

ORDER ON PENDING MOTIONS

██████████, Appellant,

v.

OFFICE OF ECONOMIC DEVELOPMENT, WORKFORCE PLANNING DIVISION, and the City and County of Denver, a municipal corporation, Agency.

On February 4, 2016, Appellant filed a motion to compel discovery, and renewed his subpoena requests for Joel Meaders and Chiquita McGowin. The Agency responded to the motion to compel discovery, listing various objections, including the untimeliness of the motion.

Motion to Compel Discovery

This is an appeal of Appellant's May 28, 2015 dismissal based on incidents of misconduct from January to April, 2015, and failure to meet an April deadline to complete 41 file reviews. In this motion to compel discovery, Appellant repeats five requests for production (RFPs) from the Agency, alleging that his original motion to compel discovery was not addressed. Appellant first filed a motion for discovery on Aug. 3, 2015. The Agency objected on several grounds, and later moved to strike the discovery motion as untimely. Appellant raised portions of his original motion in the Aug. 25, 2015 prehearing conference, and those portions were ruled upon during the conference.

Here, Appellant renews his motion for Requests for Production (RFPs) 1 – 5, as follows:

RFP 1: The floor surveillance video for Apr. 24, 2015, relevant to the allegation that Appellant threw a pen. Appellant bases his request on a statement made by Ranae Taylor at the May 15, 2015 pre-disciplinary meeting that she saw the video. The Agency responded to the original request for the video on Aug. 10, 2015 by stating the video no longer exists in keeping with its practice to erase videos after a period of time. It repeated that response on Feb. 9, 2016.

RFP 2 and 3: Appellant seeks the signed copies of his PEP dated May 5 and Oct. 8, 2014. The Agency responds that the signed PEPs are not relevant to any issue in this appeal, and further that the comprehensive PEP covering his city tenure was furnished to him as a part of his personnel file.

As noted above, the remaining issues are whether Appellant's dismissal was proper under the Career Service Rules, and whether it was instead motivated by sex

discrimination or a desire to retaliate against him for his April, 2015 grievance. There are no allegations that Appellant failed to comply with his 2014 PEP. While Appellant argues that his PEP goals were changed, that argument is not relevant to the issues being appealed.

RFP 4: Witness statements from Kathleen McCleary, Cindy Ackerman, Nick Obrin and Ed Fuerte. The Agency has previously been ordered to produce those statements, and the Agency represents that it has done so. Appellant confirms that fact on page two of his motion.

RFP 5: Appellant's Outlook Calendar appointments on March 19, and April 17, 21 and 24, 2015. Appellant has previously argued that the appointments would show the correct dates of various incidents at issue in this appeal, and will correct misleading presumptions. [Appellant's Reply re: Discovery, 8/13/15.] This issue has not been previously determined by the hearing officer. Appellant has therefore presented good cause for both the late request and for production of the requested Outlook entries

Motion for Subpoenas

Appellant has renewed his request for subpoenas for Joel Meaders and Chiquita McGowin, but presented no new grounds in support of the requests. The Agency has agreed it will produce Ms. McGowin, rendering a subpoena unnecessary. Appellant seeks Mr. Meaders to provide evidence about data analysis related to his whistleblower claim. That claim was dismissed by order dated Oct. 2, 2015.

Order

For the above reasons, the following orders are entered:

1. Appellant's request to subpoena Joel Meaders is denied. A subpoena for Chiquita McGowin is denied as unnecessary based on the Agency's agreement to produce the witness.

2. RFP 5 is granted. On or before **March 17, 2016**, the Agency shall produce the requested Outlook entries. The remaining RFPs are **denied**.

DONE March 14, 2016.



Valerie McNaughton
Career Service Hearing Officer