

JOSHUA K. MCGILL v. DEPARTMENT OF DEFENSE

Docket # DE-1221-16-0198-W-1

Agency Response-Motion to Preserve Evidence

Summary Page

Case Title : JOSHUA K. MCGILL v. DEPARTMENT OF DEFENSE

Docket Number : DE-1221-16-0198-W-1

Pleading Title : Agency Response-Motion to Preserve Evidence

Filer's Name : David Gallagher

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

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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?

Yes

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
DENVER FIELD OFFICE**

JOSHUA K. MCGILL Appellant,)	
)	MSPB DOCKET NO.
)	DE-1221-16-0198-W-1
v.)	
)	
DEPARTMENT OF DEFENSE, Agency.)	DATE: April 15, 2016
)	

**AGENCY’S RESPONSE TO APPELLANT’S
REQUEST TO PRESERVE EVIDENCE**

In accordance with the Administrative Judge’s Order of April 8, 2016, the DEPARTMENT OF DEFENSE (DoD), and in particular the Defense Contract Audit Agency (DCAA or Agency), by and through its designated representative, responds to the Appellant’s Request to Preserve Evidence.

First, the Agency takes offense with Appellant’s unsupported contention that it would destroy evidence applicable to this appeal. The Agency wants to note that Appellant has had the government issued laptop in his possession, was the sole user of the device and has been out of the office (on 100% telework) since June 2015. Appellant voluntarily resigned on April 7, 2016. The Agency did not unexpectedly “confiscate” Appellant’s government issued laptop, however, the Agency did take possession of the computer when Appellant submitted his resignation and handed the laptop to his first-level supervisor. Therefore, it is the Agency’s position that Appellant had more than ample time to print, download or extract any information from the laptop that he would deem applicable to this appeal.

Secondly, the Agency notes that the laptop Appellant turned into his supervisor may not even be operational. There is severe damage near the laptop’s hard drive (see attached pictures) that will require evaluation by our Information Technology support staff. There will also be an

evaluation as to any potential risk or harm that could occur to the network if the laptop is started and connected to our information system.

Third, to the knowledge of the Agency and this Agency counsel, the laptop has not been accessed by any personnel since it was turned over to the Agency on April 7th and is currently in transit from our Denver office to the Agency's Headquarters located in the Washington, DC area. Once the laptop arrives, an assessment will be performed as to the viability of accessing the laptop and connecting it to our information network. Our utmost concern is securing our network and protecting Agency data and contractor data that are stored on our network.

Finally, the Agency does not object to preserving any data as the Agency has nothing to hide but informs the Administrative Judge that we will follow the recommendations of our Information Technology specialists to the operational ability of the laptop and potential vulnerability it might bring to our network. Agency policy is to "clean" any returned laptop and re-issue them, if practicable. However, as seen by the enclosed pictures, re-issuance of this laptop is significantly impacted by the visible damage.

Respectfully Submitted,

/s/

David R. Gallagher
Deputy General Counsel
Ethics, Employment and Administrative Law
Defense Contract Audit Agency
Agency Representative

Submitted: April 15, 2016

Enclosure





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: Denver Field Office	Agency Response-Motion to Preserve Evidence	e-Appeal / e-Mail
Joshua K. McGill Appellant	Agency Response-Motion to Preserve Evidence	e-Appeal / e-Mail
General Counsel Agency Representative	Agency Response-Motion to Preserve Evidence	e-Appeal / e-Mail