

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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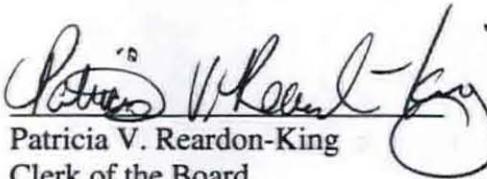
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(Fax and Interagency Mail)

Date: 2/8/08


Patricia V. Reardon-King
Clerk of the Board