

**WILLIAM A. MULLEN v. U.S. General Accounting Office**

**Docket No. 14-201-17-82**

**Date of Decision: January 31, 1983**

**Cite as: Mullen v. GAO, Docket No. 14-201-17-82 (1/31/83)**

**Before: Jerome H. Ross, Presiding Board Member**

**Headnotes:**

**Discovery**

**Hearing Procedures – Pre/Post Hearing**

**Motions Practice**

**Timeliness, General**

**ORDER**

BEFORE THE  
PERSONNEL APPEALS BOARD  
U.S. GENERAL ACCOUNTING OFFICE

\* \* \* \* \*

William A. Mullen, \*

Petitioner, \*

v. \* Docket No. 14-201-17-82

General Accounting Office, \*

Respondent. \*

\* \* \* \* \*

ORDER

On January 17, 1983, counsel for Petitioner moved for leave to depose Jim Wright, an expert witness GAO plans to use at the hearing commencing on February 22, 1983. GAO first indicated Mr. Wright as a potential witness on January 3, 1983. On January 24, having received no opposition from GAO nor been informed that one would be filed, and with a timely order important so that discovery may be concluded prior to the hearing, I granted the motion.

On January 25, GAO filed a response to Petitioner's motion to depose Jim Wright. In essence, GAO does not object to discovery from Mr. Wright, but opposes a deposition as the first step in such discovery. It argues that the procedure under Rule 26(b)(4)(A) of the Federal Rules of Civil Procedure should be followed here, namely, first written interrogatories, and then Petitioner may, if he believes that process has not been sufficient, move for an

order permitting a deposition.

I have treated GAO's response as a motion to reconsider. First, under the Board's rules, discovery procedures are not set forth in detail. Rather, the Presiding Member has discretion to order discovery in the manner best suited to the particular circumstances at the time, if the parties are unable to agree. Although the Federal Rules may provide guidance, they are not mandatory.

In the circumstances of this case, where (a) Mr. Wright's identity as an expert witness was first disclosed on January 3, (b) a motion to depose Mr. Wright may be made in any event even if written interrogatories are first served and answered (see, e.g., 10 Fed. Proc., L.Ed. §26.53), (c) the hearing is scheduled to commence in just three weeks, on February 22, (d) prior postponements of the hearing already have occurred, and (e) further postponement is to be avoided if at all possible, I adhere to my ruling that Mr. Wright may be deposed by Petitioner.

Dated: *January 31, 1983*

*[Signature]*  
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Jerome H. Ross  
Presiding Board Member