

**ARTHUR L. DAVIS v. U.S. General Accounting Office**

**Docket No. 01-04**

**Date Issued: March 27, 2002**

**Cite as: Davis v. GAO, Docket No. 01-04 (3/27/02)**

**Before: Jeffrey S. Gulin, Administrative Judge**

**Headnotes:**

**Dismissal**

**Failure to Prosecute**

**Show Cause Order**

**MEMORANDUM AND ORDER**

**PERSONNEL APPEALS BOARD  
U.S. GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C.**

<hr/>		
<b>ARTHUR L. DAVIS,</b>	)	
	)	
<b>Petitioner</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 01-04</b>
	)	
<b>UNITED STATES GENERAL ACCOUNTING OFFICE,</b>	)	
	)	
<b>Respondent</b>	)	<u>March 27, 2002</u>
<hr/>	)	

**MEMORANDUM AND ORDER**

On December 7, 2001, I issued an Order to Show Cause in the above-captioned matter. That Order recounted Petitioner's oft-stated position that he did not want a hearing on the merits before the Personnel Appeals Board. *See, e.g.*, transcript of November 16, 2001 Status Conference at 3 and 5; and Petitioner's Appeal to the Full Board (sic) Personnel Appeals Board for Recusal of the Administrative Judge and the Full Board from any Consideration of this Case, filed on October 17, 2001. Accordingly, Petitioner was given until January 4, 2002, to show cause why his Petition for Review should not be dismissed with prejudice, for failure to prosecute his claim.

On January 4, 2002, Petitioner filed his Response to Show Cause Order as to Why This Case Should Not Be Dismissed "With Prejudice" For the Alleged Failure of the Plaintiff to Prosecute This Case. In this pleading, Petitioner, "under strong protest and

objection," agrees to participate in a hearing on the merits. Petitioner's Response at 9. However, he requests the PAB to either (1) dismiss with prejudice this case thereby allowing Petitioner to re-file his Petition after adjudication of allegedly similar claims currently before the United States District Court for the District of Columbia or, (2) move to intervene in the pending District Court action, itself, as a party plaintiff against the GAO. *See id.* at 5. Petitioner also appears to suggest a third alternative – that the PAB simply defer any further action pending resolution of his claims before the District Court. *See id.* at 17.

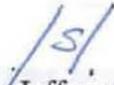
In its February 25, 2002 Reply to Petitioner's Response to Show Cause Order as to Why This Case Should Not Be Dismissed "With Prejudice" for the Alleged Failure of the Plaintiff to Prosecute this Case, Respondent argues that the Petition for Review should be dismissed with Prejudice for failure to prosecute.

Respondent's request to dismiss *with* prejudice, and Petitioner's request to dismiss *without* prejudice are both **denied**.

Petitioner's request that this matter be stayed is **granted in part**. This matter is stayed until October 1, 2002, at which time it will be set for hearing unless rendered moot by Petitioner's participation in the District Court action.

**SO ORDERED.**

Dated: 3-27-02

  
Jeffrey S. Gulin  
Administrative Judge