

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

DAVID NOBLE, JR.,
Appellant,

DOCKET NUMBER
DC-0752-11-0880-I-1

v.

UNITED STATES POSTAL SERVICE,
Agency.

DATE: October 28, 2011

**ORDER DENYING MOTION TO CERTIFY ISSUE FOR
INTERLOCUTORY APPEAL AND MOTION TO POSTPONE HEARING**

Motion to Certify Issue for Interlocutory Appeal

On October 21, 2011, the appellant filed a motion to certify as an interlocutory appeal to the Board the issue of disqualifying me as the administrative judge in this appeal. In support of his motion, the appellant argued that, in my September 27, 2011 Order and Summary of Prehearing Conference, I “made false statements about appellant’s conduct during the September 26th [prehearing] conference.” The Board’s regulations provide that an administrative judge will certify a ruling for review only if, *inter alia*, the ruling “involves an important question of law or policy about which there is substantial ground for difference of opinion.” [5 C.F.R. § 1201.92\(a\)](#). I have reviewed the appellant’s motion, and his reasons in support thereof, and it is denied because, on its face, the matter at issue does not involve an important question of policy or law. *See Lee v. Environmental Protection Agency*, 115 M.S.P.R. 533, ¶ 23 (2010); [Keefer v. Department of Agriculture](#), 92 M.S.P.R. 476, ¶ 7 (2002).

In support of his assertion that I made false statements in my Summary, the appellant attached a declaration and transcript of the September 26, 2011 prehearing conference. First, to the extent that the appellant is asking that this transcript become the official précis of the prehearing conference, that request is denied. My September 27, 2011 Order and Summary of Prehearing Conference remains the official synopsis of what occurred at the conference on that date. Second, based on my review of this transcript, I disagree with the appellant's claim that I made a false statement. Third, I am troubled that the appellant tape-recorded the prehearing conference without, to my knowledge, first getting permission or even notifying the administrative judge or the agency's representative that he was going to do this. The appellant, in his affidavit, states that he submitted a "true and accurate copy of the transcript." Assuming this to be true, I note the transcript reflects that at no point in the conference did the appellant alert anyone to the fact that he was tape-recording the telephone call. I believe the appellant's failure to inform everyone on the call that he was tape recording was, at best, discourteous. Fourth, I am reminding the parties that the Board's Hearing Order instructed them as follows:

Absent express approval from the administrative judge, no two-way communications devices may be operated and/or powered on in the hearing room; all cell phones, text devices, and all other two-way communications devices shall be powered off in the hearing room. Further, no cameras, recording devices, and/or transmitting devices may be operated, operational, and/or powered on in the hearing room.

I am notifying the parties that they do not have my express approval to record the hearing.

Motion to Postpone Hearing

On October 24, 2011, the appellant filed a second motion to postpone the hearing. Once again, he argued that he might need additional time to engage in further discovery. Previously, I granted the appellant's request to delay the hearing date, for similar reasons to those he sets forth here. The appellant, in his

motion, asserted that he contacted the agency's representative, who "did not without equivocation indicate whether [he] would oppose this motion."

After reviewing the appellant's motion and the bases for the requested delay, I am denying his request to postpone the hearing. To that end, I note that I already changed the hearing date at least once to give the parties more time to engage in discovery. I also spent considerable time at the second prehearing conference to make rulings on each matter contained in the appellant's motion to compel. I did this in order to expedite the discovery process, even though the agency's representative complained that the agency response to the motion to compel was not even due yet. The appellant, in his pleading, speculates that the agency might not cooperate with him in completing discovery, given their dealings in previous cases, although he cannot be sure that this is going to happen in this appeal. It appears, moreover, that some of the evidence the appellant continues to seek in discovery pertains to issues or cases that he has previously litigated, or that the Board has disposed of for lack of jurisdiction in the past. I therefore see no purpose in delaying these proceedings to wait for evidence that is irrelevant or immaterial to this case. In sum, I find that good cause does not exist for the request to postpone the hearing. Accordingly, the appellant's motion is denied.

FOR THE BOARD:

_____/S/_____
Daniel Madden Turbitt
Administrative Judge

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

Electronic Mail David Noble, Jr.
1 Fenceline Drive
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October 28, 2011

(Date)

/s/

Marie Sumner
Supervisory Paralegal
Specialist