

Thomas A. Quarry v. U.S. General Accounting Office

Docket No. 08-701-17-81

Date of Decision: October 13, 1981

Cite as: Quarry v. GAO (10/13/81)

Before: Levan, Presiding Member; Gallas and Taylor, Members

Motion to Dismiss

Timeliness of Discrimination Complaint

Timeliness - Waiver of Time Limits

Background

This case came before the Board on a Petition for Review filed by the Petitioner by a letter dated June, 1981, to the General Counsel to the Board. On June 16, 1981, the General Counsel to the Board advised the Petitioner that the investigation phase was completed. By a letter dated July 2, 1981, the Petitioner filed an Appeal directly to the Board for review. This Appeal was filed pro se. On July 14, 1981, the Board received a Motion for Discovery from the Petitioner. On July 20, 1981, the Board received a Memorandum of Points and Authorities in opposition to Petitioner's Petition for Review. On July 22, 1981, the Board received the Petitioner's Motion to Request Hearing dated July 21, 1981. The Board then received a Motion to Produce Witnesses, and Evidence from the Petitioner. On August 11, 1981, a prehearing conference was conducted by the Board and an appropriate order was issued by the Board on August 13, 1981. Then on August 20, 1981, the Board received a motion from the Respondent entitled Motion to Dismiss Appeal Filed By Petitioner. As a result of the various motions filed, by letter dated August 26, 1981, the Board advised the parties that it had elected to postpone the hearing originally scheduled for September 1, 1981, until a review of the various motions could be completed by the Board. On August 27, 1981, the Board received the Petitioner's Opposition to Respondent's Motion to Dismiss Appeal. On the same date, the Board also received three other motions from the Petitioner requesting an open hearing, the striking of a list of witnesses and a motion for ruling on a consent decree.

After a thorough review of the written record in this case, for the reasons expressed below, the Board has granted the Respondent's Motion to Dismiss Appeal Filed By Petitioner.

Findings of Fact

Petitioner was a Supervisory Auditor, GS-13, with the Respondent. During calendar year 1977, the Petitioner wrote letters to a member of Congress, The Public Integrity Section of the Criminal Division of the Department of Justice and to President Carter contending that certain officials of the Respondent as well as other agencies and members of Congressional committee staffs, had engaged in illegal and/or improper conduct. After unsuccessful efforts by the Respondent to have the Petitioner undergo a psychiatric examination to determine his competence, by letter dated February 2, 1979, the Respondent proposed the Petitioner's removal. This action was made effective on April 6, 1979, and an appeal was filed by the Petitioner with the Merit Systems Protection Board. In a decision dated August 1, 1979, the

Respondent's action was upheld by the Presiding Official. The Petitioner filed an appeal with the full Merit Systems Protection Board, which Board upheld the previous decision on September 25, 1980. An appeal was then filed with the United States Court of Appeals for the District of Columbia. That Court affirmed the Merit Systems Protection Board's decision without an opinion on July 1, 1981.

This particular Petition For Review is before the Board on the basis of a complaint of discrimination on the basis of race and sex (male, Caucasian) filed by the Petitioner with the Respondent by letter dated May 7, 1981. In his complaint, the Petitioner alleged that this discrimination occurred in mid-1977 when the words "white male" were written on the original of a letter which the Petitioner had sent to President Carter. By letter dated May 18, 1981, the Director of the Respondent's Civil Rights Office rejected the Petitioner's discrimination complaint as having been untimely filed since the particular notation was on a document that was in evidence at the time of the Petitioner's original hearing before the Merit Systems Protection Board in 1979.

Contentions of the Parties

The Petitioner asserts four arguments in support of his request that the matter be reviewed by the Board: (1) the May 19, 1981, letter from the Director of the Civil Rights Office violates the Consent Decree entered in the case of Smith v. Staats, Civ. No. 78-0098 (D.D.C., March 23, 1979); (2) the February 16, 1979, decision of the Comptroller General on concurrent processing of the Petitioner's removal and grievance against the Agency was improper; (3) the April 16, 1979, decision of the Comptroller General denying the Petitioner's request for relief under his formal grievance was improper; and (4) the March 29, 1979, decision to remove the Petitioner effective April 6, 1979, was improper.

The Respondent in its Motion to Dismiss Appeal Filed By Petitioner sets forth three grounds for denying the Appeal: (1) the Petitioner's discrimination complaint was not timely filed; (2) This Appeal is barred by the principles of res judicata; and (3) the Board is without jurisdiction to entertain an appeal in this manner.

Analysis

The initial threshold issue to be resolved in this Appeal is whether the Petitioner's complaint of discrimination, which was filed with the Respondent in a letter dated May 7, 1981, was filed on a timely basis. In light of the ground relied upon by the Board relating to the timeliness issue, it is unnecessary to decide this issue to consider or to discuss the contentions of the parties in this case.

The essence of this case is whether the "Petitioner" provided "good cause" for his failure to file a complaint of discrimination within thirty days after he became aware in 1979 that the notation "white male" appeared on the bottom of a letter he had sent to President Carter in 1977. In denying the complaint of discrimination, the Respondent's rejection letter of May 19, 1981, signed by its Director, Civil Rights Office, concluded that the appeal was not timely filed and no adequate or proper justification was given for the untimeliness of Petitioner's filing of the discrimination complaint against the Agency. Furthermore, in the Respondent's Motion to Dismiss Appeal Filed By Petitioner, it is asserted that the Petitioner "had all the evidence upon which he has based his discrimination complaint dated May 7, 1981, in his possession no later than June 6, 1979." Essentially, the Respondent contends that the information relied upon by the Petitioner as justification for the filing of the complaint of discrimination was information known to the Petitioner more than two years ago. Petitioner's pleadings would support that contention. Petitioner's response takes the form of an Affidavit in which he states he did not become aware that his Agency

committed reverse-discrimination against him until May 7, 1981. However, the mere assertion without more is not sufficient to overcome the fact that the facts relied upon by the Petitioner in filing his complaint of discrimination were known to him prior to his original removal hearing before the Merit Systems Protection Board. Additionally, the same information was on the record at the time that he requested review by the Merit Systems Protection Board of the Presiding Official's decision as well as when he filed an appeal with the United States Court of Appeals for the District of Columbia. While Hilberto Alonzo et al vs. Department of the Air Force et al, 80 MSPB 7032 (November 24, 1980), holds that an untimely filing of a complaint or appeal may be waived for "good cause shown," viewing the facts in this case in the most favorable light to the Petitioner, he has failed to allege facts which could persuade the Board that there was "good cause shown" for the untimely filing of his complaint of discrimination with the Respondent in May of this year.

Accordingly, the Board concludes that the Petitioner has not demonstrated "good cause" for his failure to file timely a complaint of discrimination against the Respondent.

Decision

Petitioner's Appeal to the Board for review and reinstatement of his complaint of discrimination against the Respondent dated May 7, 1981, is dismissed.