

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY JEFFERSON,
Plaintiff,

vs.

No. 17-cv-03161-JTM

ARAMARK CORRECTIONAL
SERVICES, et al.,
Defendants.

MEMORANDUM AND ORDER

On December 19, 2018, the court entered an Order to Show Cause (Dkt. 73) requiring plaintiff Anthony Jefferson to respond, in writing, on or before January 7, 2019, as to why the Motion to Dismiss (or, in the alternative, for Summary Judgment) filed by defendant Patricia Berry (Dkt. 49) should not be granted as unopposed. Plaintiff was also directed to file any response to defendant Berry's Motion to Dismiss on or before January 7, 2019. As of January 9, 2019, the court has not received any written response from plaintiff to its Order to Show Cause or to defendant Berry's Motion to Dismiss.

D. Kan. Local Rule 7.4(b) provides that absent a showing of excusable neglect, a party who does not file a timely response brief waives the right to later file such a brief and the court may decide the motion as unopposed. The rule further indicates that the court will generally grant an unopposed motion without further notice. Plaintiff was advised of the effect of Local Rule 7.4(b) in this court's prior Orders to Show Cause (Dkt. 44, Dkt. 73) and in the court's Memorandum and Order entered on December 18, 2018. (Dkt. 72). Plaintiff was also advised in the court's December 19, 2018 Order to Show cause

of the court's intention to grant Berry's Motion to Dismiss as unopposed if plaintiff failed to file a response by the January 7, 2019 deadline. (Dkt. 73).

Defendant Berry's Motion to Dismiss (Dkt. 49) and Memorandum of Law in Support (Dkt. 50) requested that the court dismiss all claims against defendant Berry pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The court recognizes that as a prisoner proceeding *pro se*, plaintiff is entitled to some leeway in the court's construction of his pleadings. See *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972). In this case even allowing a more liberal construction of plaintiff's pleadings would give the court nothing to consider in opposition to defendant Berry's Motion to Dismiss.

Because defendant Berry's Motion to Dismiss (Dkt. 49) is unopposed, the court finds the motion should be **GRANTED**. Judgment shall be entered in favor of and the matter closed as to defendant Patricia Berry.

IT IS SO ORDERED.

Dated this 10th day of January, 2019.

/s/J. Thomas Marten
THE HONORABLE J. THOMAS MARTEN
United States District Court