

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

HCR, INC., an Oklahoma corporation, Plaintiff, v. KATHLEEN SEBELIUS, Secretary of United States Department of Health and Human Services, Defendant. Case No. CIV-10-323-KEW

OPINION AND ORDER

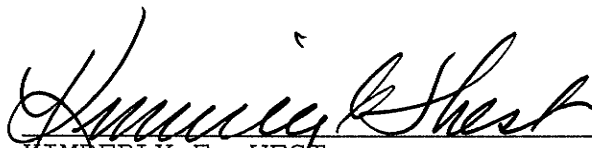
This matter comes before this Court on Plaintiff's Motion to Set Aside and Vacate Order Altering Judgment and Allow Response Out of Time filed December 2, 2011 (Docket Entry #29). On September 29, 2011, this Court granted Plaintiff's Motion for Summary Judgment. On October 29, 2011, Defendant filed a document entitled "Brief in Support of Defendant's Motion to Alter or Amend the Judgment" without filing a Motion to Alter or Amend the Judgment. As a result, the Brief was stricken as being in violation of this Court's local rules requiring both a motion and brief. On November 2, 2011, Defendant filed a Motion to Alter or Amend Judgment with accompanying brief. On November 22, 2011, this Court granted the Motion based solely upon Plaintiffs' failure to file an objection.

In response, Plaintiff filed the subject Motion to Set Aside and Vacate Order contending counsel believed when Defendant's first filing was stricken, the second, proper filing was also stricken. Counsel states he struck the response deadline from his calendar.

Plaintiff now requests that the Order granting Defendant's Motion to Alter or Amend Judgment be vacated based upon his mistake. This Court has evaluated the factors enumerated in Hancock v. City of Oklahoma City, 857 F.2d 1394, 1396 (10th Cir. 1988) and finds the circumstances presented constitutes a mistake such that the prior order should be vacated and Plaintiff should be provided an opportunity to respond to the Motion to Alter or Amend.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Set Aside and Vacate Order Altering Judgment and Allow Response Out of Time filed December 2, 2011 (Docket Entry #29) is hereby **GRANTED**. As a result, the Opinion and Order entered November 22, 2011 (Docket Entry #28) is hereby **VACATED**. Plaintiff shall file its response to Defendant's Motion to Alter or Amend the Judgment filed November 2, 2011 (Docket Entry #26) no later than **JANUARY 13, 2012**. Thereafter, Defendant will be permitted to file a reply within fifteen (15) days after the filing of Plaintiff's response.

IT IS SO ORDERED this 5<sup>th</sup> day of January, 2012.

  
KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE