

§ 28.130

4 CFR Ch. I (1–1–08 Edition)

(c) *Grounds for review.* (1) The Board will review an arbitrator’s award to which an exception has been filed to determine if the award is deficient—

(i) Because it is contrary to any law, rule or regulation; or

(ii) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(2) The Board will not consider an exception where:

(i) The award relates to an action based on unacceptable performance covered under 5 U.S.C. 4303;

(ii) The award relates to a removal, suspension for more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less covered under 5 U.S.C. 7512; or

(iii) the exception is based on a GAO rule which was not introduced into the record submitted to the arbitrator.

(d) *Board decision.* The Board shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

§ 28.130 General authority.

The procedures in this subpart relate to the Board’s functions “to consider, decide and order corrective or disciplinary action (as appropriate) in cases arising” from any area within the Board’s jurisdiction.

§ 28.131 Corrective action proceedings.

(a) When information comes to the attention of the General Counsel suggesting that a prohibited personnel practice may have occurred, exists or is to be taken, the General Counsel shall investigate the matter to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken.

(b) If the General Counsel terminates any investigation under this section which is not also the subject of a charge, the General Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated, a written statement notifying the person of the termination of

the investigation and the reasons therefore.

(c) If the General Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken which requires corrective action and which is not also the subject of a charge, the General Counsel shall report the determination together with any findings or recommendations to the GAO.

(d) If, after a reasonable period, GAO has not taken the corrective action recommended, the Board’s Office of General Counsel may file a petition with the Board. Such petition shall be processed in accordance with §§ 28.19 through 28.25.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

§ 28.132 Disciplinary proceedings.

(a) If the General Counsel determines after any investigation under 31 U.S.C. 752(b) that disciplinary action should be initiated against an employee, the General Counsel shall prepare a written complaint against the employee containing his or her determination, together with a statement of the supporting facts, and present the complaint and the statement to the employee and the Board in accordance with paragraphs (b) and (c) of this section.

(b) In the case of an employee in a confidential, policy making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate, the complaint and statement referred to in paragraph (a) of this section, with any response by the employee, shall be presented to the Congress for appropriate action in lieu of being presented under paragraph (d) of this section.

(c) Any employee against whom a complaint has been presented to the Board under paragraph (a) of this section is entitled to:

(1) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) Be represented by an attorney or other representative;

(3) A hearing before the Board or a member designated by the Board;

(4) Have a transcript kept of any hearing under paragraph (c)(3) of this section; and

(5) A written decision and reasons therefor at the earliest practicable date, including a copy of a final decision ordering disciplinary action.

(d) A final order of the Board may order disciplinary action consisting of removal, reduction in grade, debarment from GAO employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of civil penalty not to exceed \$1,000.

(e) An employee subject to a final decision ordering disciplinary action under this section may obtain judicial review of the order in the U.S. Court of Appeals for the Federal Circuit in accordance with 31 U.S.C. 755.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69304, Dec. 12, 2003]

§ 28.133 Stay proceedings.

(a) Prior to the effective date of any proposed personnel action, the Board's General Counsel may request, ex parte, the issuance of an initial stay of the proposed personnel action for a period not to exceed 30 days if the General Counsel believes that the proposed personnel action arises out of a prohibited personnel practice. The request shall be in writing and shall specify the nature of the action to be stayed and the basis for the General Counsel's belief. The Board's Office of General Counsel shall serve a copy of the request on the GAO. Within three business days of its filing, the request shall be granted by the Board member designated by the Board Chair to entertain the request unless that Board member determines that the request either:

(1) Fails to satisfy the requirements of this paragraph or

(2) On its face, conclusively establishes that the proposed personnel action did not arise out of an alleged prohibited personnel practice as specified by the General Counsel.

(b) The Board's General Counsel may request the issuance of either:

(1) Further temporary stays for the purpose of allowing additional time to pursue its investigation or

(2) A permanent stay for the purpose of staying the proposed personnel action until a final decision is rendered.

(c) Requests for stays under paragraph (b) of this section shall be received by both the Board and the GAO no less than 10 days before the expiration of any stay then in effect. Any response from GAO to the request shall be received by both the Board and the Board's Office of General Counsel no less than three days before the expiration of any stay then in effect. Any request for stay under this paragraph shall be decided by the Board member who issued the prior stay under paragraph (a) of this section, unless the Board Chair determines that it should be decided by the Board en banc. The Board member, or Board en banc, may require further briefing, oral argument, submission of affidavits or other documentary evidence, or may conduct an evidentiary hearing before rendering a decision. Any stay then in effect may be extended, sua sponte, for a period not to exceed 30 days to enable the Board member, or Board en banc, a reasonable opportunity to render a decision.

(d) A temporary stay under paragraph (b)(1) of this section may be issued if the Board member, or Board en banc, determines that under all of the circumstances the interests of justice would be served by providing more time for the Board's Office of General Counsel to pursue the investigation. However, the duration of any single temporary stay shall not exceed the amount of time reasonably necessary to acquire sufficient information to support a request for a permanent stay in the exercise of a high degree of diligence and, in no event, shall any single temporary stay exceed 60 days except as provided under paragraph (c) of this section for the purpose of allowing time to render a decision.

(e) In determining whether a permanent stay under paragraph (b)(2) of this section should be issued, the Board member, or Board en banc, shall:

(1) Assess the evidence adduced by each side as to whether the proposed personnel action arises out of an alleged prohibited personnel practice as specified by the Board's General Counsel;