

Government Accountability Office

§ 28.3

(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 petition 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) The appropriateness of a 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) *Matters involving prohibited personnel practices.* If the negotiated grievance procedure permits the employee to grieve an appealable action involv-

ing a prohibited personnel practice other than prohibited discrimination (as defined in § 28.95), such an action may be raised under either, but not both, of the following procedures:

(A) The Board's procedures; or

(B) The negotiated grievance procedure.

The employee will be deemed to have elected the Board's procedures if the employee files a timely charge with the Board's Office of General Counsel before filing a timely grievance.

(3) *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 paragraphs (c)(1) or (c)(2) of this section, then those matters may only be raised under the negotiated grievance procedure and not before the Board.

(4) *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.

(d) Except for actions involving prohibited discrimination (under § 28.95) or any other prohibited personnel practice, any appealable action that is excluded from the application of the negotiated grievance procedure may be raised only under the Board's procedures.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69298, Dec. 12, 2003; 76 FR 76873, Dec. 9, 2011]

§ 28.3 General definitions.

In this part—

§ 28.4

4 CFR Ch. I (1–19 Edition)

Administrative judge means any individual designated by the Board to preside 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.

Appeal means a request filed with the full Board for review of an initial decision.

Board means the Government Accountability 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 Office of General Counsel to investigate any matter 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 PAB Office of General Counsel for investigation.

Clerk of the Board means the Clerk of the Personnel Appeals Board.

Comptroller General means the Comptroller General of the United States.

Days means calendar days.

Director of EEO Oversight means the Personnel Appeals Board Director of EEO Oversight.

Executive Director means the Executive Director of the Personnel Appeals Board.

GAO means the Government Accountability 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 or appointed by the Board.

Notice of Appeal means a pleading requesting that the full Board review an initial decision.

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

Petition 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 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 an amended cause of action, requests reconsideration of a decision, responds to such a request, requests appellate review by the full Board or responds to such a request.

Reduction in Force (RIF) means the release of an employee from a job group by separation, demotion, reassignment requiring displacement, or furlough for more than 30 days when the cause of action is lack of work, shortage of funds, insufficient personnel ceiling, reorganization or realignment, an individual's exercise of reemployment or reinstatement rights, correction of skills imbalances, or reduction of high-grade supervisory, or managerial positions.

Request for Reconsideration means a request, filed with the administrative judge who rendered the initial decision, to reconsider that decision in whole or part.

Solicitor means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

[68 FR 69298, Dec. 12, 2003]

§ 28.4 Computation of time.

(a) To compute the number of days for filing under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served by mail, five (5) days shall be added to the prescribed period. Only two (2) days shall