

Gwendolyn Burton Poole v. U.S. General Accounting Office

Docket No. 98-01

Date of Decision: March 17, 2000

Cite as: Poole v. GAO (3/17/00)

Before: Jeffrey S. Gulin, Vice-Chair, for the Board *en banc*; Ann Wagner, Member;
Michael Wolf, Chair

Reconsideration

DECISION ON PETITIONER'S REQUEST FOR REVIEW OF THE INITIAL DECISION OF THE ADMINISTRATIVE JUDGE

This matter comes before the full Personnel Appeals Board (PAB) on Petitioner Gwendolyn Burton Poole's *pro se* filing of a "Notice of Appeal Requesting Review or Reconsideration Before the Full Board" on July 17, 1999. As noted in that pleading, Petitioner had "filed a timely appeal within the 15 day time limit."¹ Notice of Appeal at 1. Petitioner appeals from the Initial Decision issued on June 30, 1999 upholding the Agency's action of removing Petitioner from employment on the grounds of poor performance. That decision followed an evidentiary hearing conducted from September 14-16 and December 7-10, 1998 and provides a comprehensive and thorough analysis of all claims alleged by Ms. Poole in her Petition for Review.²

We have fully considered Petitioner's challenge to the June 30, 1999 Initial Decision of the Administrative Judge and find no merit in that challenge. Being persuaded that the Initial Decision addressed and correctly determined each issue presented by the Petition for Review, we AFFIRM on the opinion below.

¹ If Petitioner had not asked for review by the full Board, her use of the term "reconsideration" might have been construed as a request that the administrative judge who issued the initial decision reconsider his decision. In that event, the filing would have been untimely, since such requests for reconsideration are due within 10 days rather than the 15 days allowed for a notice of appeal. See 4 C.F.R. §28.87(b)(1) and (2).

² On September 7, 1999, Respondent GAO filed the "Agency's Response to Appellant's Request for Consideration." Citing the regulatory provision governing review by the full Board, the Agency claimed that there is "no basis for a reconsideration of the decision." Response at 1. The Agency correctly notes that under 4 C.F.R. §28.87(c), Petitioner failed to file a supporting brief within 25 days of the notice of appeal. However, Petitioner's pleading does briefly identify three specific objections to the Initial Decision. Accordingly, we accept Petitioner's filing as a perfected appeal to the full Board.

Petitioner raises three objections to the Initial Decision:

1. The Appellant attached documents to two post-hearing briefs that were not treated as evidence, but should have been. The Appellant provided genuine factual documents supporting two post-hearing briefs which she had analyzed from documents already accepted into evidence. Briefs should always summarize hearing proceedings, as well as any supportable documents that describe factual performance conditions. The absence of such vital information unjustly slants a decision in favor of the Agency.
2. The agency's required unacceptable performance and grievance procedures are in conflict and resulted in harmful error for the Appellant.
3. The Appellant's briefs with supporting documents clearly revealed that an opportunity period **should not have taken place**, but such proof was not admitted into the record or treated as evidence. The Board clearly had jurisdiction over a May 30, 1997, performance appraisal that prompted this personnel action and the resulting prohibited personnel actions. The proper claims had been filed with the Board.

Notice of Appeal at 1-2 (emphasis in original).

As to Petitioner's first issue, the Administrative Judge properly determined that the attachments submitted with Petitioner's post-hearing brief could not be admitted as evidence. In fact, the Administrative Judge explained that he had considered the documents as argument in support of Petitioner's position, while noting that they could not be considered as record evidence because "none of those documents had been entered into evidence at the hearing." Initial Decision at 22.

Petitioner's second objection was not previously raised in her Petition for Review and therefore is not appealable to the full Board.

Finally, Petitioner disputes the Administrative Judge's conclusion that, absent allegations of a prohibited personnel practice, the accuracy of the performance appraisal that gave rise to the opportunity period was not within the Board's jurisdiction. On appeal, for the first time, Petitioner attempts to draw a nexus between that appraisal and "prohibited personnel actions." Nevertheless, the Administrative Judge had allowed Petitioner "to make as complete a record as she wished with regard to her work on the loss list prior to the opportunity period. . . . [T]he jurisdictional bar to this Board's direct review of Petitioner's May 30, 1997 appraisal did not prevent Petitioner from presenting evidence to support her argument that this performance appraisal was based on a flawed analysis of her work product. In making the findings and conclusions in this decision, I have considered all of Petitioner's work product during the year prior to the Notice of Proposed Removal." Initial Decision at 23-24. Thus, while not directly reviewing the accuracy of the May 1997 appraisal, the Administrative Judge did consider Petitioner's evidence concerning the events leading up to the opportunity period.

Accordingly, the decision of the Administrative Judge is hereby **AFFIRMED** on the opinion below.

SO ORDERED.