

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REVEREND JACKIE C. KAUFFMAN, SR.: CIVIL ACTION
ADMINISTRATOR OF THE :
ESTATE OF JACKIE C. :
KAUFFMAN, II, et al., :
 :
v. :
 :
U.S. DEPARTMENT OF LABOR : NO. 96-5929

MEMORANDUM ORDER

Defendant Department of Labor ("DOL") has filed a Motion to Withdraw or Amend Deemed Admissions which plaintiffs oppose. Plaintiffs served a request for admissions on defendant to which it failed timely to respond. Defendant served its answers and objections to the requests 27 days late. Defendant admitted the truth of four of the fifteen requests and objected to the remaining requests, essentially on the ground of relevance.

Plaintiffs contend that defendant's belated objections should be disregarded and that all of the requests should be deemed admitted.

Courts have "great discretion" in deciding whether to allow withdrawal or amendment of admissions. U.S. v. Branella, 972 F. Supp. 294, 301 (D.N.J. 1997). See also Flohr v. Pennsylvania Power & Light Co., 821 F. Supp. 301, 306 (E.D. Pa. 1993); Local Union No. 38 v. Tripodi, 913 F. SUPP. 290, 293-294 (S.D.N.Y. 1996)(allowing party to file otherwise untimely answer to request for admissions). A party opposing the withdrawal or

amendment of an admission must demonstrate that he will be prejudiced thereby. Branella, 972 F. Supp. at 301. A party is not prejudiced by a belated response simply because his position is prejudiced by the true facts contained in the response. Beatty v. U.S., 983 F.2d 908, 909 (8th Cir. 1993). "[W]here possible, an action should be resolved on its merits." Id. Deemed admissions should prevail over "the quest for the truth only in extreme circumstances." Id. See also Szatanek v. McDonnell Douglas Corp., 109 F.R.D. 37, 39-40 (W.D.N.Y. 1985) (allowing belated responses to request for admissions as such serves to resolve action on merits and opposing party failed to demonstrate actual prejudice); NCR Corp. v. J-Cos Systems Corp., 1987 WL 13683 (E.D. Pa. July 13, 1987) (party permitted to withdraw deemed admissions as whenever possible "an action should be resolved on its merits").

The discovery rules are not suggestions. They are requirements. Nevertheless, plaintiffs have demonstrated no prejudice and the relatively brief delay in the service by the government of its responses to plaintiffs' requests does not warrant a resolution of this action based on the deemed admission of matters which may well be untrue, particularly where some of these matters implicate the integrity of a government agency and one of its inspectors.

The court, however, cannot sustain several of defendant's objections in their entirety. Terms like "used to work" and "used to have" in requests 4 and 7, without any time

limitations, are overly broad and call for the admission of matters which would be irrelevant. Similarly irrelevant would be information about persons who presently work for or have an interest in Knouse, four years after the accident and investigation in question. Appropriately limited responses to requests 2, 4 and 7, however, could provide relevant information.

The weight given to and indeed the admissibility of any recorded observations or findings of Mr. Rebert in the state court action could well depend upon his being a disinterested individual. See, e.g., Ingram v. Menasco, Inc., 1984 WL 145980 (N.D. Tex. Aug. 1, 1984) (discussing relevance of OSHA investigator's possible motives or interests to weight and admissibility of investigative report or file). If Mr. Rebert was partial or had a conflict of interest at the pertinent time, the need to know this may be sufficiently compelling to outweigh the interests ordinarily served by 29 C.F.R. § 2.22 and to present a triable issue regarding the reasonableness of the Deputy Solicitor's decision in this case. Moreover, one would hope and assume that a government agency would want to refute an adverse implication about the integrity of its investigative process, particularly when it can do so with a simple "denied."

The court will thus grant defendant's Motion on condition that it supplement its belated responses to the request for admissions by admitting or denying in response to requests 2, 4 and 7 that at the time of the accident and his investigation or within six months prior or subsequent thereto, any member of Mr.

Rebert's immediate family (i.e. parent or parent-in-law, spouse, child, sibling or sibling-in-law) was employed by or had a financial interest in Knouse.

ACCORDINGLY, this day of December, 1997, **IT IS HEREBY ORDERED** that defendant's Motion to Withdraw or Amend Deemed Admissions is **GRANTED** on condition that defendant supplement its belated responses by serving on plaintiffs and filing with the court by December 17, 1997 denials or admissions of the matters contained in requests 2, 4 and 7 as limited in scope by the court as set forth in the preceding paragraph.

BY THE COURT:

JAY C. WALDMAN, J.