

**SANDRA P. DAVIS v. U.S. General Accounting Office**

**Docket Nos. 00-05; 00-08**

**Date of Decision: November 6, 2000**

**Cite as: Davis v. GAO, Docket No. 00-05 (11/6/00)**

**Before: Michael Wolf, Administrative Judge**

**Headnotes:**

**Discovery**

**Motion to Dismiss**

**Protective Order**

**Sanctions**

**STATUS CONFERENCE REPORT AND ORDER**

PERSONNEL APPEALS BOARD  
U.S. GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C.

_____	)	
SANDRA P. DAVIS,	)	
	)	Docket No. 00-05
Petitioner	)	
	)	Docket No. 00-08
v.	)	
	)	
UNITED STATES GENERAL	)	
ACCOUNTING OFFICE,	)	<u>November 6, 2000</u>
	)	
Respondent	)	
_____	)	

STATUS CONFERENCE REPORT AND ORDER

A telephone status conference was held on Monday, November 6, 2000, to resolve a discovery dispute in the above-captioned matter. Petitioner was represented by counsel, Janice F. Willis. The Agency was represented by attorneys Jeffrey D. Stacey and Barry L. Shillito.

Respondent filed a Motion for a Protective Order on October 16, 2000, seeking relief from the duty to respond to 250 separate interrogatory questions contained in the document titled Petitioner's Second Set of Interrogatories and Request for Production of Documents. Petitioner filed a Motion to Compel Discovery and for Sanctions on October 20, 2000.

Respondent enumerated three bases for a protective order. First, relying on Rule 33(a) of the Federal Rules of Civil

Procedure for a numerical limit, and contending that Petitioner's request was a follow-up discovery request, the Agency claimed that the interrogatories "are unnecessarily broad and unreasonably burdensome." Motion for Protective Order at 2. The Federal Rules are instructive rather than controlling of Board procedures. Moreover, Respondent did not address objections to the interrogatories with any specificity. In addition, Petitioner correctly points out that, while captioned as a "Second Set" of interrogatories, it was the first set of interrogatories for Docket No. 00-08, and the first set propounded after Docket Nos. 00-05 and 00-08 were consolidated. Respondent has not shown that the interrogatories are too broad or burdensome. The Agency's objection based on the number of interrogatories is, therefore, denied.

Respondent also requests that Petitioner's interrogatories be rejected and that Petitioner be forced to propound her questions through deposition of the individuals to whom the interrogatories were directed, because the questions "are better suited to depositions of the individuals identified." Motion at 2. The Board's regulations do not dictate what discovery method a party should use. Insofar as this objection seeks to force Petitioner to request the information through deposition, Respondent's Motion is denied.

Respondent also objects that Petitioner's interrogatories are directed to particular named employees of the Agency, rather than to the Agency itself. Employees are agents of the Agency; they are neither parties nor non-parties for purposes of discovery. Ordinarily the Agency determines which of its employees will respond to an interrogatory. The Petitioner may not dictate who the responding employee will be. Therefore, Respondent's Motion for Protective Order is granted on the basis that the interrogatories at issue were improperly directed to individual employees, rather than to the Agency.

Petitioner's Motion to Compel Discovery insofar as it requests that Respondent be required to answer the Second Set of Interrogatories as submitted is denied.<sup>1</sup> However, Petitioner is granted leave to resubmit the interrogatories to the Agency in the proper format, and the Agency in turn must submit answers signed under oath by employees with personal knowledge of the matter about which inquiry is made. In the alternative, Petitioner may elect to elicit the information through a different method, such as oral depositions or depositions by written interrogatory.

As stated during the status conference, Petitioner will reformulate the interrogatories and resubmit the discovery request to the Agency **by November 29, 2000**. The Agency will

serve its response to Petitioner no later than December 19, 2000. For purposes of this Order, the submissions must be in the other party's hands on the requisite date. No further discovery in this matter is authorized without leave from the administrative judge.

Petitioner's Motion for Sanctions is denied. Respondent was not acting in defiance of an order compelling discovery. See 4 C.F.R. §28.43(c)..

SO ORDERED.

DATE: 11-6-00

Michael Wolf  
Administrative Judge

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<sup>1</sup> The Board notes that Petitioner's Motion was not accompanied by the requisite proposed order. See 4 C.F.R. §28.21(b).