

**JAMES B. DOWD v. U.S. General Accounting Office**

**Docket No. 91-03**

**Date Issued: March 15, 1994**

**Cite as: Dowd v. GAO, Docket No. 91-03 (3/15/94)**

**Before: Nancy A. McBride, Administrative Judge**

**Headnotes:**

**Affirmative Action**

**Discovery**

**Hearing Procedures – Pre/Post-hearing**

**Motion to Compel**

**ORDER**

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

James B. Dowd,  
Petitioner,  
  
v.  
  
United States General  
Accounting Office,  
Respondent.

Docket No. 91-03

ORDER

A prehearing conference was held in this case on Monday, March 14, 1994, beginning at 1 p.m. Paul Thompson and Joan Hollenbach represented the agency. Walter Charlton represented the petitioners. Mr. James Dowd was also present.

In the course of the conference, the Administrative Judge issued the following orders:

1. Petitioner's Motion to Compel dated March 10, 1994, was denied. Petitioner's motion sought minutes of the Executive Resources Board (ERB) and memoranda from the ERB pertaining to affirmative action plans. Petitioner stated that this information was needed because deposition testimony revealed that the ERB set affirmative action goals for the agency. However, at the conference, counsel for the agency read a statement from the deposition of Mr. Brandon in which Mr. Brandon stated that the ERB did not set affirmative action goals. Because counsel for petitioner was unable to cite to any deposition testimony supporting his contention that the ERB had a

role in affirmative action goal setting, the motion to compel was denied.

2. The agency will submit an exhibit which presents (to the extent that the agency has the documents) the affirmative action plans for women and minorities which were in effect for each year in issue in this case. The Administrative Judge requested that this exhibit be prepared because the discussion at the conference revealed that there was a lack of agreement about what plans existed and what those plans contained.

3. The agency will prepare an exhibit which contains (to the extent that the agency has the documents) the affirmative action plans for persons with disabilities and for disabled veterans for each year in issue in this case. The Administrative Judge requested this exhibit because three such plans appear to have been in effect for a period of six years in issue in this proceeding. The agency asserted that it had recently discovered copies of affirmative action plans applicable to disabled veterans, which plans were in effect during fiscal years 1984-85. The Administrative Judge also informed the parties that the Board's own files, developed pursuant to its oversight function, contained copies of affirmative action plans apparently applicable to disabled veterans for fiscal years 1980-85. To clarify what plans existed for what period of time, the Administrative Judge asked the agency to search its records and to submit as an exhibit any

affirmative action plans for persons with disabilities or disabled veterans that were in effect during the years involved in this action. Although not stated at the conference, the Administrative Judge will expect the introduction of these exhibits to include any information the agency might have about whether these plans were, in fact, adopted and implemented for the years indicated.

4. The Administrative Judge instructed the parties to make every effort to reach a stipulation which would set forth the elements of the affirmative action process for women and minorities at the GAO for the years at issue in this case. Petitioner's attorney stated that he would present a draft stipulation to the agency's counsel on Tuesday, March 15, 1994.

5. The Administrative Judge instructed petitioner's counsel to be ready at the hearing to explain the legal basis for his argument that the agency's affirmative action plan for disabled veterans should have contained all the same elements as the agency's affirmative action plan for women and minorities.

6. The agency's motion, filed on March 14, 1994, to file an amended prehearing brief was granted. Accordingly, the agency may file as additional exhibits, certain EEOC instructions and the affirmative action plans applicable to disabled veterans referred to in paragraph 3 above.

7. The agency objected to petitioner's proposal to call as witnesses Comptroller General Charles Bowsher and the Chairman of the Executive Resources Board. The Administrative Judge sustained this objection for the present time, as the stipulations that the parties are supposed to prepare concerning the affirmative action process at GAO should eliminate the need for this testimony. Even if the parties are unable to reach a stipulation, the other proposed witnesses appear best suited to supply the needed information. If this proves incorrect, the petitioner may resubmit a request for the testimony of these individuals and the Administrative Judge will consider it at that time.

8. The Administrative Judge deferred ruling on the agency's objection to having Mr. Drach testify. Petitioner asserted that Mr. Drach would testify that GAO's affirmative action plan for women and minorities was superior to affirmative action plans for disabled veterans at other federal agencies. The agency stated that it might be able to stipulate to that. The parties will discuss this and report to the Board by noon on Thursday, March 17, 1994, whether they have been able to reach such a stipulation. If the parties are unable to reach a stipulation, the Administrative Judge will then rule on the objections to the testimony of this witness.

9. The Administrative Judge noted that petitioner's exhibits were not paginated in conformity with the Board's rules. The Judge

stated that, for the present, she would not require petitioner to submit new copies of his exhibits, but that this may become necessary if references to these exhibits caused confusion at the hearing.

10. In response to the Administrative Judge's questions, counsel for the agency asserted that he did not plan to challenge the authenticity of petitioner's exhibits, but that he might have some objections to the excerpts from the depositions on the grounds that they were not complete.

IT IS SO ORDERED.

  
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Nancy A. McBride  
Administrative Judge

Date: 3-15-94