

Douglas J. Pride v. U.S. General Accounting Office

Docket No. 44-701-17-84

Date of Decision: August 20, 1984

Cite as: Pride v. GAO (8/20/84)

Before: Bowers, Presiding Member

Filing of Petition for Review

Computation of Limitations Periods

Timeliness

DECISION OF THE HEARING OFFICER

Petitioner filed a complaint with the GAO Civil Rights Office alleging discrimination on the basis of race, sex, age, and religion in the consideration of his application for employment with the GAO Office of the General Counsel. The complaint was investigated and, on January 12, 1984, Alexander A. Silva, Director, Civil Rights Office, issued a Recommended Final Agency Decision which found no discrimination. Charles A. Bowsher, GAO Comptroller General, adopted Mr. Silva's Recommended Decision as the Agency's Final Decision regarding Mr. Pride's discrimination complaint.

On January 19, 1984, the Comptroller General sent a letter to Mr. Pride advising him of the agency's final decision and enclosing a copy of that decision. The letter closed with: "If you are dissatisfied with the final agency decision I call attention to your appeal rights as set forth on page 10 [of the enclosed decision]." Page 10 of the decision stated, in pertinent part:

APPEAL RIGHTS

Within 20 calendar days after receiving the final agency decision Mr. Pride may appeal it in writing to the General Counsel, Personnel Appeals Board, Room 4057, U.S. General Accounting Office, 441 G. Street, N.W., Washington, D.C. 20548.

This statement of appeal rights is consistent with the Board's procedural rules at 4 C.F.R. §28.11(b)(4), which provide: "Petitions for review of discrimination complaints...must be filed within 20 calendar days from receipt of the petitioner of the final agency decision."¹

On March 1, 1984, Mr. Pride mailed a petition for review of the agency's final decision to the Board's General Counsel. It was received at the Board's office on March 6. The General Counsel investigated the petition and issued Mr. Pride a Right to Appeal Letter on May 8, together with the Report and Recommendations of the General Counsel. Thereafter, Mr. Pride filed a timely appeal to the Board. (See Order of May 21, 1984).

GAO has filed a motion to dismiss the petition as untimely. It alleges that Mr. Pride received a copy of the agency's final decision on February 4, 1984, but did not file a petition for review with the Board's General Counsel until March 1,² more than 20 days after he received the agency's final decision on his discrimination complaint. GAO submitted a certified mail receipt signed by Mr. Pride on February 4, and a letter dated February 7 from Mr. Pride to Mr. Bowsher stating in pertinent part: "This will...acknowledge receipt, Saturday, of your letter of January 19, 1984 concerning your adoption of the final agency decision in my complaint of discrimination..." (February 4 was a Saturday.)

In response to GAO's motion, Mr. Pride admits that: "On February 4, 1984, Petitioner received, by certified mail, a COPY of the original letter of adoption of the final agency decision of Comptroller General Bowsher, dated January 19, 1984 with the Recommendation (sic) Final Agency Decision." He further states, however, that: "On February 11, 1984, Petitioner received, by certified mail, ... Petitioner's copy of the ORIGINAL (sic) letter of adoption of Comptroller General Bowsher's dated January 19, 1984 with the Recommended Final Agency Decision." In defense of his actions, Mr. Pride claims that the 20 calendar day filing period did not commence until he received a copy of the "original" letter of adoption of Mr. Bowsher on February 11, and that, therefore, his March 1 mailing of a petition to the Board's General Counsel was within 20 days and thus timely.

Assuming for present purposes that Mr. Pride received a "copy" of the Comptroller General's decision on February 4 and the "original" on February 11, the Hearing Officer nevertheless rules that his March 1 filing was untimely. There is no evidence that what Mr. Pride received on February 4, by certified mail, was anything other than a complete and accurate copy of the agency's final decision, and there is no evidence that he understood otherwise. He was in no way misled. In fact, his letter to Mr. Bowsher, dated February 7, clearly indicates he understood the February 4 receipt to be the final agency decision and clearly indicates that the information therein was a sufficient basis for his understanding of the decision to permit him to advise Mr. Bowsher that "I plan to file a civil action in the Superior Court of the District of Columbia immediately..." It is also clear that the copy he received on February 4 fully informed him of the time limits of his appeal rights. The "copy" received on February 4 indeed was identical in content to the "original" received on February 11. Nothing in 4 C.F.R. §28.11(b)(4) requires receipt by a petitioner of the "original" final agency decision, as opposed to a "copy" of the final agency decision, in order to trigger the 20-day filing period. Mr. Pride's argument is an overly-legalistic attempt to create a technicality for extending the filing period. §28.11(b)(4) requires receipt of the agency decision before the time period commences to run in order to insure that petitioner has been adequately notified of the agency's decision. Clearly, Mr. Pride was adequately notified on February 4.

Furthermore, the Hearing Officer does not find that "good cause" has been shown to waive the time limits pursuant to 4 C.F.R. §28.11(b)(6). Again, it is clear, particularly from his February 7 letter, that Mr. Pride fully understood the import and significance of the "copy" of the agency's final decision which he received on February 4.

Finally, in his correspondence with the Board, Mr. Pride has sought, not only to appeal the underlying merits of his discrimination complaint, but also to appeal the General Counsel's findings, apparently set forth in the Report and Recommendations,³ that his petition for review was untimely filed, and to appeal an alleged lack of due process by the General Counsel in not affording him sufficient opportunity to refute GAO's evidence on the timeliness issue. The Hearing Officer does not need to rule on the threshold question of appealability to the Board of the General Counsel's investigative and prosecutorial decisions. Inasmuch as the Hearing Officer has adjudicated the timeliness *de novo* on the record, where both parties

have had a full opportunity to present evidence and argument on the issue, any purported appeal of the General Counsel's findings or actions is moot.

The petition for review is dismissed as untimely.

Notes

1. This 20-day time limit is the same as that for filing appeals with the EEOC from final agency decisions in discrimination complaints in the executive branch. 29 C.F.R. §1613.233.

2. A petition for review is filed on the day that it is mailed. See 4 C.F.R. §28.11(c).

3. By rule, the Board does not learn of the General Counsel's investigative findings or prosecutorial determination as communicated to a petitioner in his Report and Recommendations. That is a privileged communication between the Petitioner and the General Counsel. See 4 C.F.R. §28.17(c). In this case, however, Mr. Pride himself has revealed the General Counsel's finding to the Board.

