

General Accounting Office

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AUTHORITY: 31 U.S.C. 753.

SOURCE: 58 FR 61992, Nov. 23, 1993, unless otherwise noted.

Subpart A—Purpose, General Definitions, and Jurisdiction

§ 28.1 Purpose and scope.

(a) The regulations in this part implement the Board's authority with respect to employment practices within the General Accounting Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980, 31 U.S.C. 751-755. Regulations implementing the Board's authority with respect to employment practices within the Architect of the Capitol, pursuant to the Architect of the Capitol Human Resources Act, Public Law 103-283, sec. 312, 108 Stat. 1443 (July 22, 1994), appear in 4 CFR part 29.

(b) The purpose of the rules in this part is to establish the procedures to be followed:

- (1) By the GAO, in its dealings with the Board;
- (2) By employees of the GAO or applicants for employment with the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;
- (3) By employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.; and
- (4) By the Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

(c) The scope of the Board's operations encompasses the investigation and, where necessary, adjudication of cases arising under 31 U.S.C. 753. In addition, the Board has authority for oversight of the equal employment opportunity program at GAO. This includes the review of policies and evaluation of operations as they relate to EEO objectives and, where necessary,

the ordering of corrective action for violation of or inconsistencies with equal employment opportunity laws.

(d) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

[59 FR 59105, Nov. 16, 1994]

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following actions brought by the General Counsel:

(1) Proceedings in which the General Counsel seeks to stay a personnel action based upon an alleged prohibited personnel practice that has occurred or is about to occur;

(2) Proceedings in which the General Counsel seeks corrective action for an alleged prohibited personnel practice; and

(3) Proceedings in which the General Counsel seeks discipline for a GAO employee who has allegedly committed a prohibited personnel practice or who has engaged in prohibited political activity.

(b) The Board has jurisdiction to hear any action brought by any person or group of persons in the following subject areas:

(1) An officer or employee appeal involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) A prohibited personnel practice under 31 U.S.C. 732(b)(2);

(3) A decision of an appropriate unit of employees for collective bargaining;

(4) An election or certification of a collective bargaining representative;

(5) A matter appealable to the Board under the labor-management relations program under 31 U.S.C. 732(e), including an unfair labor practice under 31 U.S.C. 732(e)(1);

(6) An action involving discrimination prohibited under 31 U.S.C. 732(f)(1); and

(7) An issue about GAO personnel which the Comptroller General by regulation decides the Board shall resolve.

(c) *Special jurisdictional rules where matters are covered by a negotiated grievance procedure.* If a GAO employee is covered by a collective bargaining agreement containing a negotiated

grievance procedure that permits the employee to grieve matters that would otherwise be appealable to the Board, the following special rules apply:

(1) Matters involving discrimination, performance-based reduction in grade or removal, or adverse action. If the negotiated grievance procedure permits the employee to grieve matters involving prohibited discrimination (as defined in §28.95), performance-based reduction in grade or removal (as described in 5 U.S.C. 4303) or an adverse action (as described in 5 U.S.C. 7512), then the employee may elect to raise the matter either under the negotiated grievance procedure or under the Board's procedures, but not both. The employee will be deemed to have elected the Board's procedures if the employee files a timely charge with the Board's General Counsel or files a timely written EEO complaint with GAO before filing a timely written grievance.

(2) Other matters. If the negotiated grievance procedure permits the employee to grieve any matters which would otherwise be appealable to the Board, other than those listed in paragraph (c)(1) of this section, then those matters may only be raised under the negotiated grievance procedure and not before the Board.

(3) Board review of final decisions from the negotiated grievance procedure involving discrimination. If an employee elects to pursue a matter involving prohibited discrimination (as defined in §28.95) through the negotiated grievance procedure, the employee may ask the Board to review the final decision of the negotiated grievance procedure as it relates to the issue of discrimination. A petition seeking such review shall be filed with the Clerk of the Board within 20 days of receipt of the final decision of the negotiated grievance procedure. The Board will not review any final decisions of the negotiated grievance procedure other than those where prohibited discrimination was raised as an issue in the grievance.

§ 28.3 General definitions.

In this part—

Administrative judge means any individual designated by the Board to pre-

side over a hearing conducted on matters within its jurisdiction. An administrative judge may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing who is appointed to do so by the Board. When a panel of members or the full Board is hearing a case, the Chair shall designate one of the members to exercise the responsibilities of the administrative judge in the proceedings.

Board means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751 and explained in 4 CFR 27.1.

Charge means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Charging Party means any person filing a charge with the General Counsel for investigation.

Comptroller General means the Comptroller General of the United States.

Days means calendar days.

Exceptions to the Recommended Decision means a request filed by a party with the Board that objects to the findings and/or conclusions of a recommended decision.

GAO means the General Accounting Office.

General Counsel means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

Initial Decision means the adjudicatory statement of a case that is issued by an administrative judge who is a member of the Board.

Person means an employee, an applicant for employment, a former employee, a labor organization or the GAO.

Petition for Review means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Petitioner means any person filing a petition for review for Board consideration.

Pleading means a document that initiates a cause of action before the Board, responds to a cause of action, amends a cause of action, responds to