

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ANIMAL HEALTH

In the Matter of Loren McCullough

**ORDER ON REQUEST FOR EXTENSION
OF TIME TO RESPOND TO SUMMARY
DISPOSITION MOTION**

This matter came before Administrative Law Judge Kathleen D. Sheehy on the request of Loren McCullough for an extension of time to respond to the Motion for Summary Disposition filed by the Board of Animal Health on May 6, 2011. The Board objected to the request for an extension of time by letters dated May 17 and May 18, 2011. The motion record closed on May 18, 2011.

Michelle E. Moren, P.O. Box 350, Roseau, MN 56751, appeared for Loren McCullough (Respondent). Kimberly Middendorf, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared for the Board of Animal Health (Board).

Based on all of the files and proceedings herein, and for the reasons contained in the Memorandum attached hereto, the Administrative Law Judges make the following:

ORDER

1. The Respondent's request for an extension of time to respond to the Board's Motion for Summary Disposition is GRANTED; and the Respondent shall file his response and any cross motion for summary disposition by July 15, 2011. The Board shall have ten business days from the time of receipt to file any reply or response to the cross motion for summary disposition.

2. The hearing scheduled to take place June 27-29, 2011, is continued indefinitely pending resolution of the motions for summary disposition.

Dated: May 19, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

The Board issued the original Notice and Order for Prehearing Conference in this matter on September 3, 2010. During the prehearing conference on October 27, 2010, the hearing was scheduled to take place on December 17, 2010.¹

By letter dated November 8, 2010, the Board requested a continuance of the hearing on the basis that (1) the Board had not requested representation from the Attorney General's Office until after the prehearing conference; (2) the Board intended to file an amended Notice and Order for Hearing; and (3) the Board's primary witness had health concerns that would preclude his participation in a hearing until February 2011.² The issue identified for hearing in the Amended Notice and Order for Hearing is whether the Board's Quarantine Order (issued July 22, 2010) was properly issued and should be affirmed.³

The Respondent objected to the Board's request for a continuance. Based on the health concerns of the Board's witness and the schedules of the parties, the Administrative Law Judge found good cause to continue the hearing until March 1-2, 2011.⁴

By letter dated February 18, 2011, the Respondent requested a continuance of the hearing on the basis that he was still attempting to conduct discovery and provide responses to discovery requests made by the Board. The Board did not object to the request for a continuance and suggested that the matter might be resolved through cross motions for summary disposition. Based on the agreement, the ALJ set a deadline for May 6, 2011, for filing summary disposition motions, and May 20, 2011 for responding to any such motions. The hearing, if necessary, was scheduled to take place June 27-30, 2011.⁵

On May 13, 2011, the Respondent filed the instant request for an extension of time to respond to the Board's motion and to file his own cross-motion for summary disposition. The request was based on an Affidavit in which the Respondent stated that his physical health had been failing for a number of years and that he was suffering from congestive heart failure, diabetes, high blood pressure, rheumatoid arthritis, and atrial fibrillation. In addition, he is involved in an ongoing custody dispute involving his two children. Between his health concerns, his custody issues, and his work on the farm, he stated he lacked the time and energy to respond effectively to the Board's discovery and to provide the information to his own attorney that would be necessary to respond to the Board's motion or to file his own cross-motion. The Respondent

¹ First Prehearing Order (Oct. 27, 2010).

² Letter to ALJ from Jill Schlick Nguyen (Nov. 8, 2010).

³ Amended Notice and Order for Hearing (Nov. 8, 2010).

⁴ Letter from ALJ to counsel (Nov. 12, 2010); Letter from ALJ to counsel (Dec. 1, 2010).

⁵ Letter from ALJ to counsel (Mar. 3, 2011).

acknowledged that the Quarantine Order issued by the Board would remain in full force and effect until this matter has been concluded.⁶

The Board objects to the request for an extension on the basis that it should have been made prior to the filing of the Board's motion so that the Respondent does not obtain an unfair tactical advantage in responding to it. The Board also pointed out that Mr. McCullough has suffered from these same health concerns for many years and has relied on these concerns as justification for not responding to regulators in the past.⁷

The rules of the Office of Administrative Hearings provide that:

Requests for a continuance of a hearing shall be granted upon a showing of good cause. . . . In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. . . .

"Good cause" shall include: death or incapacitating illness of a party, representative, or attorney of a party

"Good cause" shall not include: intentional delay⁸

After reviewing the correspondence and materials in the record, the Administrative Law Judge concludes that there is good cause to grant the requested extension. Mr. McCullough has adequately supported his request, and the Administrative Law Judge does not believe that he is attempting to obtain a strategic advantage or is intentionally trying to delay the resolution of this matter. Although the request should have been made earlier, given the schedule established previously, the Administrative Law Judge does not believe the Board will be prejudiced by the extension, because the Quarantine Order will remain in effect. The Respondent is on notice, however, that further extensions will not be granted for these reasons. The Board's request for attorney's fees is premature and is denied.

K.D.S.

⁶ Affidavit of Loren McCullough.

⁷ See Affidavit of Kimberly Middendorf, Ex. C (May 6, 2011).

⁸ Minn. R. 1400.7500.