

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

JAG HEALTHCARE, INC. D/B/A GALION
POINTE, LLC

and

CASE 08-CA-039029
08-CA-039112
08-CA-039133

SERVICE EMPLOYEES INTERNATIONAL
UNION, DISTRICT 1199, WV/KY/OH

MOTION TO TAKE VIDEOCONFERENCE TESTIMONY OF NATALIE ARCHER

Counsel for the General Counsel (General Counsel) files this Motion to Take Videoconference Testimony of Natalie Archer at the upcoming Hearing in this matter. The Hearing is scheduled to take place on consecutive weeks beginning on February 3, 2020, with the first week taking place in the Region 8 Field Office of the National Labor Relations Board (the Board), 1240 E. 9th St., Room 1695, Cleveland, Ohio, 44199. The second week of the Hearing is scheduled to continue in a room at the Richland County Courthouse, 50 Park Avenue East, Mansfield, Ohio, 44902. For the reasons set forth below, the General Counsel respectfully submits that it can establish good cause and compelling circumstances, subject to appropriate safeguards, such that granting of the instant Motion is warranted.

Section 102.35(c) of the Board's Rules and Regulations, adopted effective September 29, 2017 (82 FR 43695), states:

Upon a showing of good cause based on compelling circumstances, and under appropriate safeguards, the taking of video testimony by contemporaneous transmission from a different location may be permitted.¹

¹ The National Labor Relations Board Division of Judges Bench Book (January 2020), at §12-400, also provides case law and guidance identifying circumstances where videoconference testimony may be permissible.

Ms. Archer's testimony is essential to the General Counsel's case to establish that she made sufficient searches for employment to mitigate her losses subsequent to her discharge by Respondent.

Requiring Ms. Archer to testify, in-person, at either Hearing location in Cleveland or Mansfield, Ohio, would present both logistical and economic hardships. Ms. Archer recently relocated to 5280 Airport Road, Bassett, Virginia 24055, a rural community located in the south-central portion of the state with a population of approximately 1,100 as of the 2010 census. While Bassett, Virginia is located approximately 62 miles from the Agency's Winston-Salem, North Carolina, Sub-Regional Office, travel to that location is not reasonably possible for Ms. Archer. She has no available transportation, nor sufficient child care to make that trip. As such, she is the primary care provider for a young child with special needs having no other care options. To wit, her family has one vehicle, which her husband, absent leave from his job, must use for daily transportation to and from his worksite. Requiring Ms. Archer to travel back to Ohio for the Hearing, or even to the nearest Agency Field Office, would place a substantial financial burden on Ms. Archer, who is presently unemployed.

Proper technology exists via Skype and/or other proper videoconference technology to accomplish transmission of Ms. Archer's testimony. The technological capabilities for reliable transmission of Ms. Archer's testimony exist at the Regional office during the first week of the Hearing. General Counsel understands that Ms. Archer intends to provide her testimony from a remote location, likely her residence described above, that will allow for transmission of her videoconference testimony with minimal interference. While it is unlikely that any Party representatives would be present with Ms. Archer during her testimony or that any technological assistance could be provided to Ms. Archer in the event she should encounter technological

difficulties during her testimony, allowing Ms. Archer to present her testimony in this manner will afford the Parties an equal and efficient opportunity to examine and cross-examine the witness. At present, it is anticipated that Ms. Archer will be the only witness expected to testify via videoconference and the General Counsel does not anticipate an extensive number of exhibits to be used during her testimony. Exhibits can be electronically mailed to Ms. Archer and copied to all Parties in advance of her testimony. Videoconferencing will also afford the Parties, the Administrative Law Judge and the Court Reporter to hear the testimony and to observe the witness. The Parties, including Ms. Archer, are cognizant of the conditions described above that are designed to protect the integrity of her testimony. General Counsel submits that it will make every effort to safeguard transmission of Ms. Archer's testimony.²

General Counsel has conferred with Counsel for Respondent, who has indicated Respondent does not oppose this Motion.

For the reasons stated above, General Counsel respectfully petitions the Administrative Law Judge to permit Ms. Archer to provide her testimony via videoconference (Skype or comparable videoconference technology) during the upcoming Hearing.

Dated at Cleveland, Ohio, this 27th day of January, 2020.

Respectfully submitted,

/s/Melanie Bordelois
MELANIE BORDELOIS
COUNSEL FOR THE GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
REGION 08

² Counsel for the General Counsel submits that efforts are being made to identify the specific electronic address from which the testimony will be transmitted and will provide such information to the Parties and the Administrative Law Judge upon learning of the same.

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PROOF OF SERVICE

On January 27, 2020, the foregoing Motion to Take Videoconference Testimony of Natalie Archer was electronically filed on the NLRB's e-file portal with the Division of Judges and served on the following by e-mail only:

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