



**TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT KNOXVILLE**

JOHN OLDHAM,)	Docket No. 2022-03-0420
Employee,)	
v.)	
FREEMAN WEBB COMPANY)	
REALTORS d/b/a, SUNNY BROOK)	State File No. 66575-2020
Employer,)	
And)	
ZURICH AMERICAN INSURANCE)	
COMPANY,)	Judge Pamela B. Johnson
Carrier.)	

**ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM
OF MICHELLE WEISS**

The Court held a hearing on November 29, 2023, on Freeman Webb's motion to quash a subpoena duces tecum for vocational expert Michelle Weiss. Mr. Oldham did not file a written response but offered argument during the hearing. For the reasons below, the Court denies the motion and amends Ms. Weiss's production deadline.

Mr. Oldham filed a petition for benefit determination on November 29, 2022, seeking increased benefits, extraordinary relief and/or permanent total disability benefits. The Court held a scheduling hearing in March 2023 and issued a scheduling order. The Court set the compensation hearing for October 18, 2023. Due to an unanticipated conflict, the Court issued an amended scheduling order, continuing the compensation hearing to December 20.

Ms. Weiss conducted a vocation evaluation of Mr. Oldham on November 14. On the same day, Mr. Oldham served Ms. Weiss with a subpoena duces tecum, requiring her to produce on November 28 (1) all correspondence related to Mr. Oldham's case between her and Freeman Webb or its representatives; (2) any notes generated in conversations regarding job surveys; and (3) the full results and data collected by Ms. Weiss related to Mr. Oldham's history and performance in the vocational assessment.

Freeman Webb moves to quash the subpoena because the less burdensome means exists to obtain the requested documentation, the production deadline violates the twenty-one day rule of Tennessee Rules of Civil Procedure 45.07(1) (2023), and the subpoena seeks information subject to the work product doctrine. Freeman Webb admits that they are not opposed to providing the documentation and information sought in the subpoena that is not protected by the work product doctrine; instead, they argue, Mr. Oldham is attempting to force Ms. Weiss to drive to Knoxville to produce the documents.

Rule 26.02 allows parties to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it related to the claim or defense. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.*

Additionally, Rule 45.02 and Tennessee Compilation Rules and Regulations 0800-02-21-.17(6) (February, 2022, revised) provide that a subpoena may command a person to produce designated documents. Moreover, Rule 45.07 provides a party serving a subpoena must provide the non-party witness at least twenty-one days after service of the subpoena to respond, absent agreement of the non-party witness or a court order.

Further, under rule 26.02(5), when a party withholds information otherwise discoverable by claiming privilege or protection, the party shall expressly state the privilege or protection and describe the nature of the documents, communications, or things not produced to allow other parties to assess the applicability of the privilege or protection.

Here, the compensation hearing is set for December 20 and Ms. Weiss only evaluated Mr. Oldham on November 14. Time is limited for Mr. Oldham to obtain the necessary information to prepare for Ms. Weiss's testimony at the hearing. The parties agree Mr. Oldham served expert interrogatories on Freeman Webb, and, by separate order, the Court has ordered Freeman Webb to disclose Ms. Weiss's report by December 4 and to supplement its expert interrogatory responses regarding Ms. Weiss and Dr. Poole by December 1. Given the limited time available before the compensation hearing, the Court finds a subpoena duces tecum appropriate in this instance.

Ms. Weiss shall have twenty-one days from service of the subpoena duces tecum to respond, or December 5, to produce the requested documents. Any claims of privilege or protection must be expressly stated, and the documents described as required by rule 26.02(5).

It is ORDERED.

Entered December 4, 2023.


JUDGE PAMELA B. JOHNSON
Court of Workers' Compensation Claims

CERTIFICATE OF SERVICE

I certify that a copy of the order was sent as shown on December 4, 2023.

Name	Mail	Email	Service sent to:
Andrew Roberto, Employee's Attorney		X	aroberto@brownandroberto.com
Allen Grant, Ben Norris, Employer's Attorneys		X	agrant@eraclides.com bnorris@eraclides.com


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