

General Accounting Office

§ 28.17

pursuing a RIF challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the PAB's Office of General Counsel.

[61 FR 36810, July 15, 1996]

HEARING PROCEDURES FOR CASES BEFORE THE BOARD—GENERAL

§ 28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in § 28.17 (concerning internal appeals of Board employees). These rules also apply to actions brought by the General Counsel, except as otherwise provided in subpart G (concerning corrective action, disciplinary and stay proceedings). It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§ 28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the FEDERAL REGISTER. Notice of publication in the FEDERAL REGISTER must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

§ 28.17 Internal appeals of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel serves at the pleasure of the Chair. The General Counsel may not bring any complaint or charge concerning his or her own employment except to allege that he or she has been the victim of prohibited discrimination or a prohibited per-

sonnel practice as defined in 31 U.S.C. 732 (b)(2) or (f)(1).

(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 consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a charge 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 for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Special Counsel of the Merit Systems Protection Board (MSPB) (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 MSPB 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).