

In the United States Court of Federal Claims

MICHAEL J. FORBES,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 24-1953

(Filed: April 18, 2025)

ORDER

Before the Court are Plaintiff's Motion for Relief (ECF 20) and the Government's Motion to File Corrected Administrative Record (ECF 22). For the following reasons, Plaintiff's Motion is **DENIED** and the Government's Motion is **GRANTED**.

On April 14, 2025, Plaintiff filed a Motion for Relief alleging that the administrative record filed with the Court on April 9, 2025, is deficient. ECF 20. Citing the agency's refusal to include additional documents in the administrative record at his request as well as a perceived delay in delivery, he alleges that the Government conferred in bad faith regarding the administrative record. ECF 20 at 1-4. Plaintiff requests the Court: (1) sanction the Government; (2) adjust the Scheduling Order; (3) enter another default; (4) "strike the April 9, 2025 docketed Administrative Record in lieu of an appropriately conferred-upon administrative record;" or (5) some combination thereof. ECF 20 at 4.

The Court finds that none of these actions are appropriate. Government officials are presumed to act in good faith, *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1239 (Fed. Cir. 2002), and the parties agree that Plaintiff received a draft administrative record on April 2, 2025, as required. ECF 20 at 1; ECF 21 at 1-2. The Government represents that this version, though not paginated, included all substantive documents identified by the agency. ECF 21 at 1-2. Six days later (on the eve of the Court's administrative record filing deadline), Plaintiff identified several items that he believed should be included in the administrative record. ECF 20 at 1; ECF 21 at 2. The next day, the Government: (1) shared the paginated administrative record with Plaintiff; (2) informed him that, other than two videos, the agency did not agree that any of the items Plaintiff requested belonged in the administrative record; and (3) filed the administrative record with the Court. ECF 20 at 1-2; ECF 21 at 2.

Given this history, the Court discerns no bad faith on the part of the Government. Plaintiff does not dispute that he received the administrative record a week prior, affording him ample opportunity to review it and confer with the Government on its contents. He did so and suggested additions, which the agency considered. Ultimately, the agency agreed that the videos

requested by Plaintiff belonged in the administrative record. These facts indicate the agency conferred in good faith. The fact that Plaintiff received the paginated administrative record on the same day it was filed does not indicate otherwise.

Likewise, the fact that the Government did not accept all of Plaintiff's proposed additions to the administrative record does not warrant sanctions or any other relief. Appendix K ¶ 6 of this Court's rules explicitly contemplates scenarios where parties cannot agree on the contents of a record, and provides that, in such cases, "the United States must file the administrative record, and the plaintiff(s) may file a motion to complete or supplement the record." The Government met its obligation under Appendix K ¶ 6, and now, should Plaintiff continue to believe there are gaps in the administrative record, he may file an appropriate motion. Plaintiff's Motion for Relief (ECF 20) is thus **DENIED**.

Regarding the Government's Motion to File Corrected Administrative Record, the Government moves to supplement the administrative record with two videos that were not previously included due to their format. ECF 22. Because the parties are in agreement that the videos properly belong in the administrative record, the Government's Motion (ECF 22) is **GRANTED**, and the Government is **ORDERED** to share the videos with all parties and the Court via JEFS, the Department of Justice's secure file-sharing system, on or before **April 21, 2025**.

IT IS SO ORDERED.

/s/ Philip S. Hadji
PHILIP S. HADJI
Judge