

BARBARA J. TAYLOR-CARTER v. U.S. General Accounting Office

Docket No. 96-03

Date of Decision: January 13, 1997

Cite as: Taylor-Carter v. GAO, Docket No. 96-03 (1/13/97)

Before: Elliott Bunce, Administrative Judge

Headnotes:

Jurisdiction

Motion to Dismiss

Settlement Agreement

MEMORANDUM AND ORDER

and the second status conference, Petitioner has been represented by counsel.

Petitioner's motion to dismiss her Petition for Review stated that she and Respondent have "reached an agreement settling all matters at issue in this case." Petitioner also stated her understanding that, as part of the agreement, Respondent would assist her in applying for disability retirement and that she would withdraw her Petition for Review. At the second status conference, Petitioner's counsel said that he would continue to monitor the agreement to be certain it would be carried out. The original Administrative Judge indicated her readiness to grant Petitioner's motion to dismiss, but her recusal occurred before an order to that effect was issued.

By order dated December 18, 1996, I asked the parties, through counsel, to clarify the record by answering five questions. The clarification was needed to determine if the parties wished their settlement to be entered into the record in this proceeding and wished the Board to retain jurisdiction. Clarification was also needed because Petitioner alleged she suffered a mental impairment. The questions were as follows:

For Petitioner and Respondent:

1. Do the parties wish the settlement agreement entered into the record of this proceeding?
2. Do the parties wish any additional information about the settlement agreement entered into the record of this proceeding? If so, what is the additional information?

3. Do the parties wish the Board to retain jurisdiction over the agreement in any respect? If so, in what respect?

For Petitioner:

1. Does Petitioner understand fully the terms of the settlement agreement? If not, what terms does Petitioner not understand?
2. Does Petitioner contend that her mental impairment affects her capacity to enter into the settlement agreement? If so, how does it affect her capacity?

The parties have responded through counsel. Petitioner states she does not wish to have the settlement agreement entered into the record of this proceeding and does not believe it is necessary to have additional information about the agreement entered into the record. Through counsel, she has acknowledged Respondent's assistance in preparing her disability application and stated her belief that Respondent has complied fully with the terms and conditions of the agreement. Petitioner does not believe there is a reason for the Board to retain jurisdiction over the settlement agreement. Petitioner states that she understands fully the terms of the agreement and that her mental impairment does not affect her capacity to enter into the agreement. Respondent states that it does not wish the agreement or any related information (other than the parties' responses to my order of December 18, 1996) entered into the record, nor does respondent wish the Board to retain jurisdiction. Respondent has reviewed and concurs with Petitioner's answer concerning the assistance it has provided in

preparing the disability application.

Discussion

The record in this proceeding now supports the conclusion that the criteria for the dismissal of a petition for review based on the adoption of a settlement agreement not filled with the Board have been met. See, Davis v. GAO, 1 PAB 677, 680 (1988); Sitas v. Veterans Admin., 41 M.S.P.R. 214, 216 (1989); Moran v. Veterans Admin., 43 M.S.P.R. 547, 552-53 (1990); Ray v. Dept. of Health and Human Services, 57 M.S.P.R. 16, 20 (1993).

WHEREFORE, it is ordered that:

1. Petitioner's motion to dismiss her Petition for Review is granted, and the Petition for Review, both as originally filed and as amended, is dismissed with prejudice.

2. Respondent's motions to dismiss the original and amended Petitions for Review are denied as moot.

SO ORDERED.

Date: 1/13/97

_____/s/_____
Elliott Bunce
Administrative Judge