

# **Earl L. Patrick v. U.S. General Accounting Office**

**Docket No. 25-100-17-83**

**Date of Decision: January 12, 1984**

**Cite as: Patrick v. GAO (1/12/84)**

**Before: Bowers, Presiding Members**

**Classification of Jobs**

**Prohibited Personnel Practices**

**Equal Pay**

## **ORDER**

On October 3, 1983, the Personnel Appeals Board affirmed an interlocutory Order of the then Presiding Member issued on August 18, 1983, which had denied the General Accounting Office's motion to dismiss the petition. In affirming the Presiding Member's Order, the Board held that:

- (1) A violation of GAO Order 2511.1 which results in a substantial deviation from the equal pay principle may constitute a prohibited personnel practice in violation of 5 U.S.C. §2302(b)(11);
- (2) Under 5 U.S.C. §753(a)(2), the Board has jurisdiction over alleged prohibited personnel practices;
- (3) As affirmed by GAO v. PAB, 698 F.2d at 531, allegations of prohibited personnel practices need not be brought by the Board's General Counsel or arise in the context of otherwise appealable actions; rather, the Board has established through its rulemaking authority that any matter within its jurisdiction is subject to the appellate process; and
- (4) The absence of a back pay remedy, and the inappropriateness of prospective reclassification in this case do not mean that no relief may be granted if Mr. Patrick, the petitioner, prevails on the merits.

The Board's order also stated that recourse to the internal appeal procedures contained in GAO Order 2511.1 is required before petitioning the Board for review of an alleged prohibited personnel practice based upon misclassification. The Order specifically left open, however, the question of "the degree of deference, if any, which the Board should give to classification decisions made by GAO pursuant to the internal appeal procedures under Order 2511.1." (Order of October 3, 1983, p. 10, n.5.) Given the importance of this question, the parties were asked to submit briefs stating and arguing their points of view. For the same reason, the Presiding Member also permitted the Board's General Counsel to submit a brief on the issue.

Thus, the Board's Order cleared the way for a hearing on the merits of this case, subject to resolution of the question of deference, if any, to be afforded to GAO's classification decision. It is this latter question that is addressed at this time.

The determination of the proper grade level for a particular position, by application of the classification standards and factors or by comparison to other graded positions which are cited by an employee seeking reclassification,<sup>1</sup> is, in the first instance, a matter for the agency to determine under the internal appeals process of GAO Order 2511.1. Should the agency fail to make a classification determination at all, then that would be a clear violation of the Order itself. If, however, the agency does make a classification determination based upon application of the classification standards and factors and/or relevant comparisons, but determines that the position does not warrant a higher classification, then the question arises of the scope of review of the agency's action by the Board.

To establish a violation of 5 U.S.C. §2302(b)(11), a petitioner must show that the Order itself was violated.<sup>2</sup> The classification standards themselves are not a part of GAO Order 2511.1. Application of the classification standards involves the exercise of judgment on the part of agency officials charged with implementing the Position Classification Order. Mere disagreement with the agency's determination would not establish a violation of the Order itself. It would not be appropriate, therefore, for the Board to make a de novo classification and substitute its judgment for that of the agency. However, implicit in the provisions of the Order that classification and reclassification determinations be made is the requirement that such determinations not be made in a manner that is arbitrary, capricious, or lacking a reasonable basis in law. Therefore, if the petitioner establishes that the agency's classification determination was made in such a manner, that would be a violation of GAO Order 2511.1 and would support a finding of a personnel practice prohibited by 5 U.S.C. §2302(b)(11).

The hearing in this case will commence at 10:00 a.m. on February 13, 1984.

#### **Notes**

1. See, in this context, Barnhart v. Devine, C.A. No. 82-2343 (D.D.C.), opinion granting motion to dismiss (December 16, 1983).

2. It is a prohibited practice under section 2302(b)(11) to "take or fail to take any. . . personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles. . . ."