

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

Steve Sviggum, Commissioner,
Department of Labor and Industry,

Complainant,

vs.

ORDER ON DISCOVERY MOTION

Royal Health Care,

Respondent.

This matter came before Administrative Law Judge Kathleen D. Sheehy on the Motion of the Department of Labor and Industry to Compel Discovery and to extend the procedural schedule. The Department filed the motion on September 10, 2008; the Respondent filed no response to the motion by September 24, 2008, the deadline provided pursuant to Minn. R. 1400.6600 (2007). The motion record closed on September 24, 2008.

Jackson Evans, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared for the Department of Labor and Industry (Department).

Roy Belfry, Royal Health Care, Suite 30, 5637 Brooklyn Boulevard, Brooklyn Center, MN 55429, did not oppose the motion.

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

ORDER

1. The Department's Motion to Compel Discovery is **GRANTED**. The Respondent shall respond to the Interrogatories, Requests for Production of Documents, and Requests for Admission within five business days of receipt of this Order.

2. The procedural schedule is amended as follows:

November 12, 2008: Deadline for the Department to file any motion for summary disposition.

November 26, 2008: Deadline for the Respondent to file a written response to a summary disposition motion.

December 5, 2008: Deadline for the Department to file a Reply to the response.

January 9, 2009: Deadline for the parties to exchange all exhibits they intend to offer into evidence at the hearing, along with a witness list containing a brief summary of the anticipated testimony of each witness.

January 16, 2009: Hearing, commencing at 9:30 a.m. at the Office of Administrative Hearings.

Dated: September 30, 2008

S/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

In 2005, the Department issued an order to the Respondent alleging wage and hour violations with regard to a number of Respondent's employees. After the Department issued a Notice and Order for Hearing in this matter, the parties resolved many of the outstanding issues, but wages for several employees remain in dispute. Specifically, the Respondent maintains it owes no back wages to four employees who were allegedly fired after they turned in timecards claiming pay for hours they did not in fact work.¹

On June 19, 2008, the Department served discovery on the Respondent aimed at discovering the factual basis for the Respondent's position with regard to the four employees. Based on an agreement between the parties, the responses were due August 4, 2008. The Respondent did not respond to the discovery. On August 7, 2008, the Department sent a letter requesting a response. The Respondent did not respond to the letter. On August 18, 2008, counsel for the Department spoke with the respondent, who agreed to complete the discovery by August 30, 2008. Despite the Department's multiple efforts to obtain a response, the Respondent has not responded in any fashion to the requested discovery.²

¹ Affidavit of Jackson Evans Ex. E.

² See *generally* Affidavit of Jackson Evans.

The rules of the Office of Administrative Hearings specify that any means of discovery available under the Rules of Civil Procedure for the District Court of Minnesota is allowed and authorize the filing of motions to compel. The rules further state that a party bringing a motion to compel must show the discovery is necessary, is not requested for the purpose of delay, and the issues or amounts in controversy are significant enough to warrant the discovery. The party resisting discovery may raise any objections that are available under the Minnesota Rules of Civil Procedure, including lack of relevancy and privilege.³

The Respondent has offered no objection to the discovery, which does not appear to be burdensome or overbroad but is tailored rather specifically to the issues in dispute. The information sought by the Department is necessary and relevant to the disposition of this matter. Accordingly, the Respondent must respond to the discovery requests in writing within five business days of receipt of this Order. If the Respondent fails to respond as ordered, the Respondent will be precluded from offering responsive information in opposition to the Department's planned motion for summary disposition or at the hearing on the merits. In addition, the Requests for Admission will be deemed admitted. The prehearing schedule is amended as noted above.

K. D. S.

³ Minn. R. 1400.6700, subp. 2.