

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge R. Brooke Jackson

Civil Action No. 26-MC-00072 -RBJ

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Applicant-Plaintiff,

v.

PSYCHOLOGICAL DIMENSIONS
Respondent.

ORDER on APPLICATION FOR ORDER TO SHOW CAUSE

The Equal Employment Opportunity Commission applies for an order to show cause as to why two administrative subpoenas served on Psychological Dimensions should not be enforced. The Court has considered the parties' briefs and the arguments of counsel during a hearing on May 26, 2026.¹ For the reasons summarized below, the application is DENIED.

BACKGROUND

A. Plaintiff's Unsuccessful Job Application.

On June 10, 2020, Jessica Roe applied for position as a Public Information Liaison at the Arapahoe County Sheriff's Office. *See* ECF No 2-1 at 2 (Charge of Discrimination). The application process has both pre-offer and post-offer phases. During the pre-offer phase, sometimes referred to as the suitability evaluation, Ms. Roe completed a more than 430-question

¹ Psychological Dimensions' brief was filed while the hearing was in progress, and the Court took the matter under advisement to review that brief before ruling.

psychological examination, sometimes referred to as a “Job Suitability Assessment,” administered by Psychological Dimensions, a contractor to the ACSO. *Id.* at 6. She took a polygraph test. *Id.* She was required to provide writing samples and a release permitting a background investigation. *Id.* at 7. She participated in an interview with several ACSO officers. *Id.* Following all this she was informed that she was one of three finalists and would meet with the Sheriff and Undersheriff. *Id.* After that meeting she was offered the job with a starting date of September 12, 2020, contingent upon further medical, psychological and background investigation. ECF No 2-1 at 6-8. She accepted the offer.

In the post-offer phase Ms. Roe completed another extensive psychological examination with questions “that were extraordinarily similar to the previous questions she had answered.” *Id.* at 8. She met with Dr. Chad Waxman, the Chief Psychologist of Psychological Dimensions, and a colleague, and answered questions relating to her mental health, during which she disclosed a previous history of [redacted] and was asked to complete documentation concerning prescriptions and to provide releases for the doctors who diagnosed the [redacted]. *Id.* at 8-9. While completing the documentation she remembered an earlier diagnosis and provider that she had not mentioned during the interview, and she disclosed that information. *Id.* at 9. However, because of that provider’s document retention policy, it could not confirm that she had been a patient or provide records. *Id.* Ms. Roe states that because Dr. Waxman could not obtain the information from the source, he was unable to “pass” her. *Id.* at 9. “On September 14, 2020, Chief Stef [of the ACSO] called Ms. Roe and informed her that he was rescinding her offer because she did not pass the post-offer psychological exam.” *Id.* Her efforts to persuade

Psychological Dimensions to reconsider and her complaint about the process to the ACSO were not successful.

B. The EEOC Investigation.

On June 4, 2021, Ms. Roe filed a Charge of Discrimination with the EEOC. ECF No. 2-1. Based on the alleged facts summarized above, she charged the ACSO (and the Board of County Commissioners of Arapahoe County) with discrimination based on sex, retaliation, and disability, in violation of The Americans with Disabilities Act (the “ADA”) and Title VII of the Civil Rights Act of 1964. *Id.* at 2. An Amended Charge of Discrimination, filed on March 20, 2024, charged the ACSO and the Board with discrimination based on race, color, sex, religion, national origin, retaliation, age, disability, genetic information, and pregnancy. ECF No. 2-4 at 2. In addition to the ADA and Title VII, the amended charge invoked the Age Discrimination in Employment Act (the “ADEA”), the Pregnancy Discrimination Act, the Pregnant Workers Fairness Act, the Genetic Information Non-Discrimination Act, and the Equal Pay Act. *Id.* It appears that the EEOC’s investigation has been ongoing from some time after the filing of the original charge on June 4, 2021 to the present and continuing.

On August 28, 2025, as part of its investigation, the EEOC served two administrative subpoenas on Psychological Dimensions: No: DE-2025-0012, issued pursuant to the ADEA; and No. DE-2025-0013, issued pursuant to the ADA and Title VII.² The subpoenas required Psychological Dimensions to produce certain information concerning the initial 430-plus

²² During the hearing EEOC counsel indicated that there were four subpoenas, apparently two for the ACSO and two for the Board. For present purposes both parties referred to two subpoenas – the ADEA subpoena and the ADA/Title VII subpoena.

psychological evaluation that had been administered to Ms. Roe during the pre-offer phase of her application. Specifically, the subpoenas requested production of the following:

1. For the time period of January 1, 2020 through the present, provide the Job Suitability assessment for all individuals who answered affirmatively to any of the following questions (or variation thereof) asked by Psychological Dimensions during its assessment of Arapahoe County Sheriff's Office applicants:
 - a. Have you ever been involved in or experienced any sexual harassment in the workplace?
 - b. Have you ever filed a formal complaint against an employer for any reason (e.g. EEOC complaints, discrimination or harassment claims, wrongful termination, etc.)?
 - c. Have you ever been involved in any lawsuits or other judicial actions as either a plaintiff or defendant?
 - d. Other than the above question, have you appeared in court or any other legal proceedings (e.g. Civil Service, EEOC) outside of past public safety job duties?"
2. For each Job Suitability Assessment provided in response to No. 1 above, provide all written communications, including but not limited to emails and attachments, between Psychological Dimensions and Arapahoe County Sheriff's Office discussing the applicant.
3. A declaration authenticating the produced Documents as true and accurate copies.

ECF Nos. 2-9 and 2-10.

On September 10, 2025, Psychological Dimensions emailed its objections to the subpoenas. ECF No. 2-13. First, it argued that the requested information was not relevant because Ms. Roe had answered "no" to the four identified questions in the Assessment. Second, it claimed that compliance would be unduly burdensome in that it would take at least 1500 hours to review and produce the requested information. Third, it stated that the request sought information that would infringe on the privacy and HIPAA rights of individuals who are not

parties to the proceeding. Finally, it claimed that the request sought proprietary information that included Psychological Dimensions' trade secrets. *Id.*

Since that time, counsel for the parties have exchanged communications in an unsuccessful attempt to reach an agreement. That culminated in the pending application for an order to show cause as to why Psychological Dimensions should not be enforced.

ANALYSIS AND CONCLUSIONS

The EEOC makes both procedural and substantive arguments as to why the objections to its subpoenas should be rejected. I will address the procedural points first.

According to the EEOC, the September 10, 2025 objection letter identifies two subpoenas, both being subpoenas issued by the EEOC pursuant to the ADEA. This gets back to the duplicative subpoenas arising from the charge against the ACSO and the Board, *see supra* n.2. But there is no administrative procedure for objecting to ADEA subpoenas. There is an administrative procedure for objection to the subpoenas issued pursuant to the ADA and Title VII. But no objection identifying those subpoenas was made. In any event, even if one assumes that Psychological Dimensions intended to object to the ADA/Title VII subpoena(s) as well, they were untimely. Objections to subpoenas issued pursuant to the ADA or Title VII are due within five days after service. Civil Rights Act of 1964, § 710, Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 7, 86 Stat. 103, 109 (1972) (codified at 42 U.S.C. § 2000e-9 (1994)). These subpoenas were served on August 28, 2025. The objections were served on September 10, 2025. Thus, they were eight days late; and if one omits the intervening weekend and Labor Day and counts only business days, they were still five days late.

Serving multiple subpoenas that were identical in substantive content and differed only in the EEOC's numbering and statutory authority could easily be confusing, even to a presumably sophisticated third party. The substance is that Psychological Dimensions intended to object to "the subpoenas," and that was or should have been obvious to the EEOC. It is true that Psychological Dimensions did not object within five days. However, some courts have made exceptions to that narrow window, particularly where the subpoena did not mention the five-day deadline. *See EEOC v. Lutheran Social Servs.*, 186 F.3d 959 (D.C. Cir. 1999) (holding that Lutheran's failure to object to the subpoenas within five days was not unreasonable and thus the court did not deem the objections waived because "[n]othing on the face of the subpoena or in the statutes to which it referred would have led her to believe that Lutheran *must* petition the EEOC within five days); *see also United States EEOC v. Serv. Tire Truck Ctrs.*, 2018 WL 5043734, at *8 (M.D. Pa. Oct. 17, 2018) ("Neither the EEOC's subpoena nor related email to Service Tire specifically references any statute or regulation that concerns petitioning the EEOC to modify or revoke the subpoena within five days."); *EEOC v. WinCo Foods, Inc.*, 2006 U.S. Dist. LEXIS 64521, at *11 (E.D. Cal. Sep. 7, 2006) (finding that "the failure of the subpoenaed party to file timely objections" was not fatal because, inter alia, there was a lack of notice of the five-day deadline on the face of the subpoena or by reference).

I am not inclined to find that the very slight delay in registering its objections, in the context here, is dispositive. But even if I were to find the objections to have been untimely filed, I have a bigger problem with the substance of the subpoenas in this instance.

The EEOC challenges the inclusion of the four subject questions in the Job Suitability Assessment because it believes it potentially punishes applicants for exercising their rights under

the discrimination laws. If an applicant has objected to sex discrimination by an employer, or filed a claim with the EEOC, or litigated with an employer over allegedly discriminatory conduct, he or she has simply done what the law clearly states is legal and proper conduct. He or she should not be denied a job because an employer does not want to hire individuals who have pursued such claims in the past. The subpoenas seek information that will enable the EEOC to determine whether persons who answer “yes” to any of the four questions have or have not gotten a job at the ACSO. If the applications of such individuals are consistently unsuccessful, it might support a reasonable inference of discriminatory conduct. I get it.

The problem is that it has no application to the charging party, Ms. Roe. It is undisputed that she answered “no” to the four questions; that she was found to be suitable for the position; that she made the short list of three applicants who met with the Sheriff and Undersheriff; and that she was offered the job, contingent on further, post-offer, medical, psychological and background investigations. The reasons or reasons why the offer was rescinded are found in the post-offer evaluation, not in the Psychological Dimensions’ 430-question questionnaire.

The EEOC does not, indeed cannot, dispute those facts. Nevertheless, the EEOC argues that its broad power to investigate charges of discrimination support the subpoenas. The EEOC also notes that Ms. Roe’s Charge and Amended Charge assert a “pattern and practice of discrimination.” But if the pattern or practice might be latent in the four questions in the Job Suitability Assessment, they did not impact Ms. Roe. The Court is informed that the EEOC has served additional subpoenas on Psychological Dimensions that focus on post-offer conduct. Those subpoenas and any related objections are not before this Court. The Court is unwilling to hold that the EEOC’s authority to investigate discrimination in the workplace is unlimited, or

that an individual's claim that she lost a job opportunity due to discrimination opens the door to compelling a third party to produce information that has nothing to do with the discrimination allegedly suffered by the claimant.

ORDER

Applicant-Plaintiff's Application for an Order to Show Cause Why Administrative Subpoenas Should not be Enforced, ECF No. 1, is DENIED.

DATED this 3rd day of June, 2026.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style.

R. Brooke Jackson
Senior United States District Judge