

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JEFFREY REED)	
)	No. 3-02-CV-10004
Plaintiff,)	
)	
vs.)	
)	
IOWA DEPARTMENT OF HUMAN)	
SERVICES, STATE OF IOWA, d/b/a)	
IOWA DEPARTMENT OF HUMAN)	
SERVICES, GAYE TODTZ, THOMAS)	ORDER
VILSACK, SALLY PEDERSON,)	
CHARLES PALMER, JAY BARFELS,)	
CHERRIE MCCLIMMONS, MARLYS)	
KASEMEIER DIANE DIAMOND,)	
KATHLEEN JORDAN, and)	
CAROL FONUA, Individually,)	
)	
Defendants.)	

Plaintiff, proceeding pro se, filed a motion for default judgment on June 6, 2002. Defendants resisted on June 20, 2002, and plaintiff filed a reply on June 24, 2002. The matter is now fully submitted.

On May 16, 2002, plaintiff personally served defendants with a Summons and Complaint. Defendants claim that on June 5, 2002, they mailed the original Answer to the federal Clerk of Court in Davenport, Iowa, and served plaintiff with a copy of their Answer by mailing the document to his last known address. Plaintiff claims that defendants did not mail him an answer until June 6, 2002. The Answer was not filed until June 10, 2002.

On June 6, 2002, plaintiff filed a Motion for Default Judgment against some of the defendants named in this action, including defendants State of Iowa d/b/a/ Iowa Department of Human Services, Thomas Vilsack, Sally Pederson, Diane Diamond and Carol Fonua (“defendants”). Plaintiff alleges that defendants defaulted by failing to plead, respond, or otherwise appear on or before June 5, 2002.

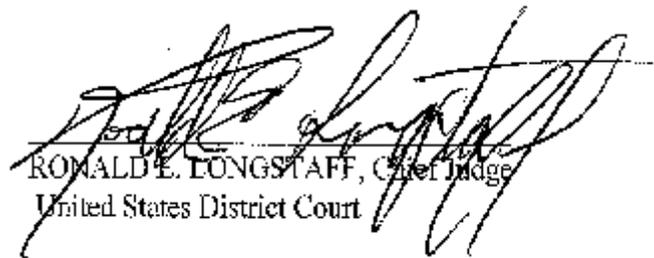
Even assuming that defendants mailed their Answer on June 6, 2002, and thus missed the deadline imposed by Federal Rule of Civil Procedure 12(a)(1)(A), the Court has discretion to set aside a default “[f]or good cause shown.” FED R. CIV. P. 55(c). The Court may consider the following factors in considering whether to set aside an entry of default: “whether the conduct of the defaulting party was blameworthy or culpable, whether the defaulting party has a meritorious defense, and whether the other party would be prejudiced if the default were excused.” *Johnson v. Dayton Electric Mfg. Co.*, 140 F.3d 781, 784 (8th Cir. 1998). “Other relevant equitable factors may also be considered, for instance, whether the failure to follow a rule of procedure was a mistake made in good faith and whether the entry of default would bring about a harsh or unfair result.” *Canfield v. VSH Restaurant Corp.*, 162 F.R.D. 431, 433 (N.D.N.Y. 1995). “There is a judicial preference for adjudication on the merits.” *Johnson*, 140 F.3d at 784. (internal citation omitted).

Applying these factors, the Court finds that even if defendants defaulted, it should be set aside. Plaintiff suffered no prejudice as a result of defendants mailing their Answer one day late. *See Iowa State Univ. Research Found. Inc. V. Greater Continents Inc.*, 208 F.R.D. 602, 605 (S.D. Iowa 2002) (“[P]laintiff must be prejudiced in some concrete way, such as loss of evidence, increased difficulties in discovery, or greater opportunities for fraud and collusion.”). Defendants also raise factual and legal questions in their Answer that suggest they may have a meritorious defense, at least for

purposes of the current motion. *See* Defendant's Amended Answer. Any blameworthiness that may be attributed to defendants is outweighed by the other two factors. Plaintiff's motion for default judgment is denied.

IT IS SO ORDERED.

This 21 day of November, 2002.



RONALD E. LONGSTAFF, Chief Judge
United States District Court