ANDREW MARSHALL, JR. v. U.S. General Accounting Office

Docket No. 92-04

Date Issued: October 22, 1992

Cite as: Marshall v. GAO, Docket No. 92-04 (10/22/92)

Before: Isabelle R. Capello, Administrative Judge

Headnotes:

Class Action

Good Cause

Motion to Compel

ORDER

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

Andrew Marshall, Jr., Petitioner, v. United States General Accounting Office, Respondent.	Docket No. 92-04

ORDER

By order dated June 23, 1992, the discovery completion date in this case was extended to August 15.

On September 29, Respondent filed a motion to compel response to Respondent's request for production of documents. Respondent requests the Board to issue an order compelling Petitioner to provide medical releases for the production of records relating to Petitioner's emotional health. These records are sought by Respondent in order for it to prepare its defense to Petitioner's claim for compensatory damages in the amount of $50,000 and six months of paid administrative leave to recover from "emotional harm caused by the violation of substantive constitutional rights." See page 14 of the Petition for Review.

Petitioner has furnished to Respondent the names and addresses of persons who have counseled and treated Petitioner. These persons include two counselors in the Respondent's Office of Counseling and Career Development (OCCD) and a physician in Atlanta, Georgia. Petitioner has furnished to Respondent a release for disclosure by OCCD of information regarding "attendance at counselling sessions, and general nature of counseling." See Attachment 1 to Petitioner's response to the motion. Petitioner has also furnished a memorandum from one of the OCCD counselors to counsel for Petitioner stating dates on which Petitioner was counseled and that he was given counseling assistance "due to stress related to his work environment." See Attachment 2 to Petitioner's response. What Respondent has sought from Petitioner, however, is his consent for release to Respondent of information, namely "[a]ll records of counseling." See Attachment E to the motion. No release has been furnished by Petitioner for the medical records of the Atlanta physician.

Counsel for Petitioner advised Respondent, at a July 1 prehearing conference, that she would be on vacation from August 13 through August 31. The undersigned, at the same time, advised the parties that she would be out of the country between August 4 and August 22. During this period, good cause existed for the filing by Respondent of a late motion to compel discovery. However, counsel for Petitioner and the undersigned have been available for extended blocks of time since the end of August. The fact that the parties have been having ongoing discussions about the discovery

issue since the end of August does not constitute good cause for this late motion, filed some 45 days after the date set for the completion of discovery. Accordingly, this motion will be denied.

Based upon the foregoing premises, it is hereby ORDERED, that the Motion to Compel Response to Respondent's Request for Production of Documents is denied.

/s/
Isabelle R. Cappello
Administrative Judge

Date: October 22, 1992

United States Government Accountability Office

Request for Scanning - Imaging Center

Operator	Date/Time Started	Date/Time Completed	Time Spent

GAO Imaging Center (IC), Room 1257, GAO HQ, (202) 512-5166, SCANHelp@gao.gov

Instructions

1. **Use a separate request for each job.**
2. **Remove all staples and metal fasteners from originals.**
3. **Attach request form to material with a paper clip or a rubber band.**

Limitations

1. **Size of originals cannot exceed 8-1/2" x 14".**
2. **Extraneous marks, lines, smudges, etc., appearing on originals may transfer to new document.**
3. **Imaging Center staff will not scan copyrighted material without proper written authorization from the copyright holder (See GAO Form 299), and will comply with copyright policy.**
4. **A 3 day turnaround is required for customers requesting scanning services for textbooks, spiral notebooks, and other materials with a binding.**
5. **Imaging Center will not scan classified material.**

1. Requester's Name	2. GAO Unit	3. Telephone No.	4. Date

5. Title/Subject of Document	6. Total No. of Pages Scanned	7. Due Date

8. Type of Document **(Sensitive requests, including this form, are kept in a secure area)**

☐ **Unclassified**

☐ **SBU (Sensitive but Unclassified)** (SBU limits delivery to CD or DM only. See item 10 to select)

Password_____ (All SBU CD requests must have an 8 character password)

9. Type of Conversion

Convert original into:

☐ **.PDF** (Acrobat with searchable text) ☐ **.PDF** (Acrobat without searchable text) ☐ **.JPEG** (picture)

Other types of files (1 day turnaround)

☐ MS Word document

☐ **Captured text only** (1 day turnaround)

☐ **Format text into a Word document** (3 day turnaround)

☐ MS Excel document

☐ **Captured text only** (1 day turnaround)

☐ **Format text into an Excel document** (3 day turnaround)

10. Method of delivery (Note: File will be submitted by email to original requester unless otherwise specified.)

☐ CD ☐ DM/ERMS

☐ Zipped email

Doc Name:_____
Author:_____
Audit Agency:_____
Job Code:_____
Objective:_____
Folder:_____
Doc Type:_____

☐ Engagement Doc Profile

☐ Administrative Profile

☐ Policy & Special Collections Profile

(Note: IC staff will also be an author when initially saving the file. Requester will be given full rights to modify file access.)

11. Special Instructions (E.g., color on some or all pages, alternate GAO email address recipents, any other special requests. Feel free to call for further clarification.)

12. Signature of Requester Upon Pickup of Originals	13. Date/ Pickup Time

SHIRLEY A. PERRY v. U.S. Government Accountability Office

Docket No. 07-02

Date Issued: February 8, 2008

Cite as: Perry v. GAO, Docket No. 07-02 (2/8/08)

Before: Paul M. Coran, Administrative Judge

Headnotes:

Sanctions

Show Cause Order

Subpoena

Timeliness, General

ORDER TO SHOW CAUSE

PERSONNEL APPEALS BOARD
U.S. GOVERNMENT ACCOUNTABILITY OFFICE
WASHINGTON, D.C.

SHIRLEY A. PERRY,	)	
Petitioner	)	
	)	
v.	)	**Docket No. 07-02**
	)	
UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE,	)	
Respondent	)	February 8, 2008

ORDER TO SHOW CAUSE

On Wednesday, February 6, 2007, Petitioner filed two separate motions with the Board: 1) Petitioner's Motion for the Issuance of a Subpoena; and 2) Petitioner's Motion *in Limine* to Exclude Certain Evidence Proffered by Respondent. The following morning, the Agency filed Respondent's Response to Motion for Subpoena and Notice Regarding Patrick Seeley; no submission regarding the Motion *in Limine* has been received at this point.

Motion for Issuance of Subpoena

Petitioner's Motion for Issuance of a Subpoena asks the undersigned Administrative Judge to require the attendance and testimony of Patrick Seeley in the administrative hearing scheduled to commence on Monday, February 11, 2008. Under the Board's regulations, such a request for subpoena is required to be filed "at least 15 days in advance of the date scheduled for the commencement of the hearing." 4 C.F.R. §28.46(b)(1). In support of the pending Motion, Petitioner asks that the untimely request be entertained "because counsel for GAO only just notified the undersigned counsel of Mr. Seeley's reluctance to appear as a witness in this matter

at the prehearing status conference on February 4, 2008." Motion for Subpoena at 2. This request was received at 3:49 p.m. on February 6, 2008.

The Agency filed its Response at 9:46 a.m. on February 7, 2008. GAO states therein that Agency counsel "had a number of discussions with Mr. Seeley in advance of the Pre-Hearing Conference in order to secure his voluntary participation at the hearing. . . . Upon learning of Mr. Seeley's unavailability, GAO counsel advised Petitioner's counsel of this fact on January 28, 2007. See Exhibit A. Thus, contrary to Petitioner's assertion, Petitioner has been aware of Mr. Seeley's unavailability since that date. It did not, as asserted in the request, first learn this fact at the pre-hearing conference of February 4." Respondent's Response at 1. The Agency then states that counsel again contacted Mr. Seeley after the pre-hearing conference in an unsuccessful effort to secure his testimony via telephone.

Attached to the Response as Exhibit A is an e-mail from Agency counsel Cherie J. Owen to Petitioner's counsel Diane R. Williams. The e-mail is dated 1/28/2008 at 2:13 p.m. Containing only two sentences and the contact information for Mr. Seeley, it states in relevant part: "With regard to Mr. Seeley, we have attempted to secure his cooperation, but he has indicated that he is unwilling to appear at a hearing."

Petitioner did not reply to the Agency's Response.

Petitioner has asked for a waiver of the time limit based upon an apparent written misrepresentation to the Board of the events in this matter.

Accordingly, the parties are ordered to show cause by written submission **no later than 3:00 p.m. today** why the Motion for Subpoena should not be denied or why sanctions should not be imposed, as follows:

Petitioner must submit a response to the Agency filing of February 7, 2008, including the attachment thereto. Respondent must submit its electronic confirmation that the e-mail attachment to its filing was in fact delivered on the date it was written (*i.e.*, "properties" print out).

A further order will issue upon consideration of these submissions.

SO ORDERED.

Date: 2-8-08

/s/
Paul M. Coran
Administrative Judge

CERTIFICATE OF SERVICE

This is to certify that on February 8, 2008 the foregoing Order in the case of *Perry* v. *GAO*, Docket No. 07-02, was faxed to the parties listed below, with delivery in the manner indicated to follow on the morning of February 8, 2008.

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(Fax and Interagency Mail)

Date: 2/8/08

Patricia V. Reardon-King
Clerk of the Board