The Commission issued a Status Conference Memorandum and Order on July 1, 2005, which established another status conference for July 13, 2005 and further ordered:

Petitioner shall participate in the July 13, 2005 telephone scheduling conference. If petitioner fails to appear at that conference, or to otherwise contact the Commission prior to that date, the Commission will entertain a motion by [the Department] to dismiss her petition for review based upon a failure to prosecute and failure to comply with Commission orders.

11. On July 12, 2005, the Commission issued a Notice which stated that, at petitioner's request, the July 13, 2005 telephone conference had been postponed to

August 16, 2005, and that the Commission would contact petitioner at her cell phone number for that conference.

12. On August 16, 2005, petitioner again failed to appear at a scheduled telephone conference and failed to provide a current telephone number. Her cell phone number was not in service.

13. On August 19, 2005, the Department filed a motion to dismiss based on petitioner's failure to prosecute her appeal and failure to comply with the Commission's orders.

14. On August 23, 2005, the Commission issued a Briefing Order which ordered petitioner to file a response to the motion no later than September 7, 2005. Petitioner failed to do so.

APPLICABLE WISCONSIN STATUTES

805.03 Failure to prosecute or comply with procedure statutes. For failure of any claimant to prosecute or for failure of any party to comply with the statutes governing procedure in civil actions or to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12(2)(a). Any dismissal under this section operates as an adjudication on the merits unless the court in its order for dismissal otherwise specifies for good cause shown recited in the order. A dismissal on the merits may be set aside by the court on the grounds specified in and in accordance with s. 806.07. A dismissal not on the merits may be set aside by the court for good cause shown and within a reasonable time.

802.10 Calendar practice.

* * *

(7) SANCTIONS. Violations of a scheduling or pretrial order are subject to ss. 802.05, 804.12 and 805.03.

RULING

The Commission has held three telephone conferences in this matter, each time providing petitioner with notice of the conferences. The notices further informed petitioner that her attendance was required at the conferences, and that her appeal could be subject to dismissal if she failed to appear or failed to provide the Commission with a telephone number at which she could be reached. In failing to appear at the scheduled conferences, petitioner failed to comply with the Commission's orders dated April 15, 2005, June 15, 2005, and July 1, 2005 (as amended July 12, 2005).

Petitioner has done nothing to move this case forward. She clearly has failed to prosecute her appeal and has failed to comply with Commission orders. The Department has shown good cause for granting its motion to dismiss on those grounds.

IT IS ORDERED

The Department's motion is granted, and petitioner's petition for review is dismissed.

Dated at Madison, Wisconsin, this 17th day of November, 2005.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"