

ROBERTA H. GASTON v. U.S. General Accounting Office

Docket No. 99-02

Date Issued: June 29, 2004

Cite as: Gaston v. GAO, Docket No. 99-02 (6/29/2004)

Before: Anne M. Wagner, Administrative Judge

Headnotes:

Settlement Agreements

Show Cause Order

ORDER TO SHOW CAUSE

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

ROBERTA H. GASTON,)	
)	
Petitioner)	
)	
v.)	Docket No. 99-02
)	
UNITED STATES GENERAL)	
ACCOUNTING OFFICE,)	
)	June 29, 2004
Respondent)	
)	

ORDER TO SHOW CAUSE

On Saturday, June 26, 2004, the Board received, by fax, a pleading entitled *Petitioner's Motion to Compel GAO to Fulfill Its Obligations Under the Terms of the Settlement Agreement*. In that Motion, Petitioner asserts that GAO has failed to effect Petitioner's retirement, which occurred on March 31, 2004 pursuant to a settlement agreement entered into by the parties in September 2003, after the Board's July 18, 2003 Final Decision finding that the Agency had unlawfully failed to accommodate Ms. Gaston's disability in violation of the ADA.

The record in this case reflects that a status conference was held before Administrative Judge Michael W. Doheny on September 25, 2003 at which time the parties represented that they had reached an agreement with regard to Ms. Gaston's work status in fulfillment of the Final Decision. On September 30, 2003, AJ Doheny issued a Status Conference Report and Order incorporating the terms of the settlement agreement as represented to him by the parties, which provides, in pertinent part, that:

The parties agreed that the matter of Petitioner's work status had been settled. Pursuant to their agreement, Petitioner was placed on GAO's rolls, effective September 12, 2003. She will remain on the rolls until March 31, 2004 at which time she will enter into a full, regular retirement.

The Order directed that the Agency "promptly inform the Petitioner in writing of all actions taken to comply with this Order. . . ." The Order further authorized Petitioner to pursue enforcement action with the Board. Neither party objected to the Order or disputed its memorialization of the terms of their settlement agreement.

In the instant Motion, Petitioner claims that due to the Agency's action or inaction, she has been improperly denied the benefits of full retirement as agreed to by the parties (and set forth in the Board's Order of September 30, 2003). Specifically, she asserts that because GAO has not reimbursed OPM for the disability payments that she received between September 1997 and July 2003, she cannot begin receiving her annuity. Consequently, Petitioner requests that (1) the Board reinstate her to full-time status at GAO effective March 31, 2004; (2) she be paid the salary she would have earned since that date had she not retired; (3) she be credited with, and allowed to use, the leave that she would have earned since March 31, 2004; and (4) her retirement date be adjusted to reflect the date on which GAO reimburses OPM for the disability payments.

In light of the foregoing, the Board hereby orders the Agency to show cause as to why it should not be found in breach of the Board's Final Decision of July 18, 2003, the parties' September 2003 settlement agreement, and the Order of September 30, 2003 insofar as Petitioner has not received the full regular retirement benefits to which she is entitled. Specifically, GAO is hereby ordered to provide a sworn affidavit detailing every effort it has undertaken since September 30, 2003 to secure the commencement of retirement compensation for Petitioner.

The Agency's response must be filed with the Clerk of the Board by 4:00 p.m. on Tuesday, July 6, 2004. No extension of this deadline will be considered.

SO ORDERED.

Date: 6-29-04

AS
Anne M. Wagner
Chair