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

DAWN MICHELLE WILSON.

Plaintiff,

VS.

SECURITY TRANSPORT SERVICES, INC.,

Defendant.

Case No. 10-4062-JAR

ORDER

On September 15, 2010, defendant filed its Motion to Dismiss, or in the alternative, for Summary Judgment (Doc. 12) on plaintiff's claim of discrimination under the Americans with Disabilities Act ("ADA"). The motion went under advisement on November 23, 2010. In her response to defendant's motion, plaintiff indicates that the "record has not been fully developed in order for this court to properly address and consider Defendant's status as an employer within the meaning of the ADA and whether Defendant's failure to assign work hours to Plaintiff following her report of her medical condition was based upon Defendant's perceived disability of the Plaintiff in violation of the ADA."

Under Fed. R. Civ. P. 56(f),¹ the Court may deny a motion for summary judgment or order a continuance to enable further discovery, when the party opposing the motion shows by affidavit that “for specified reasons, it cannot present facts essential to justify its opposition.” While plaintiff makes the argument in her response that she requires further discovery in order to

¹The Court applies Fed. R. Civ. P. 56(f), the appropriate subsection that was effective when the briefs in this matter were filed. Effective on December 1, 2010, Rule 56 was amended so that the relevant provision is now found in Rule 56(d).

justify opposition to defendant's motion for summary judgment, she has failed to submit the appropriate Rule 56(f) affidavit or declaration. Therefore, because plaintiff has failed to properly support her opposition to summary judgment on these issues, the Court will allow her an additional period of time to supplement the record with an affidavit or declaration in accordance with Rule 56(f).

IT IS THEREFORE ORDERED BY THE COURT that plaintiff shall file any affidavit or declaration pursuant to Fed. R. Civ. P. 56(f) **no later than February 10, 2010.**

IT IS SO ORDERED.

Dated: January 31, 2011

S/ Julie A. Robinson

JULIE A. ROBINSON

UNITED STATES DISTRICT JUDGE