

for Protective Order after Rapp served Hampton Inn's counsel with discovery that was directed toward Hampton Inn's counsel rather than the Hampton Inn itself.

On April 27, 2018, Rapp filed his response to the Hampton Inn's motions. On May 3, 2018, Rapp filed his own Motion to Compel.

On May 10, 2018, the Hearing Officer denied Rapp's Demand for Determination. The Hearing Officer granted Hampton Inn's Motion for Protective Order and its Motion to Compel giving Rapp until May 18, 2018 to fully respond to Hampton Inn's discovery requests.

At the May 22, 2018 final pre-hearing conference, Hampton Inn's counsel indicated Rapp had failed to respond to its discovery requests as ordered by the Hearing Officer. Rapp had also failed to identify any witnesses or exhibits he intended to use at hearing or his final contentions as required by the Scheduling Order. Accordingly, Hampton Inn's counsel sought leave to file an out of time Motion to Dismiss. That motion was granted. Subsequently, the Hearing Officer vacated the hearing and gave Rapp until May 29, 2018 to respond to the Motion to Dismiss.

II. DISCUSSION

Respondent argues that because Rapp has failed to comply with the Hearing Officer's Scheduling Order, appear at the final pre-hearing conference, and respond to Respondent's Discovery Requests, its request for dismissal of the action should be granted in its entirety pursuant to Rules 16(f)(1), 37(d)(3), and 37(b)(2)(A)(v), Mont. R. Civ. P. It further argues that Rapp's failure to respond to the Motion to Dismiss justifies dismissal.

Hampton Inn's arguments are well taken. Other than to issue vitriolic tirades against Respondent's employees or former employees and its legal counsel, Rapp has utterly failed to meaningfully participate in this matter. Uniform District Court Rule 2 provides in pertinent part, that, "Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken."

Mont R. Civ. P. 16(f) provides in pertinent part:

On motion or on its own, the court may issue any just orders, including those authorized under Rule 37(b)(2)(A)(ii-vii), if a party or its attorney:

- (A) fails to appear at a scheduling or other pretrial conference;
- (B) is substantially unprepared to participate - or to participate in good faith - in the conference; or
- (C) fails to obey a scheduling or other pretrial order.

As of the date of this decision, Rapp has failed to Respond to the Motion to Dismiss. On that basis alone his claim could be dismissed. His failure to meaningfully respond to discovery provides yet another basis for dismissal. His failure to participate in these proceedings provides yet one more basis for dismissal of his claim. Therefore, Hampton Inn's motion to dismiss is GRANTED.

III. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Rapp's failure to respond to the Motion to Dismiss is an admission that he considers the motion well taken. Uniform Dist Ct. Rule 2.

3. Rapp has failed to meaningfully respond to discovery requests and is therefore subject to sanction. Mont. R. Civ. P. 37(b)(2)(A)(v).

4. Rapp failed to comply with the orders of this tribunal and is therefore subject to sanction. Mont. R. Civ. P. 16(f)(1).

5. Rapp failed to meaningfully participate in these proceedings and is therefore subject to sanction. Mont. R. Civ. P. 16(f)(1).

IV. ORDER

IT IS THEREFORE ORDERED that the wage claim of Jeffrey S. Rapp is DISMISSED WITH PREJUDICE.

DATED this 1st day of July, 2018.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59624-1503