

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

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

**Date of Decision: December 15, 2000**

**Cite as: Davis v. GAO, Docket No. 00-05 (12/15/00)**

**Before: Michael Wolf, Administrative Judge**

**Headnotes:**

**Discovery**

**Protective Order**

**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>December 15, 2000</u>
	)	
Respondent	)	
_____	)	

ORDER

A telephone status conference was held in this matter on Monday, December 11, 2000. Petitioner was represented by counsel, Janice F. Willis. The Agency was represented by Jeffrey D. Stacey, Senior Attorney.

The conference was called to discuss Petitioner's Motion to Reconsider Time for Response and for Protective Order, filed after the undersigned administrative judge issued an order on December 5, 2000 granting Respondent's request for an extension of time to complete Petitioner's deposition, filed on November 17, 2000. As of December 5, 2000, no response had been filed by Petitioner.

Petitioner's counsel now states that she believed the normal response time of 20 days applied to the Agency's Motion

to Compel and to Enlarge Time for Depositions, rather than the 10 days allowed for response to discovery motions. See 4 C.F.R. §28.43(d)(4). On Petitioner's behalf, counsel states that she does indeed oppose the extension of time to allow for further deposition of her client. Further, she requests a protective order on the basis that "Petitioner has already sat for 16.35 hours of deposition questions over two consecutive days; that Respondent has already amassed 461 pages of deposition, and that any further depositions are solely for the purpose of harassing and draining the Petitioner financially." Petitioner's Motion at 4.

As to the first contention, the Agency's Motion to Compel and to Enlarge Discovery Period for Depositions clearly fell within the provisions of the Board's discovery regulations, 4 C.F.R. §28.40 *et seq.* Discovery in this matter had been extended by Order of November 6, 2000, to allow for Petitioner to reformulate a discovery request, with responses no later than December 19, 2000. Further, discovery had previously been extended through November 15, 2000, "for the sole purpose of completing depositions in this matter." Order of October 10, 2000. Respondent's November 17 filing of the Motion to Compel and to Extend Discovery was a timely filed discovery motion. As such, Petitioner was required to respond within 10 days of service of the Agency's Motion. 4 C.F.R. §28.43(d)(4).

Petitioner's failure to file a timely opposition justifies granting the Agency's Motion to Compel.

Even if Petitioner's Motion to Reconsider and for Protective Order were considered on its merits, it would still fail. The Board's rules require that parties seeking a protective order state the grounds on which they rely, 4 C.F.R. §28.42(d)(3). The Federal Rules of Civil Procedure, to which the Board may turn for guidance,<sup>1</sup> provide that a court may order a deposition to cease or be limited "upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party." F.R.Civ.P. 30(d). A party may also seek protection from deposition questions that exceed the scope of discovery permissible under §28.41(b) of the PAB regulations. 4 C.F.R. §28.41(b). Petitioner's conclusory statements in her Motion fall short of making the required showing under either the Federal Rules or the Board's regulations.

For all of the foregoing reasons, Petitioner's Motion for Protective Order is hereby denied.

SO ORDERED.

DATE: 12-15-00

MS/  
Michael Wolf  
Administrative Judge

<sup>1</sup> The Board's rules provide that it be guided, but not bound by, the Federal Rules of Civil Procedure. 4 C.F.R. §28.1(d).