

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

Docket No. 92-04

Date of Decision: December 23, 1992

Cite as: Marshall v. GAO, Docket No. 92-04 (12/23/92)

Before: Alan S. Rosenthal, Administrative Judge

Headnotes:

Motions Practice

Hearing Procedures – Pre/Post Hearing

Timeliness, General

ORDER

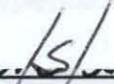
that it was filed on behalf of respondent's counsel by another attorney in her office (because counsel is currently on annual leave), the motion is most unilluminating in this regard.

The significance of the inexplicable failure of respondent's counsel to take account of express and unambiguous oral and written instructions is not lessened by the fact, stressed in the motion, that the brief had been completed prior to the December 21 deadline and would have been filed on time but for a tactical decision founded on the erroneous belief that the deadline was the following day. According to the motion, filing the brief a full day ahead of the deadline was thought "unwise because it would allow petitioner's counsel the advantage of reading respondent's brief prior to completing hers." It seems scarcely likely, however, that at the eleventh hour petitioner's counsel would have been able to make substantial revisions in her 98-page brief to accommodate respondent's arguments. Moreover, respondent's counsel apparently overlooked the consideration that, because reply briefs have been authorized, petitioner would have ample opportunity to respond to respondent's assertions in all events. In short, the withholding of the brief once completed does not appear to have served any useful purpose but rather, coupled with the failure of respondent's counsel to ascertain correctly the filing deadline, simply put the cause of her client into possible jeopardy.

The Clerk of the Board will now accept the lodged brief for filing. In future, respondent's counsel will be expected not merely to honor her office's commitment to adhere "scrupulously" to

time deadlines but, as well, in all contexts to pay close attention to the directives of this Board. This may require periodic review of those directives, to avoid the consequences of reliance on a faulty memory.

SO ORDERED.


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Alan S. Rosenthal
Administrative Judge

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