

**JANICE F. WILLIS v. U.S. General Accounting Office and U.S. General  
Accounting Office Personnel Appeals Board**

**Docket No. 98-02**

**Date of Decision: December 8, 1998**

**Cite as: Willis v. GAO and GAOPAB, Docket No. 98-02 (12/8/98)**

**Before: Paul G. Streb, Chief Administrative Law Judge, Merit Systems Protection Board  
(sitting in place of the Personnel Appeals Board)**

**Headnotes:**

**Hearing Procedures**

**Motions Practice**

**ORDER – Substitution of Respondents**

BEFORE CHIEF ADMINISTRATIVE LAW JUDGE PAUL G. STREB  
U.S. MERIT SYSTEMS PROTECTION BOARD  
SITTING IN PLACE OF THE U.S. GENERAL ACCOUNTING OFFICE  
PERSONNEL APPEALS BOARD

JANICE F. WILLIS,  
Petitioner,

v.

U.S. GENERAL ACCOUNTING OFFICE,  
and  
U.S. GENERAL ACCOUNT OFFICE  
PERSONNEL APPEALS BOARD,  
Respondents.

PAB DOCKET NUMBER  
98-02

DATE: December 8, 1998

ORDER

Substitution of Respondents

The Personnel Appeals Board (PAB) has filed a motion requesting that the six individuals who were named as Respondents in the Petitioner's petition for review and who are or were employed by the PAB be dismissed from this action, and that the PAB be substituted for them as a party.

In its motion, the PAB states that any actions that the six individuals may have been taken with respect to the Petitioner would have been taken in the course of the individuals' official duties as employees or members of the PAB; that the relief sought by the Petitioner includes official actions that could be afforded only by the PAB itself; that the PAB's practice has been to name the agency itself, rather than agency officials, as the respondent in an action such as this; and that it therefore is inappropriate and unnecessary for the individuals to remain parties to this case. Motion at 1, 3, 5 n.5. It also states

that the PAB has authority separate from the General Accounting Office (GAO), which employs the other individual named in the petition for review as a Respondent in this case; that that authority -- including the authority to order GAO to take corrective action in appropriate cases -- warrants naming it as a respondent in a case such as this; and that failure to name it as a party separate from the GAO Respondent would be improper in that it would require the PAB to be represented by a party that regularly appears before the PAB in its adjudicatory role. *Id.* at 5-7 & n.7.

While no written objection or other response to this motion has been filed, the Petitioner indicated, during a telephone conference held yesterday, that she regarded the PAB as part of GAO for purposes of this case. She indicated further that she did not believe she should be required to respond to any discovery requests the PAB, acting separately from GAO, might make of her. She did not challenge any of the factual assertions in the motion, however, and the attorney representing the GAO employee named in the petition for review also did not raise any such challenge.

In light of the un rebutted factual assertions described above, and in the absence of any objection to the dismissal of the six individually named PAB officials or former officials, I find that dismissal of those individuals is appropriate. I also find that the PAB's authority is sufficiently separate from that of GAO, with respect to matters relevant here, to warrant substituting it as a Respondent in place of those six individuals. I therefore GRANT the PAB's motion. The six individual PAB officials or former officials who were named in the Petitioner's petition for review are hereby DISMISSED from this action, and the PAB is substituted as a Respondent in their place.

I also find, in light of the assertions in the PAB motion, and in the absence of any objection by the remaining individual

named in the petition for review, that substitution of GAO as a Respondent in place of that individual is appropriate. Accordingly, Respondent James F. Hinchman is hereby DISMISSED from this action, and the GAO is substituted as a Respondent in his place.

Finally, I note that the PAB and GAO attorneys should coordinate their discovery requests to the extent practicable, in order to avoid duplication and minimize the burden on the Petitioner.

#### Other Matters

The following provisions, in addition to the procedures in 4 C.F.R. part 28, will govern this proceeding. Any questions concerning procedures may be directed to Margaret Fisher, an attorney on my staff, at (202) 653-6772, ext. 1258, or 653-7980.

(1) Discovery must be completed not later than **February 23, 1999**. Copies of discovery requests and responses should not be submitted to me unless a motion to compel is filed.

(2) Not later than **March 31, 1999**, each party must file the following:

(a) A witness list setting forth a summary of each witness's expected testimony;

(b) An index of proposed exhibits; the parties must also exchange copies of all exhibits (marked as P-1, PAB-1, GAO-1, etc.), but they should not submit the exhibits to me until the hearing; and

(c) A prehearing brief setting forth the issues and the applicable law and facts; the brief must describe the sanction, corrective action, damages, or other relief sought.

These requirements are not intended to preclude discovery concerning the matters covered by this paragraph.

(3) Not later than **April 7, 1999**, the parties must confer and attempt to reach stipulations on the admissibility of exhibits and on other matters that would result in substantial time savings at the hearing.

(4) Not later than April 12, 1999, the parties must file any stipulations and prehearing motions.

(5) On April 15, 1999, at 10:00 a.m., I will hold a conference call to discuss settlement, the hearing procedures, and other pertinent matters. The PAB shall be responsible for arranging and initiating this conference call.

(6) The hearing in this matter will begin on the following date and will be held at the following location:

May 3, 1999  
Eighth Floor Hearing Room  
1120 Vermont Avenue, N.W.  
Washington, D.C. 20419  
8:30 a.m.

If more than one day is required, the hearing will continue on the day or days immediately following the date named above.

(7) The PAB will make arrangements to have the hearing proceedings recorded and transcribed.

(8) The hearing procedures are as follows:

- The parties will present their cases without opening statements.

- Each party will be permitted to present evidence that is relevant and not repetitious. Application of the Federal Rules of Evidence is not required, but those rules may serve as guidance in my rulings.

- The parties shall have binders containing their exhibits available for use by the witnesses.

- Co-counsel shall follow the "one attorney-one witness" rule.

- The hearing is public, but witnesses other than parties are excluded from the hearing room prior to testifying. The parties should have sufficient witnesses available at the hearing site to ensure that the proceedings are not delayed.

- The parties and witnesses should not engage in conversations with me outside the hearing room or when one of the parties is not present.

- The parties will be permitted to make closing arguments at the end of the hearing.

- A copy of the hearing transcript shall be made available to each party on request. See 4 C.F.R. § 28.58(a).

PS  
Paul G. Streb  
Chief Administrative Law Judge  
Merit Systems Protection Board

Washington, D.C.