

IN THE UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

CLEOPHUS JACKSON

PLAINTIFF

VS.

CASE NO. 12-CV-4055

FEDEX FREIGHT, INC.

DEFENDANT

ORDER

On March 25, 2013, the Court entered an Order granting a Motion to Withdraw as Counsel filed by Plaintiff's attorney. (ECF No. 13). The Order directed Plaintiff to notify the Court within 30 days that he has obtained new counsel or intends to proceed *pro se*. This 30-day period passed with no response from Plaintiff. On April 30, 2013, the Court issued an order directing Plaintiff to show cause by May 30, 2013, why he failed to respond to the Court's Order. The Court cautioned Plaintiff that a failure to respond and show cause would result in this action being dismissed. Plaintiff has not responded to the show cause order and the time for doing so has passed.

The Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court may dismiss an action based on "the plaintiff's failure to comply with any court order," and such dismissal may be with prejudice if there has been "a clear record of delay or contumacious conduct by the plaintiff." *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (internal quotations omitted).

As set out above, Plaintiff has failed to respond to two orders of the Court. Therefore, the Court finds that dismissal of this action is appropriate. While Rule 41(b) allows for dismissal with prejudice, the Court finds that this harsh sanction is not warranted in this case. Accordingly,

Plaintiff's Complaint should be and hereby is **DISMISSED WITHOUT PREJUDICE**.

Defendant's Motion for Summary Judgment (ECF No. 9) is **DENIED AS MOOT**.

IT IS SO ORDERED, this 4th day of June, 2013.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge