



Issue Date: 09 January 2015

In the Matter of:

WAYNE LAIDLER,
Complainant,

Case No.: 2014-FRS-00099

v.

GRAND TRUNK WESTERN RAILROAD COMPANY,
Employer,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest.

**DECISION AND ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO COMPEL**

This matter arises under the Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109, as amended. For the reasons discussed below, *Respondent's Motion to Compel* is granted in part and denied in part.

Procedural History

Pursuant to my June 5, 2014, *Notice of Hearing and Prehearing Order*, a formal hearing was scheduled in this matter for November 26, 2014, in Chicago, IL. On June 3, 2014, Respondent ("GTW") served Complainant with copies of Interrogatories and Requests for Production of Documents ("Discovery Requests") along with Authorization Forms for Release of Protected Health Information ("Medical Release Authorizations"). On July 15, 2014, Complainant sent Respondent its *Responses to Request for Production of Documents*. Complainant sent its *Answers to Interrogatories* on July 24, 2014. In a letter dated August 27, 2014, counsel for Complainant argued that additional medical records were not necessary to allow Respondent to develop its case and stated that he would not sign the Medical Release Authorizations. GTW responded on September 5, 2014, stating that Complainant's responses to the Discovery Requests were insufficient in a number of ways, identifying those specific deficiencies, and requesting that Complainant provide the additional information by September 15, 2014.

On September 19, 2014, the hearing was rescheduled for March 3-4, 2015. On November 18, 2014, I received the parties' Joint Stipulation for a Protective Order governing disclosure of confidential information, including information pertaining to Complainant's medical history, information pertaining to nonparty employees of Grand Trunk Western Railroad Company, and non-public information pertaining to GTW's operations. I issued an *Order Approving Joint Stipulation* on December 3, 2014. Counsel for the parties met in person on October 2, 2014, but were unable to reach any agreement on this matter. On December 11, 2014, I received *Respondent's Motion to Compel*. I received Complainant's Response to Respondent's Motion to Compel on December 12, 2014. I have considered both parties' arguments in reaching my decision to grant in part and deny in part *Respondent's Motion to Compel*.

Respondent's Motion to Compel

In its motion, Respondent requests that I issue an order compelling production of the requested documents, which it argues are both relevant and critical to the issues in this case. Respondent first argues that it is entitled to seek information concerning Complainant's medical providers, medical records, and injury history because this information is relevant to Complainant's claim of emotional distress and his fitness to work for Respondent. This information includes records relating to Complainant's history of anxiety, depression, substance abuse, and difficulty sleeping. Respondent argues that any privacy concerns may be remedied by a protective order barring the disclosure of medical information.

Next, Respondent asserts that Complainant's social media accounts, diaries, calendars, day planners, and personal notes are discoverable because they could provide information pertaining to the merits of Complainant's claim and his entitlement to damages. Respondent argues that Complainant's assertion that this request is overly broad is meritless. Respondent also states that it is entitled to search information posted on Complainant's social media account because this information is relevant, public information that may lead to the discovery of admissible evidence.

Respondent next argues that Complainant should be compelled to provide his federal and state tax returns beginning in 2007 because they could provide information pertaining to Complainant's sources of income, economic damages, and efforts to mitigate these damages. Finally, Respondent argues that Complainant has failed to respond to its request for information related to facts and observations within potential witnesses' knowledge and its request for dates of Complainant's conversations with prospective witness Ted Freeman. Respondent states that because Complainant does not object to providing the information sought, but instead has refused to provide the information without explanation, Complainant should be compelled to provide this information.

Respondent requests that this tribunal order Complainant to provide signed medical authorizations and supplemental discovery responses by December 22, 2014.

Complainant's Response

Complainant responds that Respondent's discovery requests are both overly broad and unduly burdensome. He contends that the request for documentation of Complainant's medical history is being used solely for the purpose of embarrassing him. Complainant asserts that any medical records concerning his prior treatment for depression and drug rehabilitation are unnecessary and duplicative. He states that because Respondent is already in possession of detailed information concerning his history of mental illness, additional discovery is unnecessary and will serve no useful purpose.

Next, Complainant argues that Respondent's request for Complainant's diaries, journals, planners, and personal notes is overbroad and unlikely to lead to the discovery of admissible evidence. He notes that Complainant stated at his deposition that he does not keep a journal, blog, or personal calendar, and that he does not use the calendar on his cell phone. Complainant further argues that Respondent's request for his social media account information is an unwarranted invasion of privacy, particularly in light of recent case law. He asserts that Respondent has failed to make any showing that access to his private social media page would lead to the discovery of admissible evidence concerning the claims at issue. In addition, he argues that Respondent's request to view the activity on the accounts for the past five years is overly broad in scope.

Complainant next argues that Respondent's request for information about which the potential witnesses are expected to testify is unnecessary because Complainant already provided deposition testimony concerning these witnesses' expected testimony. Similarly, Complainant states that Respondent obtained the dates of his conversations with potential witness Ted Freeman during his deposition. He therefore avers that Respondent's request for this information is frivolous and unnecessary.

Complainant agreed to produce or sign the appropriate authorization to provide Respondent with Complainant's 2013 tax return.

Discussion

The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges state that either party to a claim may "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." 29 C.F.R. § 18.14(a). Further, the Federal Rules of Civil Procedure state that "relevant information need not be admissible . . . if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. 26 Fed. R. Civ. Pro. (b)(1).

However, the scope of discovery may be limited by the courts where the requested discovery is unreasonably cumulative or overly burdensome, and courts are given wide discretion in balancing the needs and rights of all parties, including privacy rights. 26 Fed. R.

Civ. Pro. (b)(2)(C). Courts have found that, in order to obtain access to non-public information on a party's social media accounts, the party seeking discovery must make a "threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence." *Potts v. Dollar Tree Stores, Inc.*, 2003 WL 1176504 (M.D. Tenn. March 20, 2013). While information posted on social media is typically not privileged, a party does not have a "generalized right to rummage at will through information that [the opposing party] has limited from public view." *Id.*

Complainant seeks damages for emotional distress, alleging that he has suffered anxiety and depression following his termination by GTW. Therefore, any information pertaining to his medical history both before and after his termination, including records concerning his history of substance abuse, is relevant to the question of whether his anxiety and depression resulted from or were exacerbated by his termination. While Complainant's concerns about his privacy are not unfounded, his medical records are protected from disclosure by my December 3, 2014 protective order. Further, it is not for Complainant to decide whether Respondent has sufficient information with which to build its case. As discussed above, any non-privileged information that is relevant to a party's claim or defense is discoverable.

Similarly, any information relating to the facts and observations of potential witnesses is discoverable, as are the dates of Complainant's conversations with potential witness Ted Freeman. Complainant's assertion that Respondent already has sufficient information concerning these subject areas is without merit. While Respondent may well have some knowledge of information relating to the issues in this case, it is entitled to request additional information as long as that information is relevant to the subject matter of the proceeding. Here, the potential witnesses' knowledge of Complainant's termination and the dates of Complainant's conversations with potential witnesses is relevant to this claim and therefore discoverable.

Complainant argues that respondent's request for information contained in Complainant's diaries, calendars, day planners, and personal notes is improper because Respondent has made no showing that this information could lead to the discovery of evidence admissible at hearing. Further, he argues that Complainant testified at his deposition that he does not keep a diary, blog, or written journal, and that he did not write anything on his cell phone calendar concerning his claim. These assertions are without merit. The requested information could lead to the discovery of evidence relating to Complainant's claim or damages. If, as Complainant asserts, he does not have a blog or written journal, then he will have no information to provide in that portion of his response to the discovery request. Complainant's inability to provide this information does not render Respondent's discovery request improper.

However, Respondent's request for Complainant's social media account information is a different matter. As discussed, a party must make at least some showing that requested information relating to social media accounts is reasonably calculated to lead to the discovery of admissible evidence. Here, Complainant has stated that he did not use social media to discuss his claim, and Respondent has offered no argument to suggest that the information could lead to the discovery of admissible evidence. Further, the request is overbroad in that Respondent has requested Complainant's social media information from the past five years. Given that the events leading to the filing of this claim did not occur until the end of 2012, it is highly unlikely

that Respondent could find any information in the years prior to Complainant's termination that would support its case. Weighing the probative value of the requested information against Complainant's privacy rights, I see no reason to allow Respondent to delve into Complainant's Facebook page and other social media accounts to access information that Complainant has intentionally shielded from public view.

Finally, although Respondent has requested Complainant's tax returns beginning in 2007, Complainant has agreed to provide Respondent with only his 2013 tax return. Because tax returns provides information about a party's financial situation that may relate to damages, Respondent is entitled to discovery of Complainant's tax returns from 2007 forward.

Accordingly, *Respondent's Motion to Compel* is hereby **GRANTED IN PART AND DENIED IN PART**. It is hereby **ORDERED** that Complainant comply with Respondent's Discovery Requests to the extent indicated in this order. Complainant must provide Respondent with all of the requested information, excluding that information which pertains to his social media accounts within 45 days of the issuance of this order.

IT IS SO ORDERED.

CHRISTINE L. KIRBY
Administrative Law Judge