

DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-12-0054-I-1

Agency's Motion to Compel Discovery

Summary Page

Case Title : DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket Number : DC-0752-12-0054-I-1

Pleading Title : Agency's Motion to Compel Discovery

Filer's Name : Stephen W. Furgeson

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

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DAVID NOBLE v. UNITED STATES POSTAL SERVICE

Docket # DC-0752-12-0054-I-1

Agency's Motion to Compel Discovery

Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

2. Does your pleading assert facts that you know from your personal knowledge?

No



Via e-Mail and Priority Mail – Delivery Confirmation

December 23, 2011

Daniel Madden Turbitt
Administrative Judge
Merit Systems Protection Board
Washington Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Re: **David Noble, Jr. v. United States Postal Service**
MSPB Dkt. No. DC-0752-12-0054-I-1

Dear Administrative Judge Turbitt:

Enclosed are the "Agency's Motion To Compel" and a certificate of service in the above-captioned matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Stephen W. Furgeson
Attorney

cc: David Noble, Jr.
1 Fenceline Drive
Gaithersburg, MD 20878

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

DAVID W. NOBLE, JR.,)	
Appellant,)	
)	DOCKET NO. DC-0752-12-0054-I-1
v.)	
UNITED STATES POSTAL SERVICE)	ADMINISTRATIVE JUDGE:
Agency.)	Daniel Madden Turbitt
)	

AGENCY'S MOTION TO COMPEL DISCOVERY

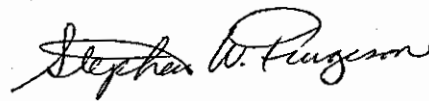
Pursuant to 5 C.F.R. § 1201.73 (c) (2), the Agency moves for an order compelling discovery responses.

On November 23, 2011, written discovery was mailed to the Appellant. See Exhibit 1. The Appellant received the discovery on November 25, 2011. See Exhibit 2. Responses were due from the Appellant by Thursday, December 15, 2011, but were not provided.

After those responses were not received the undersigned Agency counsel contacted the Appellant by an email on December 22, 2011, inquiring as to the status of the Appellant's responses to the Agency's discovery. See Exhibit 3. The Appellant responded that he was unaware of the Agency's discovery. See Exhibit 3. The undersigned Agency counsel then provided the Appellant with a copy of the Agency's discovery and delivery confirmation and asked the

Appellant to explain why he had not responded. See Exhibit 3. At the close of business on December 22, 2011 the Appellant had not responded.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Stephen W. Furgeson
Attorney for Agency

CAPITAL METRO LAW OFFICE



Via Priority Mail – Delivery Confirmation

November 23, 2011

David Noble, Jr.
1 Fenceline Drive
Gaithersburg, MD 20878

Re: **David Noble, Jr. v. United States Postal Service**
MSPB Dkt. No. DC-0752-12-00544-1

Dear Mr. Noble:

Enclosed are the "Agency's Interrogatories And Request For Production Of Documents" and a certificate of service in the above-captioned matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Stephen W. Furgeson
Attorney

Enclosures

Exhibit 1

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

DAVID W. NOBLE, JR., Appellant,)	
)	
)	DOCKET NO. DC-0752-12-0054-I-1
)	
v.)	
)	ADMINISTRATIVE JUDGE:
UNITED STATES POSTAL SERVICE Agency.)	Daniel Madden Turbitt
)	

AGENCY'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

The United States Postal Service ("Postal Service" or Agency"), by and through its undersigned representative, hereby serves upon Appellant the following Interrogatories and Request for Production of Documents. These Interrogatories and Requests are deemed to be continuing in nature.

Instructions

A. Each interrogatory and subpart thereof must be answered separately, fully, under oath, and in writing, and such answers must be served upon counsel for the Agency within 20 days after service hereof.

B. These interrogatories are continuing in character, and therefore require you to file supplemental answers if you obtain further or different information before the hearing in this matter.

C. Unless otherwise indicated, these interrogatories refer to the time, place and circumstances of the occurrence(s) mentioned, alleged or complained of in your Appeal.

D. Where knowledge of information in possession of a party is requested, such request includes knowledge of the party's servants, employees, agents, representatives, spouse, family and attorney(s). The term "representative" shall mean and include any and all agents, servants and employees.

E. Where an individual interrogatory calls for an answer that involves more than one part, each part of the answer should be clearly set out so that it is understandable.

F. If you lack the information necessary to answer any of the interrogatories, please describe the specific effort(s) made by you or anyone on your behalf to ascertain the information and state as definitely as possible when you anticipate obtaining the information and supplementing your response.

G. For each interrogatory, identify all persons who have provided the facts upon which the answers are based, or if a document is relied upon, identify the document.

H. In answering these interrogatories, furnish all information that is available to you or otherwise subject to your custody and control.

I. If you know of any documents, communication, or information but cannot give the specific information or the full information for which a particular interrogatory calls for, so state, give the particular reasons for your inability, give

the best information that you can provide on the subject (such as approximate dates or amounts), and identify every person whom you believe may have the requested information.

J. If any interrogatory is not answered fully under a claim of privilege, work product or for any other reason, state the basis for your refusal to answer and identify all allegedly privileged oral and written communications containing information requested by the interrogatory. State the precise privilege or privileges you are interposing with respect to the interrogatory. Supply sufficient factual detail to enable the Board to determine whether or not such document or communication is actually privileged, including:

(a) the date or dates of the communication or of the document; (b) the name, position and address of each person who participated in the communication or the preparation of the document; (c) the name, position and address of each person to whom the communication or document was addressed; (d) the name and address of each person, other than the addressee, to whom the document, communication, or the substance thereof have been disclosed in any way; (e) the general subject matter of the document or communication; and (f) the basis or bases for the claim of privilege.

Definitions

A. "And" shall be deemed to include "or" and vice versa; the singular form shall be deemed to include the plural and vice versa.

B. "Communications" include conversations, telephone calls, letters, telegrams, electronic mail, video transmissions, or facsimiles and any other written, oral, or other forms of communications.

C. The terms "describe" or "description", when referring to any event, mean to provide the following information:

- (1) The time, date, and place of the event (including by way of amplification and not limitation a meeting, occurrence, or event);
- (2) the identification of each person who participated in the event or was a witness thereto;
- (3) the subject matter and substance of that which took place; and
- (4) the identification of each document relating to the event.

D. "Document" means any written, recorded, graphic, electronic or other material, however produced or reproduced, whether or not in the possession, custody, or control of Appellant, and whether or not claimed to be privileged against discovery on any grounds, including, but not limited to, material in the form of books, reports, witness statements, studies, records, agreements, lists, memoranda, diagrams, checks, sketches, charts, diaries, correspondence, notebooks, facsimiles, telegrams, schedules, bills, invoices, notes, photographs, videotapes, sound recordings, appointment calendars, films, worksheets, computer printouts, computer disks, information stored in computer memory drives of any kind, bookkeeping entries, or any other documents of any kind whatsoever, irrespective of the form, including any draft or working copy.

E. "Identify" means:

(1) When referring to a natural person, state his or her full name and present or last known business and residence address (including street name and number), his or her last known or present business affiliation, and his or her position and business affiliation at the time of the event or matter in question;

(2) When referring to any entity other than a natural person, state its full name and the address of its principal place of business;

(3) When referring to a document, indicate the type of document (for example, letter, record, list, chart, memorandum, report, etc.) and provide its date, title, its subject matter and substance, identification of the person by whom the document was prepared and to whom it was delivered, and other information necessary to enable the custodian to locate the particular document and necessary for use in a demand for the production of documents under subpoena or the Federal Rules of Civil Procedure;

(4) When referring to an oral communication: (a) state the date and place thereof; (b) identify each person making the communication, the person to whom it was made, and each person who was present (in person or by telephone) when it was made; (c) state the subject and substance of the communication; and (d) specify each document relating to the communication or that was prepared or made during the course thereof or as a consequence thereof.

F. "Person" means any natural person or any entity other than a natural person, including a government or government agency.

G. A communication or document "relating" to any given subject means any communication or document that includes statements about, discusses, describes, reflects, identifies, refers to, deals with, or is in any way pertinent to that subject.

H. "State the basis," when referring to a contention, means: (1) describe all facts, identify all persons having knowledge of such facts, identify all oral communications concerning such facts, and identify all documents on which you rely to support your contention; and (2) set forth the legal or factual theory on which you rely and each logical step in your analysis.

I. "You" means the person to whom these interrogatories are directed, together with his attorneys and any other person acting directly or indirectly on his behalf.

J. The term "Discussion" refers to all communications, other than those which were accomplished only by use of documents and then only to the extent those documents are completely identified, whether or not accomplished with the aid of any electrical, mechanical, or any other device, and whether or not only one party spoke or communicated. It includes, but is not limited to, meetings, phone conversations, chance encounters, advice or promises, requests, and meetings and telephone calls which are not evidenced by documents not included in paragraph E(3) above.

Interrogatories

1. Identify, according to the Definitions above, each person answering or assisting in the preparation of these Interrogatories and Request for Production of Documents.
2. Identify each person whom you allege, or believe, has personal knowledge of the facts concerning the allegations in your Appeal and provide a complete and accurate description of each such person's knowledge.
3. State whether you have made any statement or statements in any form to any person regarding the allegations in your appeal. If so, identify each person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.
4. If you contend that your due process rights, please state in detail the basis for your contention.
5. State fully and accurately your basis for contending that you were constructively suspended.
6. For each statement you provided in your response to Interrogatory No. 5, please provide a complete and accurate description of how you believe this statement would support your Appeal.
7. Please each individual that you believe were responsible for your constructive suspension, and when did your constructive began.
8. What caused you to file your appeal of the constructive suspension on August 15, 2011?

9. Please explain in detail why you believe the Agency's actions created intolerable working conditions for you.

10. If you intend to raise any other defenses, including affirmative defenses, in this case, please describe each defense and provide a complete and accurate description of how you believe this defense(s) would support your Appeal.

11. State the exact amount of monetary and/or non-monetary losses you are claiming as a result of the allegations made in the Appeal, including the amount claimed for income/back pay/front pay and/or other employment benefits, and the factual basis for such monetary and non-monetary claims.

12. Describe in detail each and every item of damage (other than compensatory damages) that you claim by stating, by way of example and not by limitation, the nature of the damage, the dollar value of the damage, the methodology used in calculating the dollar value of the damage, and the date on which the damage was sustained.

13. Please describe in detail your medical history (including, but not limited to, any psychological or psychiatric treatment or counseling) for the past year and identify every Health Care Provider who provided such medical care, treatment or counseling.

14. With reference to Interrogatory Number 13 above, state fully and in detail:

- a. The names, addresses and telephone numbers of all doctors, limited practitioners, hospitals, institutions, or other health care providers who treated and/or examined you for the physical and/or mental symptoms described in your response to interrogatory 13;
- b. The progressive order in which each physical and/or mental symptom occurred or was noted in terms of frequency and severity.

- c. The date when each physical and/or mental symptom occurred or was noted;
- d. The date when a physician or other health care provider was consulted by you in connection with each physical and/or mental symptom;
- e. The nature of the complaint that was the subject of the consultation;
- f. The diagnosis rendered in each case;
- g. The therapy and/or medication prescribed or recommended by each said physical or other health care provider; and
- h. Sign the attached "General Request and Consent to Release Medical Records and to Submit to an Oral Deposition."

15. Please state whether any of the recordings you submit were done with the consent of the individual recorded.


REQUEST FOR PRODUCTION OF DOCUMENTS

The Agency requests that you produce the following documents. "On file with the Agency" will be considered an insufficient response to these requests.

1. Produce all documents you have compiled in connection with the claims at issue in this Appeal.
2. Produce all documents identified in response to any of the above Interrogatories.
3. Produce all documents relied upon or referenced in your answer to any of the above Interrogatories.
4. Produce copies of all exhibits you intend to introduce into evidence at a hearing in this matter.

5. Produce each and every document that relates to or concerns each and every defense raised by you.
6. Produce all documents that reflect information exchanged between you and any individual you contemplate or contemplated calling as an expert witness at a hearing in this matter, including, but not limited to, all correspondence, reports and drafts thereof, memoranda, and notes of conferences, meetings, and/or telephone calls.
7. Produce all reports, correspondence, memoranda, electronic mail, and similar materials that you have received from individuals whom you intend to call as witnesses, expert or otherwise, at the hearing of this appeal.
8. Produce all notes, memoranda, diaries, records, written materials and recordings of any kind which you have compiled in connection with the allegations in this Appeal.
9. All documents that in any way support your claim for damages in this appeal.

Respectfully Submitted,



Stephen W. Furgeson
Agency Counsel
Capital Metro Law Office
United States Postal Service
8200 Corporate Drive
Landover, MD 20785-2200
(301) 955-0703
FAX: (301) 955-0701

CERTIFICATE OF SERVICE

I hereby certify that the "Agency's Interrogatories And Request For Production Of Documents" was served on this 23rd day of November 2011, as indicated below, as follows:

Appellant -- via Priority Mail, Delivery Confirmation

David Noble, Jr.
1 Fenceline Drive
Gaithersburg, MD 20878



Stephen W. Furgeson

U.S. Postal Service™ Delivery Confirmation™ Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

DELIVERY CONFIRMATION NUMBER:
030A 0730 0000 7775 1563

DAVID NOBLE JR
1 FENCELINE DR
GAITHERSURG MD 20878-1902

Postmark
Here

NOV 23 2011

POSTAL CUSTOMER:
Keep this receipt. For inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- Priority Mail™ Service
 First-Class Mail® parcel
 Package Services parcel

(See Reverse)

PS Form 152, May 2002

English

Customer Service

USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

Track & Confirm

GET EMAIL UPDATES

YOUR LABEL NUMBER

0308073000077751663

SERVICE

STATUS OF YOUR ITEM

DATE & TIME

LOCATION

FEATURES

Delivered

November 25, 2011, 1:53 pm

GAITHERSBURG, MD 20878

Delivery Confirmation™

Out for Delivery

November 25, 2011, 11:07 am

GAITHERSBURG, MD 20878

Sorting Complete

November 26, 2011, 10:57 am

GAITHERSBURG, MD 20878

Arrival at Post Office

November 25, 2011, 10:46 am

GAITHERSBURG, MD 20878

Processed through
USPS Sort Facility

November 24, 2011, 9:26 pm

GAITHERSBURG, MD 20898

Check on Another Item

What's your label (or receipt) number?



LEGAL

- Privacy Policy ›
- Terms of Use ›
- FOIA ›
- No FEAR Act EEO Data ›

OTHER USPS SITES

- Business Customer Gateway ›
- Postal Inspectors ›
- Inspector General ›
- Postal Explorer ›

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Exhibit 2

Furgeson, Stephen W - Washington, DC

From: Furgeson, Stephen W - Washington, DC
Sent: Thursday, December 22, 2011 1:31 PM
To: David Noble
Subject: RE: Constructive suspension appeal
Importance: High
Attachments: Track & Confirm Discovery.pdf; 2011 11-23 Agy's Interrog & RFPD.pdf

According to the attached confirmation the Agency's discovery request was received at your address of record November 25, 2011. Can you explain to me why you would not have received it?

From: David Noble [mailto:dwnoble@gmail.com]
Sent: Thursday, December 22, 2011 12:59 PM
To: Furgeson, Stephen W - Washington, DC
Subject: Re: Constructive suspension appeal

I haven't gotten any discovery requests from you.

On Thu, Dec 22, 2011 at 12:21 PM, Furgeson, Stephen W - Washington, DC

<stephen.w.furgeson@usps.gov> wrote:

I will hopefully send these response out today or tomorrow. Where are your responses to my discovery??

From: David Noble [mailto:dwnoble@gmail.com]
Sent: Tuesday, December 20, 2011 9:45 PM
To: Furgeson, Stephen W - Washington, DC
Subject: Constructive suspension appeal

USPS's responses to my discovery requests were due last week. I'm going to file a motion to compel discovery. Before I do so we need to confer. When will you be available?

David Noble

Exhibit 3

CERTIFICATE OF SERVICE

I hereby certify that the "Agency's Motion To Compel" was served on this 23rd day of December 2011, as indicated below, as follows:

Administrative Judge—via Priority Mail, Delivery Confirmation and efile

Daniel Madden Turbitt
Administrative Judge
Merit Systems Protection Board
Washington Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

Appellant -- via Priority Mail, Delivery Confirmation

David Noble, Jr.
1 Fenceline Drive
Gaithersburg, MD 20878



Stephen W. Furgeson

Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	Agency's Motion to Compel Discovery	e-Appeal / e-Mail
David Noble Appellant	Agency's Motion to Compel Discovery	e-Appeal / e-Mail