

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MICHAEL GOUGH,

Plaintiff,

v.

Civ. No. 22-459-CFC

ATTMEER NAJEE PRESCOTT,

Defendant.

MEMORANDUM ORDER

At Wilmington this 21st day of November, 2022;

1. On October 11, 2022, the Court entered an order for Plaintiff to show cause, on or before November 14, 2022, why this case should not be dismissed for failure to prosecute, pursuant to D. Del. LR 41.1. (See D.I. 9) Plaintiff did not respond to the show cause order.

2. Pursuant to Fed. R. Civ. P. 41(b), a court may dismiss an action “[f]or failure of the plaintiff to prosecute or to comply with [the Federal Rules] or any order of court” Although dismissal is an extreme sanction that should only be used in limited circumstances, dismissal is appropriate if a party fails to prosecute the action. *Harris v. City of Philadelphia*, 47 F.3d 1311, 1330 (3d Cir. 1995).

3. The following six factors determine whether dismissal is warranted: (1) The extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of other

sanctions; and (6) the meritoriousness of the claim or defense. *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984); *see also Hildebrand v. Allegheny Cty.*, 923 F.3d 128 (3d Cir. 2019). The Court must balance the factors and need not find that all of them weigh against Plaintiffs to dismiss the action. *Emerson v. Thiel Coll.*, 296 F.3d 184, 190 (3d Cir. 2002).

4. Several factors warrant the sanction of dismissal including Plaintiff having taken no action since March 25, 2022 when he submitted a supplement to the complaint, having failed to file a response to the October 11, 2022 show cause order, and apparently have abandoned the case.

THEREFORE, it is Ordered that:

1. The Complaint is **DISMISSED** without prejudice for Plaintiff's failure to prosecute this case.
2. The Clerk of Court is directed to **CLOSE** the case.



Chief Judge