

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

DEREK SUNDERMAN,

Plaintiff,

v.

WESTAR ENERGY, INC.,

Defendant.

No. 05-2347-CM

MEMORANDUM AND ORDER

Plaintiff Derek Sunderman brings this action against his former employer, defendant Westar Energy Inc., alleging that defendant violated his rights under the Civil Rights Act of 1964. The case is before the court on Defendant's Motion to Dismiss, Alternatively to Extend the Deadline to take Plaintiff's Deposition (Doc. 36). Because the briefs are unclear on whether plaintiff has fulfilled his obligations, defendant's motion is presently denied in part. Plaintiff is ordered to demonstrate to the court by November 1, 2006 that he has met his obligations. The deadline to take plaintiff's deposition is extended until November 13, 2006.

I. Factual Background

On August 8, 2005, plaintiff filed this action. After that date, plaintiff has failed repeatedly to respond promptly to defendant's motions and court orders. These failures to respond include: (1) plaintiff did not file promptly a response to Defendant's Motion for Partial Summary Judgment; (2) plaintiff did not file promptly a response to this court's February 16, 2006 Show Cause Order; (3) plaintiff did not file promptly a response to Magistrate Judge O'Hara's March 10, 2006 order to inform the court of the status of the confidential settlement statement, which prompted an April 17,

2006 Show Cause Order asking why plaintiff should not be held in contempt for disregarding the March 10 order; (4) plaintiff did not file promptly a response to Defendant's Motion to Compel Discovery; (5) plaintiff did not file promptly a response to Magistrate Judge O'Hara's May 23, 2006 Show Cause Order, which resulted in plaintiff being assessed defendant's costs and fees; and (6) plaintiff did not file promptly a response to comply with Magistrate Judge O'Hara's June 22, 2006 Order granting plaintiff a time extension.

Defendant alleges that plaintiff also has failed to respond promptly to discovery requests and has not paid the costs and fees awarded on June 12, 2006. Specifically, defendant states that plaintiff has not: (1) provided a release for medical records; (2) filed or exchanged his witness list or his exhibit list; (3) provided responses to interrogatories which were due originally on March 22, 2006; and (4) scheduled plaintiff's deposition. Defendant states that plaintiff also has not paid the sanctions award as directed by Magistrate Judge O'Hara. Plaintiff responds that the interrogatory responses were mailed on April 26, 2006, but that he has lost all copies of these responses. Plaintiff also "intends" to pay the awarded sanctions, but omits any further explanation.

Without confirmation of whether plaintiff's obligations remain unfulfilled, the court is presently unwilling to impose the severe sanction of dismissal. Because plaintiff represented to the court that he was ready to remedy his deficiencies to opposing counsel, the court is willing to give plaintiff an opportunity to show that he has satisfied his obligations. If plaintiff fails to demonstrate his remedial efforts, the court will consider this confirmation of defendant's present allegations.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (Doc. 36) is denied in part and granted in part. The deadline to take plaintiff's deposition is extended until November 13, 2006.

IT IS FURTHER ORDERED that plaintiff shall demonstrate to the court by November 1, 2006 that he has provided defendant with the requested discovery materials and paid the sanctions award.

Dated this 24th day of October 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge