

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GLENDAL STEWART,

Plaintiff,

v.

ERIK K. SHINSEKI,  
Secretary, Department of Veteran Affairs,

Defendant.

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ORDER  
10-cv-456-bbc

Plaintiff Glendale Stewart is proceeding against defendant Erik K. Shinseki on plaintiff's claims that he was subjected to several types of discrimination and retaliation while employed at a VA hospital. Now before the court is plaintiff's broad motion to compel discovery. For the reasons stated below, I am denying plaintiff's motion, although I note that he might be able to obtain at least some of the information he is seeking if he narrows certain requests and agrees to a protective order that guards the confidentiality of the responsive information.

### **1. Interrogatories**

Plaintiff moves to compel answers to his interrogatories 2-7, 9-18, and 21-23. As an initial matter, plaintiff objects to defendant Shinseki answering interrogatories that plaintiff intended to be answered by other people or by the department. But discovery requests in a lawsuit can only be served on parties in the case, and only parties are obliged to answer. *See* Fed. R. Civ. P. 33, 34 and 35.<sup>1</sup> In any event, in a case like this, the defendant has access to the relevant information that others working for the VA would have, so it's not as if plaintiff has suffered any detriment by having the defendant provide the answers.

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<sup>1</sup> I note that Rule 45 provides for discovery subpoenas to third parties, which might be relevant to plaintiff's request for information from his union president, *see* below.

Plaintiff moves to compel answers to interrogatories 2-4, 7, 13, 18 and 21 which have been answered. Interrogatories 2-4 ask for any information defendant obtained from third parties during his employment. Defendant responded that he was not aware of having obtained such information. These responses are adequate. Next, although defendant objected to interrogatories 7, 13, 18 and 21, he provided the information requested therein. Therefore, plaintiff's motion to compel answers to these interrogatories will be denied.

Plaintiff moves to compel defendant to answer interrogatories 5, 9-11 and 14-16. Defendant objects to these requests as overly burdensome and requesting information prohibited from disclosure. Interrogatories 5, 9, 10, 11, 14, 15 and 16 request information about other employees for the past 10-15 years. These interrogatories are overly broad and burdensome and request employee names, addresses and telephone numbers which cannot be disclosed pursuant to 5 U.S.C. § 552a(b). Defendant will not be compelled to answer these interrogatories. Even so, plaintiff might be entitled to obtain at least some of the information he is seeking in order to discover whether the VA has treated similarly situated employees differently for impermissible reasons. To get there from here, plaintiff will have to write narrower interrogatories, and he will have to work with the defendant's attorneys to generate and submit to the court a protective order to ensure the confidentiality of sensitive information.

Third, plaintiff moves to compel answers to interrogatories 12, 17 and 22-23. Defendant objects to answering these interrogatories because they are not likely to lead to the discovery of admissible evidence. Interrogatory 12 asks for the name of a female employee who filed a complaint of sexual harassment claim against Keith Bednar. Such evidence is not relevant to plaintiff's claims in this case and it is not relevant to the subject matter involved in plaintiff's

action. *See* F.R. Civ. Pro. 26(b)(1). Interrogatory 17 broadly seeks information regarding complaints from patients and families regarding poor treatment, cleanliness and mistreatment at the Madison VA. Again, this interrogatory does not seek information relevant to plaintiff's claims in this case and it is not relevant to the subject matter involved in plaintiff's action.

Interrogatories 22 and 23 seek information from Jerold Hansen, the Acting Union President, who is not a party in this case. Plaintiff's motion to compel responses to these interrogatories will be denied. If plaintiff wishes to obtain this information from Mr. Hansen, he may attempt to obtain it pursuant to Rule 45, but plaintiff should be aware that non-parties like Mr. Hansen are treated very differently from parties, so plaintiff should read Rule 45 carefully before invoking it to attempt to get information from Mr. Hanseon.

## **II. Request for Production of Documents**

Plaintiff moves to compel production of documents requested in 1-3, 5, 7-12, 14, and 16. The documents requested in requests 1, 3, 5, 7, 12 and 16 have been provided. In request 2, plaintiff seeks attendance records of other employees. This information is not likely to lead to admissible evidence in this case. Request number 9 seeks information the name of a patient who reported that plaintiff had used foul language. In his response to the motion to compel, defendant asserts he is not aware of any documents containing this information. As a result, there is nothing for the court to order defendant to disclose on this point.

Requests 10, 11 and 14 request information about other employees. Requests 11 and 14 are not relevant to plaintiff's claims in this case and are not relevant to the subject matter involved in plaintiff's action. Some of the information that plaintiff is angling toward in Request

10 might be discoverable because it could be relevant to proving a claim of intentional discrimination, but plaintiff would have to narrow this request and defendant would have the right to insist on a protective order before providing any relevant information. At this point, I am denying plaintiff's motion to compel production of these documents.

### **3. Request for Admission**

Plaintiff moves to compel defendant to admit or deny request for admission number 12. That request states "That the plaintiff did his job as required and according to the way he was trained to do it and asked questions when needed to make sure his job was done correctly." Defendant responds that, because the portion stating "asked questions when needed to make sure job was done correctly" is vague, defendant cannot either deny or admit this portion of the statement. Defendant denied the remainder of the admission. This response is adequate.

### **ORDER**

IT IS ORDERED that plaintiff's motion to compel, dkt. 28, is DENIED.

Entered this 16<sup>th</sup> day of August, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge