JANICE M. TURNER v. U.S. General Accounting Office

Docket No. 94-07

Date of Decision: December 8, 1994

Cite as: Turner v. GAO, Docket No. 94-07 (12/8/94)

Before: Leroy D. Clark, Administrative Judge

Headnotes:

Credibility

Discovery

Evidence

Hearing Procedures

Summary Judgment

MEMORANDUM AND ORDER

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

JANICE M. TURNER,	)	
Petitioner,	)	
v.	)	**Docket No. 94-07**
UNITED STATES GENERAL ACCOUNTING OFFICE,	)	
Respondent.	)	

MEMORANDUM AND ORDER

On Wednesday, December 7, 1994, both parties in this case appeared before the Administrative Judge for the purpose of oral argument on petitioner's Motion for Summary Judgment and respondent's Cross-Motion for Summary Judgment. For the reasons set forth below, both motions are hereby **DENIED**. The parties should proceed to prepare for hearing on December 19 and 20, 1994, in accordance with the schedule set by Order of December 1, 1994.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Following the oral argument on the two cross-motions for summary judgment, several key factual issues remain unresolved. The parties appear to be in clear dispute over whether the Management Review Group (MRG) in question did, in fact, engage in a relative ranking process of the employees they were reviewing, either in their first session or upon reconvening. Moreover, if some form of relative ranking occurred, the details of that process are unclear. It has also not been established whether the MRG had the authority, or its members were aware of the option, to seek a waiver from the Agency's distribution requirements for determining Pay-for-Performance. The precise nature of the instructions given to the MRG when they were told to reconvene cannot currently be determined. In addition, there is a need to develop testimony as to how the Agency developed the distribution guidelines/requirements for the Pay-for-Performance system which were applied in this case.

These issues bear further development and may involve questions of witness credibility which can best be resolved in the context of an evidentiary hearing. They are not suited to resolution based upon the pleadings and supporting papers alone.

Accordingly, the petitioner's Motion for Summary Judgment and respondent's Cross-Motion for Summary Judgment are hereby **DENIED**. The parties shall proceed to meet the following schedule:

I. Witness lists, exhibits and any stipulations the parties have reached must be filed on or before Tuesday, December 13, 1994. The witness lists shall include a brief summary of the proposed testimony sufficient to apprise the opposing party of the

substance of the testimony. The exhibits proposed must conform with the requirements of 4 C.F.R. §28.56(f).

2. Any objections to witness lists or exhibits must be filed by 12:00 noon on Thursday, December 15, 1994.

3. The evidentiary hearing will commence at 9:30 a.m. on Monday, December 19, 1994 and continue, if necessary, through Tuesday, December 20, 1994, in the Board's hearing room, Suite 830, 820 First Street, N.E., Washington, D.C.

SO ORDERED.

DATE: 12-8-94

/s/
LEROY D. CLARK
ADMINISTRATIVE JUDGE