

# **Edward G. Horvath v. U.S. General Accounting Office**

**Docket No. 12-211-17-81**

**Date of Decision: April 27, 1982**

**Cite as: Horvath v. GAO (4/27/82)**

**Before: Gallas, Chair; Bussey, Simmelkjaer, and Taylor, Members**

**Standard of Review**

**Hearing Procedures**

**Reopening and Reconsidering**

**RECONSIDERATION OF HORVATH v. GAO, M7-B5 (MARCH 30, 1982)**

## **Background**

A Member of the Board issued the initial decision in this case on March 30, 1982. The Board received a Motion to Reopen and Reconsider on April 6, 1982, from the Petitioner. The Board subsequently received from the General Accounting Office (Respondent) a Response to Petitioner's Motion.

## **Contentions of the Parties**

The Petitioner contends that there were discrepancies in the record and that the Board failed to question the timing and appropriateness of certain events surrounding this case. Respondent contends that the Board should deny Petitioner's motion because it fails to satisfy the Board's regulatory requirements for review of an initial decision.

## **Analysis**

A motion to reopen and reconsider under 4 C.F.R. §28.25(c) may be granted by the Board when it is established that:

- (1) New and material evidence is available that, despite due diligence, was not available when the record was closed;
- (2) The decision of the Hearing Officer is based on an erroneous interpretation of statute or regulation.

Petitioner has neither offered "new and material evidence", nor contended that the decision was based on an "erroneous interpretation of statute or regulation." Therefore, Petitioner has failed to meet the criteria set forth in 4 C.F.R. §28.25(c) for reopening and reconsidering an initial decision.

## **Decision**

The Board, having considered the Respondent's Motion to Reopen and Reconsider the Board's initial decision in Horvath v. GAO, M7-B5 (March 30, 1982), and, based on the foregoing Analysis, affirms its original decision. Accordingly, Petitioner's appeal to the Board for review and approval of a retroactive promotion to November 15, 1981, is denied and his appeal is dismissed.