

## Government's Delayed Motion to Transfer Puts a Hold on Litigation

Normally under the Court of Federal Claims' rules, when the Government files an Answer, this triggers deadlines beginning with the early meeting of counsel and culminating in a mutual exchange of initial disclosures. But in *Janoski v. United States*, a claim for back pay by an employee of the National Oceanic and Atmospheric Administration, the Government filed an Answer and five weeks later moved to transfer the case to the Eastern District of Virginia on jurisdictional grounds.

The Government then claimed that the motion to transfer the case should stay the preliminary matters of the meeting of counsel, Joint Preliminary Status Report, and exchange of initial disclosures. This is the procedure envisioned by the Rules for dispositive motions—but the rules are silent on non-dispositive motions, such as the Government's motion to transfer. Janoski argued that absent an order from the CFC directing otherwise, the Government had to follow the timeline set forth in the Court's rules. The Court largely agreed with the Government, noting that typically even a dispositive motion cannot derail discovery, but that a stay was warranted because the motion to transfer was filed before the early meeting of counsel:

Normally, the Court is of the opinion that once a case has proceeded into the discovery phase, even a (somewhat belated) dispositive motion cannot derail these proceedings. See *Flintco, Inc. v. United States*, No. 10–178C, 2012 WL 3276158, \*1–2 (Fed. Cl. Aug. 10, 2012). On the other hand, our rules provide that a dispositive motion filed early enough—prior to the JPSR deadline—will typically defer the filing of the JPSR. App. A ¶ 6. This does not necessarily postpone discovery, which has as its trigger the early meeting of counsel and not the JPSR. See RCFC 26(d)(1) (citing RCFC App. A, ¶ 3). But since the timing of the early meeting is stated in relation to the JPSR, see RCFC App. A ¶ 3, when a dispositive motion is filed before this meeting takes place, it would have the effect of deferring the early meeting (and those aspects of case management that follow).

The opinion can be read [here](#).

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