

expected testimony. Documents to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements of § 28.56.

(2) Unless so ordered by a court of competent jurisdiction, no employee of the Personnel Appeals Board Office of General Counsel shall produce or disclose any information or records acquired as part of the performance of his/her official duties or because of his/her official status. Before producing or disclosing such information or records pursuant to court order, an employee shall notify the General Counsel.

13. Revise § 28.13 to read as follows:

§ 28.13 Special procedure for Workforce Restructuring Action.

In the event of a Workforce Restructuring Action (WRA) resulting in an individual's separation from employment, an aggrieved employee may choose to file a petition directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. Pursuant to § 28.98, individuals raising discrimination issues in connection with a WRA action need not file a complaint with GAO's Office of Opportunity and Inclusiveness before pursuing a WRA challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the Board's Office of General Counsel.

Hearing Procedures for Cases Before the Board—General

14. Amend § 28.15 by removing the word "appeals" and adding in its place the word "petitions" in the first sentence.

15. Amend § 28.17 by revising the heading, paragraphs (a)(2) and (a)(3), paragraphs (b)(1) and (b)(2) and paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 28.17 Internal petitions of Board employees.

(a) * * *

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall bring this matter to the attention of the Board's Executive Director or General Counsel. If the matter cannot be resolved within 10 days, the Executive Director shall notify the employee of his or her right to file an EEO complaint. The employee may consult with either the Board's Solicitor or General Counsel and seek advice with regard to procedural matters concerning the filing of an EEO charge. The employee shall

have 20 days from service of this notice to file an EEO charge with the PAB Office of General Counsel. Upon receipt of an EEO charge, the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a WRA-based separation, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the challenged action is a WRA-based separation from employment, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(b) * * *

(1) If agreed to by the Office of Special Counsel or the EEOC, as appropriate, that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the Special Counsel or the EEOC does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) * * *

(c) * * *

(1) If agreed to by the MSPB or the EEOC, as appropriate, that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If neither the MSPB nor the EEOC agrees to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board. The procedure for judicial review of the decision shall be the same as that described in § 28.90.

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16. Amend § 28.18 by revising paragraphs (a), (b), (c), (d), introductory text, (e) and (f) to read as follows:

§ 28.18 Filing a petition with the Board.

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under

Subchapter IV of Chapter 7 of Title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition if one of the following is met:

(1) The person has received a Right to Petition Letter from the Board's Office of General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel and that Office has not issued a Right to Petition Letter; or

(3) The person was separated due to a Workforce Restructuring Action and chooses to file a petition directly with the Board, without first filing with the Board's Office of General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after receipt by the charging party of the Right to Petition Letter from the Board's Office of General Counsel.

(2) Petitions filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel, provided that that Office has not issued a Right to Petition Letter concerning the charge.

(3) Petitions filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the effective date of the separation due to a Workforce Restructuring Action.

(c) *How to file.* (1) A petition may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. It must be received by 4 p.m., Monday through Friday, on the date that it is filed.

(2) A petition may be filed by mail addressed to the Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548 or Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petition shall include the following information:

* * * * *

(e) *Failure to raise a claim or defense.* Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Non-EEO class actions.* One or more persons may file a petition as representatives of a class in any matter