

**Before the House Subcommittee on the
Federal Workforce, Postal Service, and the District of Columbia**

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Good afternoon, Chairman Davis, and members of the subcommittee. At your request, I am here today to address questions you may have regarding my Office's investigation into allegations that the Government Accountability Office (GAO) unlawfully deprived some of its employees of pay to which they were otherwise entitled. As a preliminary matter, however, I would appreciate the opportunity to address my role and that of the Personnel Appeals Board with regard to this matter.

In enacting the Government Accountability Office Personnel Act (GAOPA), 31 U.S.C. 731 *et seq.*, Congress created the Personnel Appeals Board (PAB or Board) with jurisdiction to adjudicate adverse actions and prohibited personnel practices, among other things. Under the GAOPA and the Board's implementing regulations, the Board's Office of General Counsel (PAB/OGC) investigates charges filed by parties alleging a violation of their statutory rights. Where reasonable grounds exist to believe that such a violation has occurred, the General Counsel offers to represent the charging party in adjudicating the claim before the PAB. The charging party may accept the offer, or decline and proceed to the Board *pro se* or with some other representative. If reasonable grounds do not exist to support the claim, and the PAB General Counsel does not offer to represent, the charging party may still proceed to the Board with the claim. However, the PAB General Counsel has no role in the creation or implementation of policy at GAO other than to comment on proposed agency orders. More importantly, while the PAB/OGC is empowered to prosecute claims before the Board, the ultimate adjudicatory function remains with the members of the PAB.

In January, 2006, GAO provided some of its employees a 2.6% across-the-board annual adjustment to permanent pay, but denied 308¹ employees - all of whom had satisfactorily met performance expectations - the same annual increase. In 2007, GAO denied 139 GAO employees of the 2.4% annual adjustment. Since these actions were taken, 274 individuals filed with the PAB/OGC challenging GAO's decision to abolish their annual cost-of-living adjustments in 2006 and/or 2007.

In general, the charges filed with the PAB/OGC allege that GAO committed certain prohibited personnel practices in (1) instituting its market-based pay system; (2) eliminating the 2006 and 2007 annual adjustments for employees who performed at a satisfactory level; (3) setting the 2006 and 2007 annual adjustment provided GAO employees at a rate below that given executive branch employees under the General Schedule; and (4) calculating performance-based pay based on the standardized rating score. Some of these employees also challenged the

¹ These included 14 Band III, 5 Band IIB, 236 Band IIA, and 53 Band I employees.

formula for calculating locality pay, the use of a so-called “speed bump” to delay employees from reaching the pay cap, the lack of uniformity in the rating system across teams, and the Band II restructuring. In addition, at least fourteen of these employees indicated that they believed the pay decisions evidenced discrimination based on one or more of the following improper bases: age, race, and sexual orientation.

Because our investigation in these cases has not been completed, I believe that it could prejudice the rights of these employees to disclose publicly our preliminary assessment of the merits of most of these claims. However, because the issue of the Comptroller General’s statutory authority to abolish the annual adjustment was implicated by the Band II restructuring cases that were settled last year, and because I have previously testified before this Subcommittee regarding my legal analysis as to this claim, I am not similarly constrained with regard to discussing this issue. Specifically, I concluded that there were reasonable grounds to believe that the Comptroller General’s statutory authority with regard to setting the annual adjustments of employee pay under Public Law 108-271, sec. 3(a)(3) did not encompass the discretion to deny the adjustment altogether to employees whose performance was at a satisfactory level. In this regard, both the plain language and legislative history of the statute readily reflected Congress’ intent that the Comptroller General would provide GAO employees who were performing at acceptable levels some annual pay adjustment.

With due regard for the rights of employees whose claims are still pending before the PAB, I am prepared to answer your questions.