

REGG HATCHER v. U.S. General Accounting Office

Docket No. 34-201-17-83

Date of Decision: July 6, 1984

Cite as: Hatcher v. GAO, Docket No. 34-201-17-83 (7/6/84)

Before: Mollie H. Bowers, Presiding Member

Headnotes:

Dismissal

Motions Practice

Timeliness, General

ORDER

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BEFORE THE
PERSONNEL APPEALS BOARD
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C.

* * * * *
REGG HATCHER,
 Petitioner
 v.
GENERAL ACCOUNTING OFFICE,
 Respondent
* * * * *

Docket No. 34-201-17-83

ORDER

On August 17, 1982, Petitioner filed an administrative EEO complaint with GAO's Civil Rights Office alleging that he had been the object of racial discrimination with respect to his hiring, promotion, job assignments, and job evaluations. Prior to a final agency decision, Petitioner filed a petition for review of the administrative complaint on December 22, 1982, with the PAB's General Counsel, pursuant to 4 C.F.R. §28.11(c). PAB Docket No. 21-700-15-82 ("Hatcher I"). Since this petition was filed "...after 80 days have passed since the filing of a formal complaint of discrimination with GAO...", it was timely in accordance with 4 C.F.R. §28.11(b)(4), even though GAO had not yet issued a final agency decision on his EEO complaint.

After Hatcher filed his December 22, 1982, petition, the PAB General Counsel investigated the substance of the petition as required under 4 C.F.R. §28.17(a). On May 4, 1983, the General

Counsel concluded his investigation and, pursuant to 4 C.F.R. §28.17(c), sent a Right to Appeal Letter to Hatcher.^{1/}

On October 17, 1983, Hatcher filed a second petition for review with the PAB General Counsel. PAB Docket No. 34-201-17-83 ("Hatcher II"). That petition, which is the subject of the instant proceeding, directly concerns a second administrative EEO complaint filed by Hatcher with GAO's Civil Rights Office on February 28, 1983, to which GAO issued a final agency decision on September 22, 1983. On February 29, 1984, the PAB General Counsel concluded his investigation in Hatcher II and sent a Right to Appeal Letter to Hatcher. On March 19, 1984, Hatcher filed a petition for review in Hatcher II with the Board, pursuant to 4 C.F.R. §28.19(a).

GAO has moved to strike certain portions of the Hatcher II petition which raise the same claims as those raised in Hatcher I. Hatcher contends that the Hatcher I case remains before the Board for adjudication and that the claims in that case may be tried now in this proceeding. The Hearing Officer agrees with GAO for several reasons.

^{1/} Between the filing of the petition on December 22, 1982, and the Right to Appeal Letter on May 4, 1983, a final agency decision on the Petitioner's administrative complaint was issued by GAO's Civil Rights Office on March 4, 1983. Under both 4 C.F.R. §28.11(b)(4) and §28.47(b)(2), Petitioner was not required to submit a fresh petition for review with the PAB subsequent to the issuance of the final agency decision.

First, it appears that Hatcher has misunderstood the PAB's regulations governing the procedures triggered by a petition for review. In his brief, counsel for the Petitioner argues that the PAB took no action to process the December 22, 1982, petition for review in Hatcher I. However, as set forth in 4 C.F.R. §28.17, it is evident that the PAB General Counsel, rather than the PAB as a whole, has responsibility for initially acting on a petition for review. The General Counsel did investigate the allegations made in the December 22, 1982, petition and, in accordance with 4 C.F.R. §28.17(c), issued a Right to Appeal Letter to Hatcher on May 4, 1983. Hatcher did nothing to respond to this letter. While he claims that the original petition for review was sufficient, this interpretation flies in the face of the clear and unequivocal language contained in the Right to Appeal Letter which states, in the last paragraph, that:

Should you elect to file a Petition for Review with the Board, it must be post-marked no later than 20 days from your receipt of this letter or if your Petition is delivered to the Board in person, it must be received by the Board's Administrative Assistant no later than 4 p.m., 20 days from your receipt of this letter.

This procedure is consistent with 4 C.F.R. §28.19(a) which states: "Where the procedures for the General Counsel's investigation have been completed and the petitioner petitions the Board for relief,..."(emphasis added).

When Hatcher did not respond to the Right to Appeal Letter within the prescribed 20 days, therefore, the PAB properly issued a Notice of Termination of Appeal on June 1, 1983. Hatcher's defense that he was acting as a pro se Petitioner is not considered adequate by the Hearing Officer in view of the clear and unequivocal language contained in the Right to Appeal Letter and his failure to file any protest against the termination of his first appeal. Furthermore, when Hatcher was issued a Right to Appeal Letter in Hatcher II on February 29, 1984, he did follow the directives contained therein for filing a petition with the Board. This action belies his contention that no further action on his part is required once he initially files a petition with the PAB General Counsel. Since Hatcher was also not represented by counsel at the time of this filing, this buttresses the Hearing Officer's previous ruling on Hatcher's defense as a pro se Petitioner. The Hearing Officer, therefore, agrees with the GAO that once Hatcher did not comply with the instructions contained in the Right to Appeal Letter of May 4, 1983, in Hatcher I, that case was terminated by the PAB, then litigation on the points contained in the petition for review of December 22, 1982, was hereafter precluded.

Dated: July 6, 1984


Mollie H. Bowers
Hearing Officer