

**ALFRED E. RAMEY v. U.S. General Accounting Office**

**Docket No. 40-209-17-83**

**Date of Decision: June 13, 1988**

**Cite as: Ramey v. GAO, Docket No. 40-209-17-83 (6/13/88)**

**Before: Jessie James, Jr., Chairman**

**Headnotes:**

**Attorney Fees**

**Compliance**

**ORDER**

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

\* \* \* \* \*  
ALFRED E. RAMEY,  
Petitioner  
v.  
GENERAL ACCOUNTING OFFICE,  
Respondent  
\* \* \* \* \*

Docket No. 40-209-17-83

ORDER

On March 2, 1988, the Presiding Member issued a decision in this matter awarding Petitioner attorney's fees and costs for the successful prosecution of a discrimination complaint before the Board. Petitioner thereafter timely filed a motion to reopen and reconsider the Presiding Member's decision, alleging that the Presiding Member erred by not awarding him fees for all of the hours expended by counsel in representing Petitioner, and by not awarding counsel an hourly rate commensurate with counsel's skill and experience. Respondent has opposed the motion to reopen and reconsider the decision of the Presiding Member, and the subject appeal is now under consideration by the Board.

Petitioner now comes before the Board and requests an order compelling Respondent to pay Petitioner the amount of attorney fees and costs specified in the decision of the Presiding Member.

As grounds for the instant motion, Petitioner states that (1) more than thirty days have passed since the Presiding Member entered his decision granting Petitioner attorney fees, (2) Respondent has not appealed the determination in any manner, and (3) any further delay in payment will unduly prejudice both Petitioner and his counsel.

Respondent has filed an opposition to Petitioner's motion, contending that, because Petitioner has appealed the Presiding Member's decision, the decision of the Presiding Member is not final, and the Board is without authority to order enforcement of any decision that is not final.

We agree with Respondent; Petitioner's request is premature. A decision by a Presiding Member of the Board is not of such force and effect that a party can be required to comply with it until it becomes a final decision of the Board. A Presiding Member decision does not become final if a request to reopen and reconsider is filed. See, Dawson v. Merit Systems Protection Board, 712 F.2d 264 (7th Cir. 1983); Lynch v. Department of Education, 665 F.Supp. 62 (D.D.C. 1987); Stephens v. Office of Personnel Management, 86 FMSR 5180 (MSPB 1980). Here, it is not Respondent who has appealed the decision of the Presiding Member, but Petitioner.

The language of the Presiding Member's decision stated clearly that:

"This decision will become final on April 18, 1988, unless a Motion to Reopen and Reconsider is filed by one of the parties on or before

April 4, 1988, or unless the Board reopens on its own motion."

Petitioner's obvious purpose in filing his request to reopen and reconsider the decision of the Presiding Member was to keep the decision from becoming a final decision and, therefore, binding on the parties. Appeal of a Presiding Member's decision prevents that decision from becoming a final decision of the Board. See, Corey v. Department of Labor, 84 FMSR 5865 (MSPB 1984).

Only final decisions of the Board are subject to enforcement orders, and here, the Presiding Member's decision is not yet final. Petitioner cannot, on the one hand, ask the Board to reverse the decision of the Presiding Member, while simultaneously asking the Board to enforce the very order he is appealing.

For the above reasons, the Petitioner's motion to compel payment of relief to the extent ordered by the Presiding Member is DENIED.

  
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Jessie James, Jr.  
Chairman  
For the Board

Date: 6/13/88