

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>DAVID COLE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
	)	<b>CASE NO. 04-2329-KHV</b>
<b>v.</b>	)	
	)	
<b>CERTAINT EED CORPORATION</b>	)	
<b>INSULATION GROUP,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	
_____	)	

**ORDER**

On July 13, 2004, David Cole, pro se, filed suit against Certainteed Corporation Insulation Group, alleging employment discrimination based on race and age in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, and the Age Discrimination In Employment Act, 29 U.S.C. §§ 621-634 (b). This matter comes before the Court on the Motion To Dismiss (Doc. #8) filed March 7, 2005. Plaintiff has not opposed the motion.

Under Rule 6(a), Fed. R. Civ. P., and D. Kan. Rule 6.1(d)(2), plaintiff had until March 30, 2005 to file a response. Pursuant to D. Kan. Rule 7.4, if a respondent fails to file a timely response, “the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.” On June 20, 2005, the Court addressed defendant’s motion to dismiss as follows:

Although defendant’s motion begins by asserting that plaintiff’s claims are barred by the statute of limitations, and tries to position this issue as a jurisdictional one, it actually questions whether plaintiff can show good cause for failure to execute service. Even if plaintiff could not show good cause for his failure to make timely service, however, on proper motion the Court could have granted a permissive extension of time. See Hunsinger v. Gateway Mgmt. Assocs., 169 F.R.D. 152, 155

(D. Kan. 1996). The Court therefore orders plaintiff to respond to defendant's motion to dismiss on or before **July 5, 2005**. **The Court warns plaintiff that failure to meet this or any other deadline will result in an order of dismissal with prejudice.**

Memorandum And Order (Doc. #16) at 3. July 5, 2005 has come and gone and plaintiff has not filed a response to defendant's motion to dismiss. **IT IS THEREFORE ORDERED** that Certaineed Corporation's unopposed Motion To Dismiss (Doc. #8) filed March 7, 2005 be and hereby is **SUSTAINED**. Plaintiff's claims are **DISMISSED WITH PREJUDICE**. The Clerk is directed to enter judgment for defendant.

Dated this 8th day of August, 2005 at Kansas City, Kansas.

s/Kathryn H. Vratil  
KATHRYN H. VRATIL  
United States District Judge