

JANET KRELL v. U.S. Government Accountability Office

Docket No. 07-01

Date Issued: May 29, 2007

Cite as: Krell v. GAO, Docket No. 07-01 (5/29/07)

Before: Steven H. Svartz, Administrative Judge

Headnotes:

Discovery

Filing of a Petition

Good Cause

PAB General Counsel

PAB Regulations

Timeliness of Complaint, Waiver of Time Limits

ORDER

**PERSONNEL APPEALS BOARD
U.S. GOVERNMENT ACCOUNTABILITY OFFICE
WASHINGTON, D.C.**

JANET KRELL,

Petitioner

v.

**GOVERNMENT ACCOUNTABILITY
OFFICE,**

Respondent

Docket No. 07-01

May 29, 2007

ORDER

By letter dated March 16, 2007, the Personnel Appeals Board Office of General Counsel (PAB/OGC) informed Petitioner's private counsel that it had completed its investigation of a Charge filed by Janet Krell against the Government Accountability Office (GAO). The letter additionally stated that the PAB/OGC was offering to represent Ms. Krell in accordance with its findings in proceedings before the Personnel Appeals Board (PAB or Board) if Ms. Krell decided to pursue her claims with the PAB. This "Right to Petition" Letter also stated that if Ms. Krell timely elected representation by the PAB/OGC, the PAB/OGC would file a Petition on her behalf with the PAB and would continue to represent her throughout the proceeding.¹ The letter further advised that Ms. Krell could decline the offer of representation and pursue her claims either *pro se* or with outside counsel, citing 4 C.F.R. §28.12(d)(3).

¹ The return receipt from the U.S. Postal Service indicates that the letter was delivered on March 23, 2007. Accordingly, as prescribed in 4 C.F.R. §28.18, a timely Petition was due to be filed with the PAB by hand delivery or mail postmarked no later than April 23, 2007.

The letter also specifically pointed out that if Petitioner chose to proceed on her own or with private counsel, then either Ms. Krell or her representative must file a Petition with the Board within 30 days of receipt of the letter. In addition, the letter noted that the requirements for filing a Petition at the PAB are governed by the procedures found at 4 C.F.R. §28.18, and that the cited provision as well as other rules governing the Board's appeal process could be found at www.pab.gao.gov. The letter further cautioned that failure to timely file a Petition is grounds for dismissal. Specifically, the Right to Petition Letter stated as follows:

[Y]our client has the right to decline this offer [of representation by the PAB/OGC] and pursue her claims either *pro se* or with a representative of her choosing. 4 C.F.R. §28.12(d)(3). If that is the case, then your client or her chosen representative must file a Petition with the PAB within 30 calendar days after your receipt of this letter. Failure to timely file a Petition is grounds for dismissal. Furthermore, in filing such a Petition, your client must adhere to the procedures found at 4 C.F.R. §28.18 and described in the enclosed summary. These and other rules governing the appeal process at the PAB can be downloaded from the Board's website at www.pab.gao.gov.

The letter also provided counsel with telephone and e-mail contact information should any questions arise.

The cited regulatory provision makes clear that a Petition must be filed with the Board within 30 days of receipt of a Right to Petition Letter. 4 C.F.R. §28.18(b)(1). The regulation further specifies how and where to file a Petition—*i.e.*, either (1) by hand delivery to the PAB offices at Suite 560, Union Center Plaza II, 820 First Street, NE, Washington, DC 20002; or (2) by mail addressed to the PAB, Suite 560, Union Center Plaza II, 441 G Street, NW, Washington, DC 20548. 4 C.F.R. §28.18(c)(1) and (2). There is no provision authorizing the filing of a Petition by facsimile submission.

As noted above, the Right to Petition Letter in this matter was received at counsel's offices on March 23, 2007. Accordingly, in order to be timely filed, a Petition was due to be

delivered by hand or postmarked no later than April 23, 2007.

On April 20, 2007, the PAB/OGC timely filed a Petition with the PAB on behalf of Ms. Krell.

On May 22, 2007, Ms. Krell's private counsel submitted by facsimile a Petition to the PAB.² The facsimile submission included a cover sheet containing the notation that no hard copy would follow. The cover sheet of the May 22 submission also stated: "We served this improperly on April 23, 2007 (see attached certificate of service), because we used the same Certificate of Service PAB/OGC used when filing their Petition for Ms. Krell, not realizing they were not including PAB on the certificate of service. I apologize for our error and hope you will consider Ms. Krell's Petition timely filed." The attached certificate of service referenced in the cover sheet of the May 22 submission is dated April 23, 2007, and states that a copy of the Petition faxed to the Board on May 22 was served on GAO and sent to Ms. Krell on April 23, 2007.

Counsel's attempt to file a Petition on behalf of Ms. Krell through the May 22, 2007 facsimile submission to the PAB does not comply with the PAB's regulations either as to when to file a Petition or how to file a Petition. *See* 4 C.F.R. §§28.18(b)(1) and (c). As stated above, in order to be timely filed, a Petition was due to be delivered by hand or postmarked no later than April 23, 2007. The May 22 facsimile submission was received by the PAB considerably after the deadline for filing a Petition in this matter, and as such is untimely. Moreover, the May 22 facsimile submission does not comply with either of the only two methods authorized by 4 C.F.R. §28.18(c) for filing a Petition—that is, either by hand delivery or by mail.

² The facsimile submission was dated May 21, 2007, and was received by the PAB on May 22, 2007.

The Board's regulations provide that "[e]xcept as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified period of time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Board or the administrative judge." 4 C.F.R. §28.4(c). As set forth above, the Right to Petition letter advised counsel of the pertinent PAB regulations for filing a Petition, and additionally advised counsel of the filing deadline and the consequence of untimely filing. Nothing in counsel's faxed submission of May 22 establishes good cause for granting an exception to the regulatory requirements in 4 C.F.R. §28.18. Accordingly, the Petition submitted by facsimile on May 22, 2007 is hereby dismissed for failure to comply with the PAB's requirements.³

SO ORDERED.

Date: 5-29-07



Steven H. Svartz
Administrative Judge

³ As noted above, the PAB/OGC timely filed a Petition on Ms. Krell's behalf. Nothing in this Order affects the Petition filed by PAB/OGC. Additionally, I note that, consistent with the PAB's regulations (4 C.F.R. 28.12(d)), the PAB/OGC's Right to Petition Letter dated March 16, 2007, provided Ms. Krell with an option: if she timely elected representation by the PAB/OGC, the PAB/OGC would file a Petition on her behalf in accordance with its findings and would continue to represent her throughout the proceeding; on the other hand, if she declined the PAB/OGC's offer, she could pursue her claims either *pro se* or with a representative of her choosing. Ms. Krell elected representation by the PAB/OGC, as evidenced by the timely filing of a Petition by the PAB/OGC on her behalf.

Nothing in the PAB's regulations suggests that if an individual has elected representation by the PAB/OGC and the PAB/OGC has filed a timely Petition on behalf of the individual, the individual can also file another Petition involving the same matter. Indeed, 4 C.F.R. §28.12(e) provides that a charging party may retain private counsel in a limited role to assist the General Counsel as appropriate when representation by PAB/OGC is elected. Accordingly, allowing a second filing would appear to be inconsistent with the concept of an election set forth in the PAB's regulations and could present administrative difficulties. However, in light of the procedural deficiencies in the May 22 facsimile submission, I need not resolve: (1) whether the Petition submitted by Ms. Krell's private counsel involved the same matter as the Petition filed by the PAB/OGC; or (2) whether the Petition submitted by Ms. Krell's private counsel would have been considered properly before the PAB even if it had been timely filed in accordance with the PAB's procedural requirements.