

Marian Mitchell Harley v. U.S. General Accounting Office

Docket No. 23-201-17-83

Date of Decision: April 25, 1984

Cite as: Harley v. GAO (4/25/84)

Before: Feigenbaum (Presiding Member)

Timeliness of Petitions for Review

Limitations Periods

DECISION OF THE PRESIDING MEMBER

On December 19, 1983, the Board's General Counsel issued the Petitioner a Right to Appeal letter concerning her allegation of racial discrimination and notified her of her right to file a petition for review within the twenty-day filing time requirement. Having received no petition, the Board closed its file in the case and sent a Notice of Termination of Appeal on January 18, 1984.

On February 10, 1984, the Petitioner requested that the Board permit her to file her petition late. Her letter to the Board stated:

I missed the 20-day period in which I could have pursued an appeal due to coming down with the flu and having to deal with two deaths two weeks in a row--thus I was out on leave quite a bit during this period.

In view of the unforeseen circumstances, I, therefore, request that the Board reopen my case. I appreciate your consideration.

Respondent GAO moved that the Petitioner's request be dismissed because she had not shown good cause for her untimely filing. The Presiding Member held a pre-hearing conference to consider the Petitioner's request on April 2, 1984. The Petitioner was present, as were representatives of GAO.

A review of Grievant's leave record indicates the following. The twenty-day filing period covered the dates December 20, 1983, through January 8, 1984. Normally, there would have been fourteen working days in that period. However, because of the Christmas and New Year holidays, there were only twelve working days. The Petitioner was on annual or sick leave for a total of five days during the period, leaving only seven days during which she was in a work status.

During the next two weeks (ten work days) the Petitioner was on leave for thirty hours, almost four full days. This was the period January 9 through January 20, 1984. As stated above, the Notice of Termination of Appeal was issued on January 18, 1984.

This chronology indicates that the Petitioner was absent from work for a significant amount of time during the twenty-day filing period, and also during the two weeks thereafter. This time out due to illness and deaths in the family, along with its concomitant distractions, would have furnished a basis for waiver of the time limits in accordance with 4 CFR §28.11(b)(6). However, Petitioner did not request such waiver until seventeen working days after the issuance of the Notice of Termination of Appeal. Even if one assumes she did not receive the Notice (which was issued on a Wednesday) until the following Monday (January 23), she did not request a waiver until fourteen working days thereafter. She was on annual or sick leave for a total of twelve hours (1-3/4 days) during this fourteen-working-day period.

If the Petitioner was intent on pursuing her complaint, receipt of the Notice of Termination should have triggered her to take immediate action to request a waiver. However, the Petitioner did not act immediately, and the delay until February 10 is far in excess of that for which good cause has been shown.

The Petitioner's request that the time limits be waived is denied for the reasons stated above. The petition for review is dismissed.