

**§ 28.131 Corrective action proceedings.**

(a) When information comes to the attention of the General Counsel suggesting that a prohibited personnel practice may have occurred, exists or is to be taken, the General Counsel shall investigate the matter to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken.

(b) If the General Counsel terminates any investigation under this section which is not also the subject of a charge, the General Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated, a written statement notifying the person of the termination of the investigation and the reasons therefore.

(c) If the General Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken which requires corrective action and which is not also the subject of a charge, the General Counsel shall report the determination together with any findings or recommendations to the GAO.

(d) If, after a reasonable period, GAO has not taken the corrective action recommended, the General Counsel may file a petition for review with the Board. Such petition for review shall be processed in accordance with §§ 28.19 through 28.25.

**§ 28.132 Disciplinary proceedings.**

(a) If the General Counsel determines after any investigation under 31 U.S.C. 752(b) that disciplinary action should be initiated against an employee, the General Counsel shall prepare a written complaint against the employee containing his or her determination, together with a statement of the supporting facts, and present the complaint and the statement to the employee and the Board in accordance with paragraphs (b) and (c) of this section.

(b) In the case of an employee in a confidential, policy making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate, the complaint and statement re-

ferred to in paragraph (a) of this section, with any response by the employee, shall be presented to the Congress for appropriate action in lieu of being presented under paragraph (d) of this section.

(c) Any employee against whom a complaint has been presented to the Board under paragraph (a) of this section is entitled to:

(1) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) Be represented by an attorney or other representative;

(3) A hearing before the Board or a member designated by the Board;

(4) Have a transcript kept of any hearing under paragraph (c)(3) of this section; and

(5) A written decision and reasons therefor at the earliest practicable date, including a copy of a final decision ordering disciplinary action.

(d) A final order of the Board may order disciplinary action consisting of removal, reduction in grade, debarment from GAO employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of civil penalty not to exceed \$1,000.

(e) There may be no administrative appeal from an order of the Board under paragraph (d) of this section. An employee subject to a final decision ordering disciplinary action under this section may obtain judicial review of the order in the U.S. Court of Appeals for the Federal Circuit in accordance with 31 U.S.C. 755.

**§ 28.133 Stay proceedings.**

(a) The General counsel may request the issuance of an ex parte stay, not to exceed 30 days in duration, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. Any such request shall be in writing and shall specify, among other things, the nature of the action to be stayed and the basis for the General Counsel's belief that a prohibited personnel practice may be involved. The General Counsel shall serve a copy of the request on the GAO. Within three business days of its filing, the request shall

be granted by the Board member designated by the Board Chair to entertain it unless, in the opinion of that member, the request either fails to satisfy the requirements of this paragraph or, on its face, conclusively establishes the absence of a prohibited personnel practice.

(b) The General Counsel may request either a further temporary stay or a permanent stay of the proposed personnel action. Such a request shall be filed and served so as to be received by the Board and the agency no less than 10 days before the expiration of any ex parte stay issued under paragraph (a) of this section. The agency's response to the request shall be filed and served so as to be received by the Board and the General Counsel no less than three days before the expiration of the ex parte stay issued under paragraph (a) of this section.

(c) A stay request under paragraph (b) of this section will be considered and decided by the Board member who issued the ex parte stay under paragraph (a) of this section, unless the Board Chair determines that it should be considered and decided by the Board en banc.

(d) Upon initial consideration of a stay request under paragraph (b) of this section, the Board or the designated member thereof may:

(1) grant or deny the requested stay, in whole or in part, on the basis of the written submissions of the respective parties without additional briefing, oral argument, or the receipt of any documentary evidence or testimony;

(2) require further briefing of the issues presented by the request and/or call for oral argument; or

(3) conduct a hearing at which documentary evidence and testimony is received. If necessary, the ex parte stay issued under paragraph (a) of this section may be extended sua sponte for a period not to exceed 30 days to enable the Board or the designated member thereof a reasonable opportunity to decide the matter.

(e) In acting upon a stay request under paragraph (b) of this section, the Board or the designated member thereof shall consider and balance such established equitable factors as:

(1) The likelihood that the personnel action sought to be stayed involves a prohibited personnel practice; and

(2) The nature and extent of the injury that the employee and the agency likely will suffer if the requested stay is or is not issued. If a further temporary stay is granted based on a claim that the General Counsel requires additional time to conclude an investigation of the employee's complaint, the duration of that further stay shall not exceed the amount of time necessary to complete the investigation in the exercise of a high degree of diligence.

(f) Any order issued by a member of the Board granting or denying, in whole or in part, a stay request under paragraph (b) shall be subject to review by the Board en banc on the filing and service of a notice of appeal, accompanied by a supporting brief, within 10 days of the service of that order. Responsive briefs shall be filed and served within 10 days of service of the appeal.

(g) A motion to vacate a stay order may be filed at any time. A stay order issued by the Board en banc may not be vacated by a single Board member.

**Subpart H—Appeals by Members of the Senior Executive Service**

**§ 28.140 Personnel actions involving SES members.**

Members of the GAO Senior Executive Service (SES) may appeal adverse actions relating to misconduct, malfeasance or similar action to the Board in accordance with Subpart B of this part. Members of the GAO SES who allege that they have been subjected to a personnel action that constitutes a prohibited personnel practice or prohibited discrimination may appeal to the Board in accordance with subpart B or subpart D of this part respectively.

**§ 28.141 Performance based actions.**

A career appointee removed from SES to a GAO position outside the SES for less than fully successful executive performance shall, upon notice of such removal, be entitled, upon request, to an informal hearing before a member of the Board designated by the Chair of the Board.

(a) At the informal hearing, the career appointee and/or a representative