



Issue Date: 16 November 2004

Case No.: 2004AIR32

In the Matter of

**Coleen L. Powers,
Complainant**

v.

**Pinnacle Airlines, Inc.,
Respondent**

**RECOMMENDED DECISION AND ORDER
DENYING THE COMPLAINANT'S CLAIM**

On October 25, 2004 I issued an Order Cancelling Hearing, canceling the hearing scheduled for November 17 and 18, 2004; directing the Complainant to advise the Court by close of business November 1, 2004 whether she wished to withdraw her complaint, and if so, the reasons for that request; and directing the parties to file any motions challenging the sufficiency of responses to discovery by November 12, 2004.

On November 12, 2004, by facsimile, the Complainant filed her "Complainants' Reply & Opposition to Named Persons' Motion Received Via US Mail on November 8, 2004, and Reply and Concerns to ALJ October 25, 2004 Order." On that same date, by facsimile, the Complainant filed a copy of "Ms. Powers' Replies to Doug Hall's First Set of Interrogatories."¹

On November 3, 2004, the Respondent filed its "Respondent Pinnacle Airlines' Motion to Dismiss for Failure to Comply With the Court's Orders." On November 12, 2004, by facsimile, the Respondent filed its "Respondent Pinnacle Airlines' Further Motion to Dismiss For Failure to Comply With Discovery."

¹ Again, I note that the Complainant's pleadings are not in compliance with my August 25, 2004 Order, specifically directing that "No pleadings shall be filed that identify any party other than Coleen L. Powers as Complainant, and Pinnacle Airlines, Inc. as Respondent. Any pleadings that do not comply with this order will be returned, and will be considered as not having been filed." The Complainant has styled her pleadings "Coleen L. Powers, et al Complainants," and has listed parties other than Pinnacle Airlines, Inc. as respondents, both in the caption, and by incorporation with a footnote. Despite the Complainant's continued blatant refusal to comply with my Order, however, I have considered her pleadings herein.

In my Order, I advised the Complainant that the regulations governing her claim provide that a request for withdrawal of a claim must be made in writing, and must be approved by the Administrative Law Judge. I further advised the Complainant that such a dismissal would be with prejudice, that is, that the Complainant would not be free to refile her claim. The Complainant did not file a response by November 1, 2004 as directed. In her November 12, 2004 pleading, the Complainant stated that she objected to any dismissal with prejudice, because her October 17, 2004 exhibits were responsive to the Respondent's discovery requests.

Although her response was not timely,² I conclude from the Complainant's statement that, if dismissal will be with prejudice, she does not wish to withdraw her claim. As a dismissal at the Complainant's request would be with prejudice, it appears that the Complainant is no longer pursuing her request to withdraw her claim.

The Respondent has asked that the Complainant's claim be dismissed for her failure to cooperate in discovery. As the Respondent noted in its November 3, 2004 Motion to Dismiss, I granted the Respondent's motion to compel the Complainant to respond to discovery requests on October 20, 2004, and directed the Complainant to respond to those requests by October 27, 2004. I repeated this instruction in my October 25, 2004 Order. As of November 3, 2004, the Complainant had not filed any response to the Respondent's discovery requests.

In her November 12, 2004 pleading, the Complainant argues that documents she filed with this Court on October 17, 2004 are responsive to the Respondent's discovery requests. A review of the file shows that on October 17, 2004, the Complainant filed, by facsimile, her "Complainants' Motion for Continuance of Hearing & Modification of Pre-Hearing Order; & Reply, Objections, & Motion to Strike Named Persons' & Pinnacles' Premature/Bad Faith October 5, 2004 Motion." On October 21, 2004, the Complainant filed this same pleading by mail, along with a stack of documents, approximately four inches thick, designated as CX 400 through 404. These documents included some of the pleadings in this case, but otherwise appear to have no connection to the specific issues in this claim.

Respondent argues that, in addition to being untimely, the Complainant's response to its discovery requests is insufficient. I agree. The Complainant has provided no response to the Respondent's request for documents. Her response to the Respondent's interrogatories does not provide the Respondent with information directly relevant to the basis for her claims and request for damages, but essentially requires the Respondent to comb through hundreds of pages of documents, many of which have no relevance to this case, and attempt to guess the basis for the Complainant's claims and request for damages.

For example, in response to a request to identify each person likely to have discoverable information relating to the facts of her claims, as well as the subjects of such information, the Complainant merely cited to the voluminous documents she submitted to this Court on October 21, 2004. In response to a question asking her to identify all communications with any

² In her November 12, 2004 pleading, the Complainant argues that compliance with my October 25, 2004 Order was impossible, as she was out of state from October 27 through 31, at prepaid career enhancement training. The Complainant has not explained why it took an additional twelve days to respond to my Order.

government agency relating to her claims, the Complainant again cited to these documents, as well as the “computers” of numerous employees of Pinnacle. Again, rather than answering specific questions about promotional opportunities she alleges she was denied, the Complainant cited to various pleadings, exhibits, and other documents, without actually addressing the questions posed. She did not provide any calculation for the damages she requested, nor did she indicate the knowledge or information possessed by the persons she identified as involved in computing damages. Curiously, she refused to identify communications with persons other than Pinnacle management or a government agency about her claims, citing “Atty client privilege with Mr. Slavin.” Yet, setting aside the fact that Mr. Slavin is no longer licensed as an attorney in the State of Tennessee, in her November 12, 2004 pleading the Complainant casts herself as a “natural person,” and a pro se litigant who is being denied due process.

In my October 20, 2004 Order granting the Respondent’s motion to compel, I found that the Respondent’s discovery requests were narrowly focused on obtaining information and documents directly relevant to the basis of the Complainant’s claims and request for damages, and ordered her to respond to these requests. The Complainant has chosen to ignore this Order, and instead has provided a woefully inadequate response to the request for interrogatories, and no response to the request for documents.

The only substantive response provided by the Complainant to the Respondent’s request for dismissal for refusal to cooperate in discovery is her statement, at page 6 of her November 12, 2004 pleading, that the Respondent has willfully and falsely misrepresented to the Court that “After receiving no response, Pinnacle filed a motion to compel on October 5, 2004.” Yet the Complainant in fact did not provide any response to Respondent’s discovery requests until November 12, 2004. The Complainant also argues that her Exhibits CX 400 through 404 are “certainly responsive” to the Respondent’s discovery requests. As discussed above, I find that the Complainant’s response to the Respondent’s interrogatories was insufficient, and was essentially a non-response; she did not respond at all to the request for documents.

Title 29 C.F.R. Section 18.6(d)(2) provides:

If a party or an officer or agent of a party fails to comply with a subpoena or with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or requests for admissions, or any other order of the administrative law judge, the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Here, the Complainant was specifically directed to provide a complete response to the Respondent’s discovery requests by October 27, 2004. She did not do so, nor has she yet complied with my Orders.

The Respondent is entitled to know the basis for the Complainant's claims that are the subject of this case, as well as the damages that she seeks, and the basis for those damages, in order to prepare for hearing. Yet the Complainant has refused to fully participate and cooperate in the discovery process, and instead has peppered the Court and opposing counsel with pleadings raising issues that have nothing to do with this case, and attacking the character, integrity, and intelligence of the Court and opposing counsel.

In short, the Complainant has not complied with the Orders I issued directing her to respond to the Respondent's discovery requests. Nor has she provided any meaningful response to the Respondent's motion for dismissal. Accordingly, as provided by 29 C.F.R. Section 18.6(2)(v), based on the Complainant's failure to cooperate in discovery, and her failure to comply with my Orders directing her to do so, her complaint for relief under AIR 21 is denied.

Accordingly, for the reasons discussed above, IT IS HEREBY ORDERED that the Complainant's claim for relief under AIR 21 is DENIED.

SO ORDERED.

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LINDA S. CHAPMAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; Final Rule, 68 Fed. Reg. 14099 (Mar. 21, 2003).

