

**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: September 23, 1998

Cite as: Willis v. GAO and GAOPAB, Docket No. 98-02 (9/23/98)

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

Headnotes:

Dismissal

Estoppel

Failure to Prosecute

Jurisdiction

Mootness

Show Cause Order

Timeliness of Complaint

ORDER

GAO's regulations provide that a person who has received a right-to-appeal letter and who claims to be adversely affected by a GAO action or inaction that is within the Board's jurisdiction under subchapter IV of chapter 7 of title 31, U.S. Code, may file a petition for review within 30 days after service on her of a right-to-appeal letter. 4 C.F.R. § 28.18(a), (b). A petition for review that has not been filed within this period may be dismissed unless the petitioner shows good cause for waiving the time limit. See *Quarry v. General Accounting Office*, Docket No. 08-701-17-81 (1981).

The Petitioner appears to have received right-to-appeal letters covering all ten of the charges listed in her petition. See PAB Response at 2-3 & Tab 11. Evidence submitted by PAB indicates, however, that the right-to-appeal letters that were issued in connection with nine of those charges were issued more than 30 days before the Petitioner filed her petition for review. That is, it indicates that a right-to-appeal letter covering charges numbered 001-801-15-94 and 001-602-42-95 was issued on August 31, 1995; that a right-to-appeal letter covering charges numbered 048-602-42-96 and 061-602-42-96 was issued on January 27, 1997; that a right-to-appeal letter covering charges 002-600-42-97 and 003-600-42-97 was issued on February 3, 1997; that a right-to-appeal letter covering charges 005-600-42-97, 007-600-42-97, and 008-600-42-97 was issued on March 11, 1997; and that the Petitioner did not file her petition for review until August 17, 1998. See *id.*; Petition for Review at 3. The petition for review as it concerns those nine charges therefore appears to have been untimely filed.

For the reasons stated above, I ORDER the Petitioner to show that her petition was timely filed or that there is good cause for waiving the filing deadline. In the absence of such a

of the order. No such additional evidence or argument has been received, however.

showing, I ORDER her to show why I should not dismiss the petition as untimely filed.

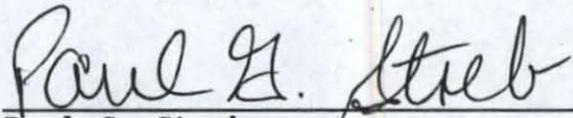
The actions at issue in four of the nine charges identified above also appear to have been the subject of previous decisions. On April 22, 1996, I dismissed for lack of jurisdiction a petition for review that had been filed in connection with the following: (1) a December 15, 1993, decision to suspend the Petitioner for 10 days and (2) a performance evaluation covering the period from January 3, 1994, through June 3, 1994. *Willis v. United States General Accounting Office*, Docket No. 95-03 (Apr. 22, 1996), *aff'd*, 98 F.3d 1359 (Fed. Cir. 1996) (Table). That decision subsequently was affirmed by the U.S. Court of Appeals for the Federal Circuit. *Willis v. United States General Accounting Office*, 98 F.3d 1359 (Fed. Cir. 1996) (Table). Evidence submitted by the PAB indicates that these actions were the subject of charges 001-801-15-94 and 001-602-42-95. See PAB Response, Tabs 1, 2. On May 7, 1997, I dismissed a petition for review that had been filed in connection with the following: (1) a 10-day suspension of the Petitioner, effective November 18, 1996, and (2) a proposal to remove the Petitioner. *Willis v. General Accounting Office*, Docket No. 97-01 (May 7, 1997). That dismissal was based on the Petitioner's failure to prosecute her case. *Id.* PAB has submitted evidence that the suspension and the removal proposal at issue in that case were the subject of charges 002-600-42-97 and 003-600-42-97. See PAB Response, Tabs 5, 6.

Under the doctrine of collateral estoppel, or issue preclusion, a party may be precluded from relitigating an issue that was previously adjudicated. This doctrine is applicable if the following criteria are met: (1) The issue previously adjudicated is identical to that presented in the instant case; (2) that issue was actually litigated in the prior case; (3) the

previous determination of the issue was necessary to the resulting judgment; and (4) the party precluded by the doctrine was fully represented in the prior case. See *Kroeger v. United States Postal Service*, 865 F.2d 235, 239 (Fed. Cir. 1988); *Peartree v. United States Postal Service*, 66 M.S.P.R. 332, 341 (1995).

Both PAB and GAO have argued that the actions at issue in the four charges identified above should be excluded from consideration in connection with the present petition for review. See GAO Answer at 4; PAB Answer at 6-7. The bases for this proposed exclusion apparently would be the same as the bases on which the petitions for review of the same actions were dismissed in 1996 and 1997. See GAO Answer at 4; PAB Answer at 4-7. Under these circumstances, it would appear that issues have been presented here that are identical to issues that were actually litigated in the two prior petitions for review filed by the Petitioner, and that were necessary to the resulting dismissal of those petitions. That is, here as in the previous cases I must determine whether charges 001-801-15-94 and 001-602-42-95 are moot, whether the Board therefore lacks jurisdiction over the actions at issue in them, and whether the Petitioner failed to prosecute the petition for review arising from charges 002-600-42-97 and 003-600-42-97. Moreover, the party who would be precluded from relitigating these matters would be the Petitioner, a party who would seem to have been "fully represented" in the prior proceedings. It would appear, therefore, that all the criteria for application of the doctrine of collateral estoppel have been met with respect to the issues identified above. It would appear further that giving collateral estoppel effect to my prior findings regarding mootness, jurisdiction, and failure to prosecute would result in the dismissal of charges 001-801-15-94, 001-602-42-95, 002-600-42-97, and 003-600-42-97 from consideration in this case.

For the reasons stated above, I ORDER the Petitioner to show why collateral estoppel effect should not be given to the findings I made in my 1996 and 1997 decisions with respect to mootness, jurisdiction, and failure to prosecute, and to show why her petition for review as it concerns 001-801-15-94, 001-602-42-95, 002-600-42-97, and 003-600-42-97 should not be dismissed from consideration in this case. The Petitioner's response regarding this issue and the timeliness issues raised above must be filed not later than 10 calendar days after the date of this order.



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

Washington, D.C.

Request for Scanning - Imaging Center

32

Operator	Date/Time Started	Date/Time Completed	Time Spent

GAO Imaging Center (IC), Room 1257, GAO HQ, (202) 512-5166, SCANHelp@gao.gov

Instructions

1. Use a separate request for each job.
2. Remove all staples and metal fasteners from originals.
3. Attach request form to material with a paper clip or a rubber band.

Limitations

1. Size of originals cannot exceed 8-1/2" x 14".
2. Extraneous marks, lines, smudges, etc., appearing on originals may transfer to new document.
3. Imaging Center staff will not scan copyrighted material without proper written authorization from the copyright holder (See GAO Form 299), and will comply with copyright policy.
4. A 3 day turnaround is required for customers requesting scanning services for textbooks, spiral notebooks, and other materials with a binding.
5. Imaging Center will not scan classified material.

1. Requester's Name	2.. GAO Unit	3. Telephone No.	4. Date
5. Title/Subject of Document	6. Total No. of Pages Scanned	7. Due Date	

8. Type of Document (sensitive requests, including this form, are kept in a secure area)

Unclassified

SBU (Sensitive But Unclassified
(SBU limits delivery to CD or DM only.
See item 10 to select)

Password
(All SBU CD requests must have an
8 character password)

9. Type of Conversion

.PDF (Acrobat with searchable text)

.PDF (Acrobat without searchable text)

.JPEG (picture)

Additional Services

PII Requested (send to IA)

MS Word document

Web Upload (Send to IM)

MS Excel document

10. Method of delivery (Note: File will be submitted by email to original requester unless otherwise specified.)

CD

DM/ERMS

Doc Name: _____
Author: _____
Audit Agency: _____
Job Code: _____
Objective: _____
Folder: _____
Doc Type: _____

Engagement Doc Profile

Administrative Profile

Policy & Special Collection Profile

(Note: IC staff will also be an author when initially saving the file. Requester will be given full rights to modify file access.)

11. Special Instructions (E.g., color on some or all pages, alternate GAO e-mail address recipients, any other special requests. Feel free to call for further clarification.)

12. Signature of Requester Upon Pickup of Originals	13. Date/Pickup Time
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EARL L. PATRICK v. U.S. General Accounting Office

Docket No. 25-100-17-83

Date of Decision: August 6, 1984

Cite as: Patrick v. GAO, Docket No. 25-100-17-83 (8/6/84)

Before the Board: Jerome H. Ross, Chairman; Charles Feigenbaum, Member; Ira F. Jaffe, Member; Robert T. Simmelkjaer, Member

Headnotes:

Discretion of Administrative Judge

Evidence

Request for Reconsideration/Appeal to the Full Board

ORDER OF THE BOARD

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

_____)	
EARL L. PATRICK,)	
Petitioner)	
)	
v.)	Docket No. 25-100-17-83
)	
U.S. GENERAL ACCOUNTING)	
OFFICE,)	
Respondent)	
_____)	

ORDER OF THE BOARD

On April 17, 1984, Presiding Member Mollie H. Bowers denied the allegation of Petitioner Earl L. Patrick of having been subject to a prohibited personnel practice. Petitioner has requested the Board to reopen and reconsider Petitioner's appeal on the following grounds:

- 1) that new and material evidence is available that despite due diligence, was not available when the record was closed; and
- 2) that the decision of the Presiding Member in light of all the circumstances may be based upon an erroneous interpretation of GAO Order 2511.1

DECISION

Petitioner's request for reopening and reconsideration is denied. The alleged new and material evidence could have been discovered with the exercise of due diligence and in addition,

there is no reason to believe that this evidence, if it had been available, would have had any effect on the Presiding Member's decision to deny. It is further the Board's view that there has been no showing by the Petitioner that the Presiding Member's decision was based on an erroneous interpretation of GAO Order 2511.1.

Dated: August 6, 1984

_____/s/_____
Jerome H. Ross, Chairman

_____/s/_____
Charles Feigenbaum, Member

_____/s/_____
Ira F. Jaffe, Member

_____/s/_____
Robert T. Simmelkjaer, Member