JOHN G. ALAMILLA, Sr. v. U.S. General Accounting Office

Docket No. 94-01

Date of Decision: August 8, 1994

Cite as: Alamilla v. GAO, Docket No. 94-01 (8/8/94)

Before: Harriet Davidson, Administrative Judge

Headnotes:

Discovery

Protective Order

MEMORANDUM AND ORDER

PERSONNEL APPEALS BOARD
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C.

JOHN G. ALAMILLA, SR.,	)	
Petitioner,	)	
v.	)	**Docket No. 94-01**
UNITED STATES GENERAL ACCOUNTING OFFICE,	)	
Respondent.	)	

MEMORANDUM AND ORDER

1. Respondent's Motion for Protective Order

Having considered Respondent's motion for a protective order and Petitioner's response thereto, the motion is granted. The motion was based on the following grounds: (1) the Comptroller General does not have unique knowledge pertaining to the case; (2) other GAO officials are in the best position to answer questions concerning GAO Order 2540.1 and the pay-for-performance system; and (3) deposing the Comptroller General would unduly interfere with the exercise of his duties and responsibilities. The Petitioner claims that the Comptroller's deposition is needed to establish his intentions for the pay protection provision, to explain what he meant by his memorandum of May 19, 1989, to corroborate what various staff members told GAO employees about pay protection, to express his view of staff comments attributable to him and to explain how the agency implemented pay protection for the Petitioner.

Heads of government agencies are not usually subject to deposition. Kyle Engineering Co. v. Kleppe, 600 F.2d 226, 231 (9th Cir. 1979); Peoples v. United States Department of Agriculture, 427 F.2d 561, 567 (D.C. Cir. 1970); Sykes v. Brown, 90 F.R.D. 77, 78-9 (E.D. Pa. 1981). Before a party may take a deposition of such individual, there must be a clear showing that the agency head possesses unique information necessary to the development or maintenance of the party's case which cannot reasonably be obtained through other less burdensome or obtrusive means. See Sykes v. Brown, supra at 78.

The Petitioner failed to make this showing. In his declaration, the Comptroller General stated that pay protection under the pay-for-performance system (PFP) was established and implemented in GAO Order 2540.1. Petitioner has not demonstrated that the Comptroller General's intentions for the pay protection provision were at variance with the actual provision set forth in GAO Order 2540.1. The Petitioner has not shown that probing the Comptroller General about his memorandum dated May 19, 1989, or substantiating and commenting on his subordinates' statements, are necessary to the development or maintenance of his case. Further, the record clearly indicates that the Comptroller General has delegated the implementation of the PFP system to his subordinates and does not possess any unique knowledge of how the pay protection provision was applied to or affected Petitioner.

Accordingly, the Comptroller General shall not appear and his deposition shall not be taken.

2. Petitioner's Request for Enlargement of Time

For good cause shown, the Petitioner's request for an extension until August 12, 1994, of the time within which to respond to Respondent's motion for summary judgment is granted. Petitioner must file his answering papers with the Clerk of the Board by 12:00 p.m.

3. Oral Argument

Oral argument on Respondent's motion will be held on Monday, September 19, 1994, at 11:00 a.m. in the hearing room of the Personnel Appeals Board, located at 820 1st Street, N.E., Suite 830, Washington, D.C.

SO ORDERED.

DATED: Aug. 8, 1994