

MARY L. MARTINO v. U.S. General Accounting Office

Docket No. 76-100-17-86

Date of Decision: December 31, 1986

Cite as: Martino v. GAO, Docket No. 76-100-17-86 (12/31/86)

Before: Roger P. Kaplan, Presiding Member

Headnotes:

Filing of a Petition

Jurisdiction

Motions Practice

PAB Regulations

ORDER

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

* * * * *
MARY L. MARTINO,
Petitioner
v.
GENERAL ACCOUNTING OFFICE,
Respondent
* * * * *

Docket No. 76-100-17-86

ORDER

This matter has come on Respondent's motion for a more definite statement pursuant to Rule 12(a) of the Federal Rules of Civil Procedure.

Respondent asserts that the Petition for Review fails to identify the precise statutory provision under which the Petitioner seeks to invoke the Board's jurisdiction. Petitioner's failure to identify such a provision, the Agency avers, renders her complaint so vague and ambiguous that the Agency is unable to frame a responsive pleading, and therefore, is rendered vulnerable to prejudicial surprise during the latter stages of this proceeding.

It is true that a motion for a more definite statement should be granted whenever the allegations of a party are so vague and ambiguous that the opposing party cannot frame a responsive pleading. Wright and Miller, Federal Practice and

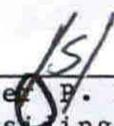
Procedure, Civil Sec. 1377 at p. 750 (1969); Rule 12(e), Federal Rules of Civil Procedure. However, Rule 8 of the Federal Rules of Civil Procedure allows liberal pleading of causes of action, as long as the pleading stating the cause of action gives the defendant notice of the action being brought. Conley v. Gibson, 355 U.S. 41, 47 (1957); U.S. v. Board of Harbor Commissioners, 73 F.R.D. 460, 462 (D. Del. 1977). The basis for granting a motion for a more definite statement is unintelligibility, not mere lack of detail, and thus Rule 12(e) motions are looked upon with disfavor. Conley v. Gibson, supra; Towers Tenant Association, Inc., v. Towers Ltd. Partnership; 563 F.Supp. 566, 569 (D.D.C. 1983).

Respondent argues that Petitioner's failure to allege a specific statutory basis for her Petition for Review not only makes it difficult for GAO to file a responsive pleading, but such an omission does not provide a statutory basis for the Board's jurisdiction. I disagree. There is no requirement in the PAB Rules and Regulations that the statutory predicate to an appeal be cited in the charge or the Petition for Review. See 4 C.F.R. Secs. 28.11(d) and 28.18(d). Moreover, failure to identify the statute under which an action is brought will not render a pleading "vague and ambiguous." Employees of GAO have an automatic right to appeal an adverse action to the PAB; the Board is given jurisdiction over such adverse actions under 31 U.S.C. Sec. 753(a)(1). Petitioner here alleges very clearly that she believes her termination of May 30, 1985 was improper. The only person who cannot appeal a removal action to the PAB are

probationary and temporary employees. A career employee is automatically entitled to appeal an adverse action. 4 C.F.R. Sec. 7.6(e)(1); General Accounting Office v. GAO Personnel Appeals Board, 698 F.2d 516, 531-532 (D.C. Cir. 1983). See also, Shaller v. GAO, 1PAB 177 (1983) (on remand). Petitioner was in career-competitive status at the time of her termination.

Finally, whether Petitioner's appeal of her termination is based on an EEO ground or some other affirmative defense (improper procedure, penalty too severe, etc.), the PAB has jurisdiction. The specific affirmative defense can be ascertained by the Agency through discovery. If there is then perceived a procedural defect, such as timeliness, the Petition for Review might then be subject to an appropriate dispositive motion.

For the above reasons, the Agency's motion for a more definite statement is hereby DENIED.



Roger P. Kaplan
Presiding Member

Dated: December 31, 1986

CERTIFICATE OF SERVICE

I hereby certify that the Order dated 12/31/86 in the matter of Martino v. GAO, Docket No. 76-100-17-86 was hand-delivered to J. Dean Mosher, Esquire, on December 31, 1986.

R. L. Higgins for Dean Mosher (For Agency) Carol Ryan (For PAB)