

**JANICE F. WILLIS v. U.S. General Accounting Office and U.S. General
Accounting Office Personnel Appeals Board**

Docket No. 98-02

Date of Decision: March 15, 1999

Cite as: Willis v. GAO and GAOPAB, Docket No. 98-02 (3/15/99)

**Before: Paul G. Streb, Chief Administrative Law Judge, Merit Systems Protection Board
(sitting in place of the Personnel Appeals Board)**

Headnotes:

Discovery

Hearing Procedures – Pre/Post-Hearing

Motion to Compel

Sanctions

ORDER

BEFORE CHIEF ADMINISTRATIVE LAW JUDGE PAUL G. STREB
U.S. MERIT SYSTEMS PROTECTION BOARD
SITTING IN PLACE OF THE U.S. GENERAL ACCOUNTING OFFICE
PERSONNEL APPEALS BOARD

JANICE F. WILLIS,
Petitioner,

v.

U.S. GENERAL ACCOUNTING OFFICE,
and
U.S. GENERAL ACCOUNTING OFFICE
PERSONNEL APPEALS BOARD,
Respondents.

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) PAB DOCKET NUMBER
) 98-02
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) DATE: March 15, 1999
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ORDER

On March 8, 1999, Respondent Personnel Appeals Board (PAB) filed a motion requesting that sanctions be imposed on the Petitioner for her failure to comply with orders compelling discovery. The Petitioner responded in opposition to this motion on March 11, 1999.¹ For the reasons stated below, I find that the Petitioner failed to comply with discovery orders as the PAB alleges, and that sanctions may be warranted. The motion therefore is GRANTED in part.

In response to motions filed by the PAB, I issued orders on February 17 and 25, 1999, directing the Petitioner to provide

¹ The PAB has filed a response to the Petitioner's submission, along with a motion for leave to file that response. Because the PAB's submission addresses only matters that I am resolving in that party's favor on the basis of the motion and the Petitioner's response to it, I find the PAB's submission unnecessary. The PAB's motion for leave to file the response therefore is DENIED.

certain documents and other information to the PAB and to Respondent General Accounting Office (GAO) not later than February 24 and March 1, 1999, respectively. Order of Feb. 17 at 2; Order of Feb. 25 at 2. In its March 8 motion, the PAB asserted that the Petitioner had provided nothing in response to either order. Motion at 1-2. It requested that the Petitioner be sanctioned by the dismissal of her appeal or, in the alternative, that lesser sanctions be imposed. *Id.* at 5-7.

The Petitioner does not deny that she failed to respond to the orders in question. In fact, in her response to the motion for sanctions, she appears to admit that she failed to do so. See Response to Motion at 4-5. She argues, however, that "there was no willful intention to ignore the Order"; she seems to indicate that her failure to respond was caused by her unexpected appointment on February 10, 1999, as a representative in a court case; and she asserts that she "sought to remedy [the time conflict caused by this appointment] with a request for an extension of time to answer discovery." See *id.* She also seems to contend that the PAB acted in bad faith by "fil[ing] a Motion to Compel on February 22, 1999," and by opposing her February 17 request for an enlargement of the discovery period. See *id.* at 3-4.

I note first that there is no indication in the record that the Petitioner advised me or the other parties to this case of any need for additional time in which to respond to any discovery request or order. In fact, she filed no response at all to either of the PAB's motions to compel discovery; and she filed nothing with me or, evidently, with either Respondent indicating that she needed additional time in which to provide the information I ordered her to provide. Moreover, although she has identified the date on which she received her court appointment, she has provided no other specific information about the manner in which the tasks she was required to perform

in connection with this appointment prevented her from complying with my orders in a timely fashion.

I also note that the Petitioner's allegations of bad faith on the part of the PAB are not relevant to the issue of the failure to respond to my orders of February 17 and 25. The pleading to which the Petitioner objects, i.e., the pleading the PAB filed on February 22, was a response to the Petitioner's request for an enlargement of the discovery period, and not a "Motion to Compel," as the Petitioner has alleged. See PAB Submission of Feb. 22, 1999. Furthermore, the Petitioner has not shown how the issue of whether the discovery period should have been enlarged has any bearing on the issue of whether sanctions should be imposed for her failure to respond to my orders. The discovery requests that led to the PAB's motions to compel discovery were presented to the Petitioner well before the originally scheduled end of the discovery period, as were the PAB's motions and even my orders.

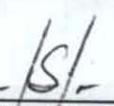
In addition, I note that the Petitioner asserts, in her response to the motion for sanctions, that she "has had to respond to requests from two different attorneys who appear to be representing separate interests when she has only filed suit against one of them, the U.S. General Accounting Office, her former employer," and that she asks for "a ruling on which attorney represents Petitioner's former employer in this case in order to relieve Petitioner of the undue burden of having to litigate on two fronts." Response to Motion at 3. In my order of December 8, 1998, I noted that the Petitioner had raised this issue during a telephone conference held the prior day. Order of Dec. 8 at 2. I also found there that the authority of the PAB was sufficiently separate from that of GAO, with respect to matters relevant to this case, to warrant naming both the PAB and GAO as separate respondents. *Id.* Nothing in the Petitioner's recent submission persuades me that this finding

should be rescinded or modified. Moreover, even if the participation of both respondents during the discovery process increased the burden of discovery on the Petitioner as she alleges, the Petitioner has provided no specific information indicating that any such increased burden prevented her from complying with my orders of February 17 and 25.

I have found above that the Petitioner failed to comply with my orders of February 17 and 25, and that sanctions may be warranted. I have made no decision at this time, however, as to the specific nature of the sanctions that will be imposed. Instead, I will defer my decision until after the parties have submitted their prehearing briefs, witness lists, and indices of exhibits.² At that point, I will be better able to assess the harm, if any, the Respondents have suffered. In making my decision regarding sanctions, I will consider any evidence that the Petitioner has complied by that time with my orders, and any evidence that she has failed to comply with other orders. The Respondents may, within three (3) work days after they receive the Petitioner's prehearing brief, witness list, and exhibits, provide more information as to how they have been harmed by the Petitioner's failure to comply. The Petitioner may respond to any such submission within 1 work day after it is filed. Both the Respondents' submissions regarding this matter and the

² Because of this deferral, I need not address, at this time, the Petitioner's argument that the sanction of dismissal would be excessively severe or her argument that the PAB has not been harmed by her failure to respond to my orders.

Petitioner's response must be filed and served on the other parties by facsimile.



Paul G. Streb
Chief Administrative Law Judge
Merit Systems Protection Board

Washington, D.C.