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Attorney for Complainant
LINDA DAVIS ANDERSON

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SAN FRANCISCO REGIONAL OFFICE

)	Case No. 370-99-X2040
LINDA DAVIS ANDERSON, Ph.D.)	
)	
Complainant,)	
)	
vs.)	COMPLAINANT'S OPPOSITION
)	TO AGENCY'S MOTION TO
)	EXCLUDE COMPLAINANT'S
U.S. GEOLOGICAL SURVEY,)	PROPOSED EXHIBITS AND
DEPARTMENT OF THE INTERIOR,)	CROSS-MOTION TO EXCLUDE
)	AGENCY EXHIBITS NOT
Agency.)	IDENTIFIED AND PRODUCED
_____)	

The Complainant, Dr. Linda Anderson, opposes the agency's motion to exclude Complainant's proposed exhibits. The Complainant's Proposed Exhibit List was faxed to the counsel for the agency on Thursday, June 8, 2000 and the complete set of Complainant's Proposed Exhibits (together with an amended exhibit list) were hand-delivered to counsel for the agency by noon on Friday, June 9, 2000. The agency has cited no prejudice caused by the brief delay in receipt of these documents.

The Administrative Judge notified the parties that "all documents contained in the Investigative File are considered to be part of the record in this case" and further ordered the parties to send

proposed exhibits at least five business days before the hearing. See Order on Pre-Hearing Conference, dated March 27, 2000. On June 2, 2000, the Supplemental Pre-Hearing Report and Order notified the parties that

Complainant is granted leave to amend her complaint to include her allegation of being notified of a diminished performance rating because of her sex or EEO participation, which, according to the record, was raised during the course of the counseling and investigation stage of this proceeding.

Accordingly, many documents which should have been included in the Agency Investigative File” were not included. In order to include the documents relevant to this issue, substantial additional work was necessary shortly before the due date for the exhibit list. The undersigned clarified that the proposed exhibit list could be submitted on June 8, 2000. Both the amended list of exhibits and the copies of each exhibit were served on counsel for the agency on or before Noon on Friday, June 9, 2000 by hand-delivery.

CROSS-MOTION TO EXCLUDE AGENCY DOCUMENTS

The agency has not submitted any proposed documents or list of proposed documents to date and it is now one day prior to the hearing. The Administrative Judge has the authority to impose sanctions on a party if they fail to comply without good cause with orders or requests. Under 29 C.F.R. 1614.108(e) and 1614.109(f)(3), the Administrative Judge may take actions against the agency, if he determined that the investigation is inadequate due to the agency’s failure to complete the investigation within the time limits, including subject the agency to adverse findings, consider the issues to which the requested information or testimony pertains to be favorable to the complainant, exclude other evidence offered by the agency, etc.

CONCLUSION

For the foregoing reasons, complainants request that the exhibits be admitted into evidence in the hearing and that the agency be precluded from adding additional documents to the record which were not included in the Investigative File and not provided to the Complainant prior to the hearing.

Respectfully submitted,

Date: June 11, 2000

MARY DRYOVAGE

Attorney for Complainant,
Linda Anderson

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SAN FRANCISCO REGIONAL OFFICE

LINDA DAVIS ANDERSON, Ph.D.) Case Nos. 370-99-X2040
)
)
Complainant,)
)
vs.)
)
U.S. GEOLOGICAL SURVEY,) **CERTIFICATE OF SERVICE**
DEPARTMENT OF THE INTERIOR,)
)
Agency.)
_____)

I am a citizen of the United States and have an office in the County of San Francisco; I am over the age of eighteen years and not a party to the above-entitled action; my business address is, Law Offices of Mary Dryovage, 1231 Market Street, Penthouse West, San Francisco, CA 94103.

On January 16, 2003, I served the within **COMPLAINANTS OPPOSITION TO AGENCY'S MOTION TO EXCLUDE COMPLAINANT'S PROPOSED EXHIBITS** on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid in the United States mail at San Francisco, California, addressed as follows:

Karen D. Glasgow
U.S. Department of the Interior
Office of the Solicitor
San Francisco Field Office
600 Harrison, Suite 545 (415)744-4122 fax
San Francisco, CA 94107

I declare under penalty of perjury that the foregoing is true and correct and was executed on January 16, 2003 at San Francisco, California.