

PERSONNEL APPEALS BOARD



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PERSONNEL APPEALS BOARD

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Jonathan E. Kaufmann
Vice Chair

Isabelle R. Cappello
Roger P. Kaplan
Paul A. Weinstein
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Biographical Information



Jessie James, Jr.

Jessie James, Jr., was appointed to the Board in 1985 and became Chair in 1987. A former Merit Systems Protection Board, Office of Special Counsel, and Department of Justice attorney, Mr. James is in private practice in Virginia. In addition to his practice, which includes employment cases, he is owner and president of a company that conducts EEO investigations. Mr. James also teaches courses on EEO law for the government.



Jonathan E. Kaufmann

Jonathan E. Kaufmann is a partner in the law firm of Kaufmann and Brick. In private practice since 1981, Mr. Kaufmann specializes in labor arbitration and mediation as well as EEO mediation and decision writing. He has been a member of the Personnel Appeals Board since 1985. Mr. Kaufmann was the Chair from 1986-1987 and the Vice Chair from 1987-1989.



Isabelle R. Cappello

Isabelle R. Cappello was appointed to the Board in 1986. She is retired after 30 years of federal service, which included service as an officer in the U.S. Navy; an attorney at the U.S. Departments of Justice and Labor; an assistant general counsel at the Equal Employment Opportunity Commission; and an administrative law judge at the Interstate Commerce Commission and the Federal Labor Relations Authority.

Biographical Information



Roger P. Kaplan

Appointed to the Board in 1986, Roger P. Kaplan is a labor arbitrator from Washington, D.C. A graduate of the University of Maryland, College Park, Mr. Kaplan received his juris doctor degree from the George Washington University Law Center in 1968. He is on the National Labor Panels of the American Arbitration Association, the Federal Mediation and Conciliation Service, and the National Mediation Board. Mr. Kaplan serves on numerous permanent arbitration panels between unions and employers.



Paul A. Weinstein

Appointed to the Board in 1987, Professor Paul A. Weinstein directs the Industrial Relations and Labor Studies Center and is a member of the Department of Economics at the University of Maryland, College Park. An arbitrator listed by the American Arbitration Association and the Federal Mediation and Conciliation Service, he specializes in public-sector issues. He chairs the Statistics Committee of the Industrial Relations Research Association and the Public Sector Labor Relations Conference Board. His research focuses on the public sector and Spanish industrial relations.

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Abbreviations

EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FLRA	Federal Labor Relations Authority
GAO	General Accounting Office
MSPB	Merit Systems Protection Board
OGC/PAB	Office of General Counsel of the Personnel Appeals Board

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Introduction

The Personnel Appeals Board of the General Accounting Office is an independent agency established under the 1980 GAO Personnel Act (P.L. 96-191) to ensure that GAO employees received the same protection as their executive-branch counterparts. Pursuant to this statute, GAO was allowed to create its own personnel system, independent of administrative, adjudicatory, and oversight agencies, to afford GAO employees the same rights as their counterparts in the executive branch (who are covered by the Civil Service Reform Act).

Protection of Employees in the Executive Branch

In the executive branch of government, several agencies are responsible for protecting employee rights: the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), the Equal Employment Opportunity Commission (EEOC), the Office of Special Counsel, and the FLRA General Counsel. Three of these agencies (MSPB, FLRA, and EEOC) adjudicate employment disputes, and the other two agencies (the Special Counsel and the FLRA General Counsel) investigate and prosecute alleged violations of the law.

The MSPB adjudicates appeals involving personnel actions including

- termination of employment,
- reduction-in-grade,
- reduction-in-force,
- suspension of more than 14 days, and
- denial of within-grade salary increases.

The FLRA is responsible for resolving a wide range of issues involved in the labor-management relations program in the executive branch, including

- unfair labor practices,
- negotiability determinations,
- appropriate bargaining unit determinations,
- representative labor organization elections,
- arbitration award reviews, and
- impasse resolution negotiations.

The EEOC is responsible for adjudicating agency decisions on EEO (equal employment opportunity) complaints and for overseeing EEO programs. The Special Counsel litigates cases before the MSPB. The primary responsibilities of the Special Counsel include investigating and prosecuting prohibited

personnel practices and prohibited political activity (often referred to as Hatch Act violations). The FLRA General Counsel investigates and prosecutes unfair labor practices before the FLRA.

GAO Personnel Appeals Board and its Office of General Counsel

The GAO Personnel Act has consolidated the above-mentioned functions into the GAO Personnel Appeals Board and its Office of General Counsel. The Board has substantially the same authority at GAO as that of the MSPB, the FLRA, and the EEOC, combined, to adjudicate disputes concerning personnel actions, unfair labor practices, and discrimination matters. It also has EEO oversight authority over GAO. The PAB General Counsel has authority to investigate and prosecute alleged violations of the law for which the Board has jurisdiction.

Just before fiscal year 1989 began, President Reagan signed into law a bill amending the GAO Personnel Act.¹ The amendments made four important changes in the law:

- The term of Board members: During the years, a consensus developed that the Board members' 3-year terms were too short, disrupting the continuity of the Board's membership. In most years, two members left the Board and two new members joined. Because they served part time, members found that assuming full membership responsibilities took many months. And, since cases may take more than a year from the time of the appeal to a decision, members had to decline to hear new cases during most of their last year on the Board to ensure case continuity. Therefore, a member's effective time on the Board was less than 2 years. Finally, having to replace two members 2 out of every 3 years diminished the supply of qualified potential members. To address these problems, the amendments enlarged members' terms from 3 to 5 years and provided that only one member was to leave the Board each year.
- Board members' experience requirements: The original law required that nominees have 3 years of experience in adjudicating or arbitrating personnel matters and that they be nominated by organizations composed primarily of individuals with such experience. In the past, most of the Board nominees were private arbitrators. Arbitrators, however, traditionally deal with labor relations issues other than discrimination and frequently have little or no discrimination law experience. The majority of the Board's work

¹General Accounting Office Personnel Amendments Act of 1988 (P.L. 100-426, 102 Stat. 1598 (1988)).

load, however, has involved complex EEO cases. To allow the Board to tap into the supply of EEO lawyers and specialists, the amendments delete the requirement for 3 years of experience in adjudicating or arbitrating personnel matters. Therefore, applicants not nominated by neutral organizations may now be considered.

- The right of GAO employees to recover attorney fees for successful EEO litigation in federal court: A principal purpose of the original GAO Personnel Act of 1980, as explained by then Comptroller General Staats, was to make sure that GAO employees had the same rights and protection as other federal employees under the federal antidiscrimination statutes. It was assumed that the Act accomplished this purpose until 1987, when a federal court of appeals decided that the Act did not incorporate all of the rights and remedies of those statutes.² Specifically, it ruled that GAO employees could not recover attorney fees for successful EEO litigation in federal court, as could executive-branch employees. The 1988 amendments to the GAO Personnel Appeals Act reversed that decision.
- Judicial review of Board decisions: The original law provided for appeal of Board decisions to the appropriate federal court of appeals.³ In practice, almost all appeals of Board decisions went to the U.S. Court of Appeals for the District of Columbia. When the original law was passed, MSPB decisions were handled in the same manner. In 1982, however, the Congress created the U.S. Court of Appeals for the Federal Circuit and gave it exclusive jurisdiction over certain federal government subjects. Appeals from MSPB decisions go to the Federal Circuit. The amendments to the Act require that appeals of Board decisions also go to the U.S. Court of Appeals for the Federal Circuit.

²*General Accounting Office v. GAO Personnel Appeals Board*, Civ. No. 86-1443 (D.C. Cir. June 29, 1987) (unpublished); (Reh. denied, Sept. 10, 1987) (unpublished).

³This provision applies to cases that do not raise an EEO issue. Such cases may not be heard by a district court; they may be appealed only to the appropriate federal court of appeals after a final Board decision. For EEO cases, the employee or applicant for employment may file in federal district court for trial before a federal judge.

Organization and Functions

Personnel Appeals Board

The PAB is composed of five members with expertise in the fields of EEO, labor law, arbitration, mediation, and adjudication. The Board members select their own Chair and Vice Chair for 1-year renewable terms. The Board hears appeals from GAO employees arising from (1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other labor relations issue; and (4) an action involving prohibited discrimination. It also hears EEO class action appeals and is responsible for EEO oversight of GAO.

As shown in figure 2.1, the Board's Office of General Counsel, the Office of EEO Oversight, and the following staff positions assist Board members:

- The Executive Director manages the Board's staff and daily office operations.
- The Solicitor is the principal aide to the Chair and to members concerning legal matters.
- Two secretaries/receptionists/paralegals provide clerical and administrative support to the Executive Director, Solicitor, and Director of EEO Oversight.
- A law clerk (or law clerks, as necessary) assist the staff with legal research and drafting and with administrative matters.

Office of General Counsel

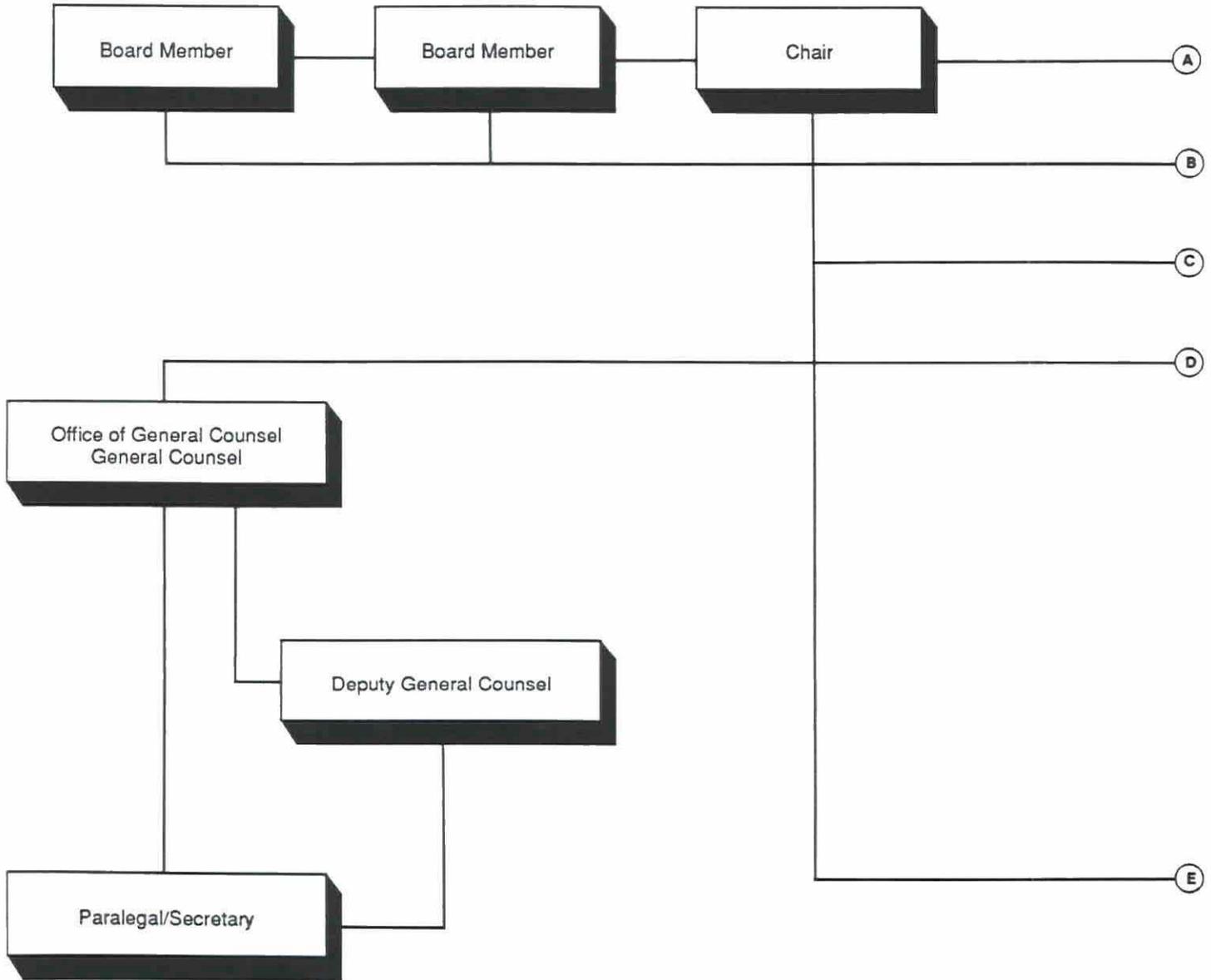
The Board Chair appoints the General Counsel, who serves at the pleasure of the Chair. The General Counsel represents the interests of GAO employees in litigation before the Board and in court. The Office also conducts self-initiated investigations. A Deputy General Counsel assists the General Counsel and, when necessary, acts for the General Counsel. A paralegal/secretary also assists the General Counsel. In addition, OGC/PAB uses contractors to help with statistical analyses and investigations.

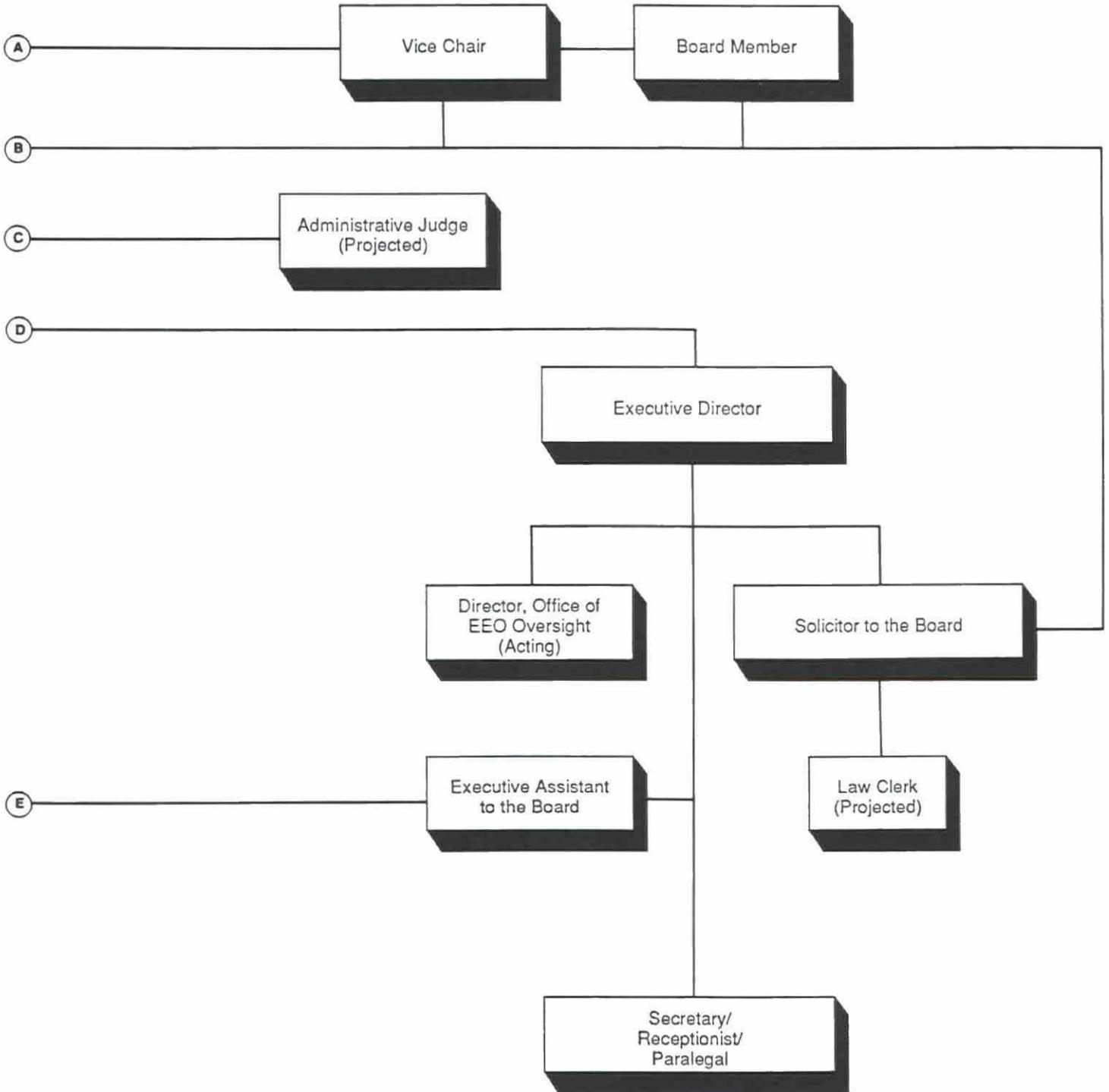
Office of EEO Oversight

The position of Director of the Office of EEO Oversight was created in 1988. The Director is responsible for proposing areas for review as well as conducting studies approved by the Board.

The Director is also responsible for overseeing and operating the Board's reporting and retrieval system, which receives EEO-relevant GAO documents and reports.

Figure 2.1: Organization of the Personnel Appeals Board





Appeals to and Adjudication by the Personnel Appeals Board

The Appeals Process

A GAO employee, a group of employees, a labor organization, or an applicant for GAO employment may bring appeals to the Board. In addition to hearing individual complaints, the Board also has jurisdiction to hear EEO class actions.

Individual Appeals

OGC/PAB investigates an individual complaint. After this investigation, OGC/PAB may encourage settlement of the dispute. If no settlement occurs, a right-to-appeal letter notifies the employee, GAO management, and the Board that the investigative phase is completed. The employee also receives, along with the letter, OGC/PAB's report and recommendations, which discuss the legal and factual basis of the appeal. As privileged communications between OGC/PAB and the employee, the report and recommendations advise the employee whether OGC/PAB has found reasonable evidence to believe that the employee's rights under the GAO Personnel Act have been violated. If OGC/PAB determines that such evidence exists, it offers to represent the employee before the Board at no expense to the employee. If OGC/PAB determines that such reasonable evidence does not exist, it advises the employee that he or she may personally present a petition to the Board or arrange for representation in further processing the appeal.

Regardless of OGC/PAB's findings, the employee may elect representation by private counsel or represent him or herself. When an employee accepts OGC/PAB's offer of representation, however, OGC/PAB must be the lead counsel on the case.

If an employee chooses to pursue an appeal, he or she must file a petition for review with the Board within 20 calendar days after receiving the right-to-appeal letter. After receiving a petition, the Chair appoints a Board member to hear and decide the case. The Board member's decision becomes final unless the PAB or either party requests that the full Board reconsider the decision. Almost all final decisions are appealable to the federal courts. Certain labor-related cases are not.

OGC/PAB may also be involved in an employee's appeal in another circumstance; it may intervene in an employee's case before the Board to represent the public interest. Ordinarily, this would occur when the interpretation of a civil service law, rule, or regulation is at issue.

The following lists the steps followed by OGC/PAB to process charges leading to filing petitions for review with the Board.

1. Charge received.
2. Charge acknowledged.
3. Charge entered in case tracking system.
4. Case file requested from GAO.
5. Charge assigned for investigation.
6. Agency response and case file received.
7. Agency response and case file reviewed.
8. Charging party's claim investigated.
9. Relevant legal issues researched.
10. Other relevant witnesses interviewed.
11. Results of investigation discussed with charging party.
12. Report and recommendations prepared for charging party.
13. Report and recommendations delivered to charging party.
14. Petition for review filed with Board.

The following lists the steps involved to process petitions for review and cases at the Board level.

1. Notice of petition for review sent out (with service list).
2. GAO responds to the petition for review.
3. Administrative Judge assigned.
4. Discovery.
5. Prehearing matters and motion practice.
6. Administrative Judge responds to motions by orders served on the parties.
7. Final prehearing briefs filed.
8. Final prehearing conference (status conference) held.
9. Hearing held.
10. Transcript of hearing received and distributed by PAB.
11. Posthearing briefs filed 30 days after transcript received by PAB.
12. Parties may request an opportunity to respond to posthearing briefs.
13. Decision issued by Administrative Judge.
14. Motions to reopen and reconsider made.
15. Final decision issued by the full Board.
16. All cases, except those involving discrimination, are appealable to the U.S. Court of Appeals for the Federal Circuit.
17. In discrimination cases, petitioner may file *de novo* in U.S. District Court (where petitioner resides) or in the U.S. Court of Appeals for the Federal Circuit.

Figures 3.1 to 3.3 illustrate the possible directions that an appeal to the Board may follow.

Figure 3.1: Process of Case From Petition for Review to Termination of Appeal

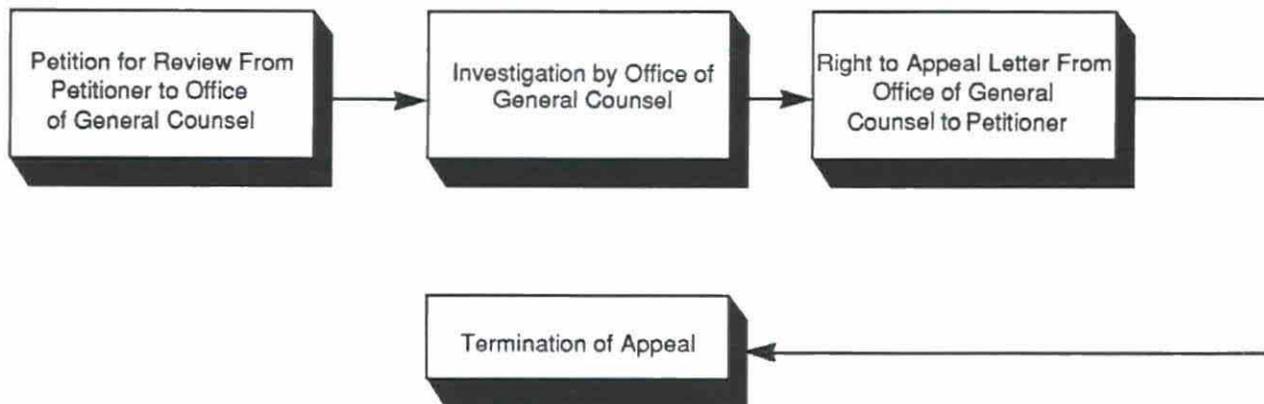


Figure 3.2: Process of Case From Petition for Review to Final Board Member's Decision With No Appeal

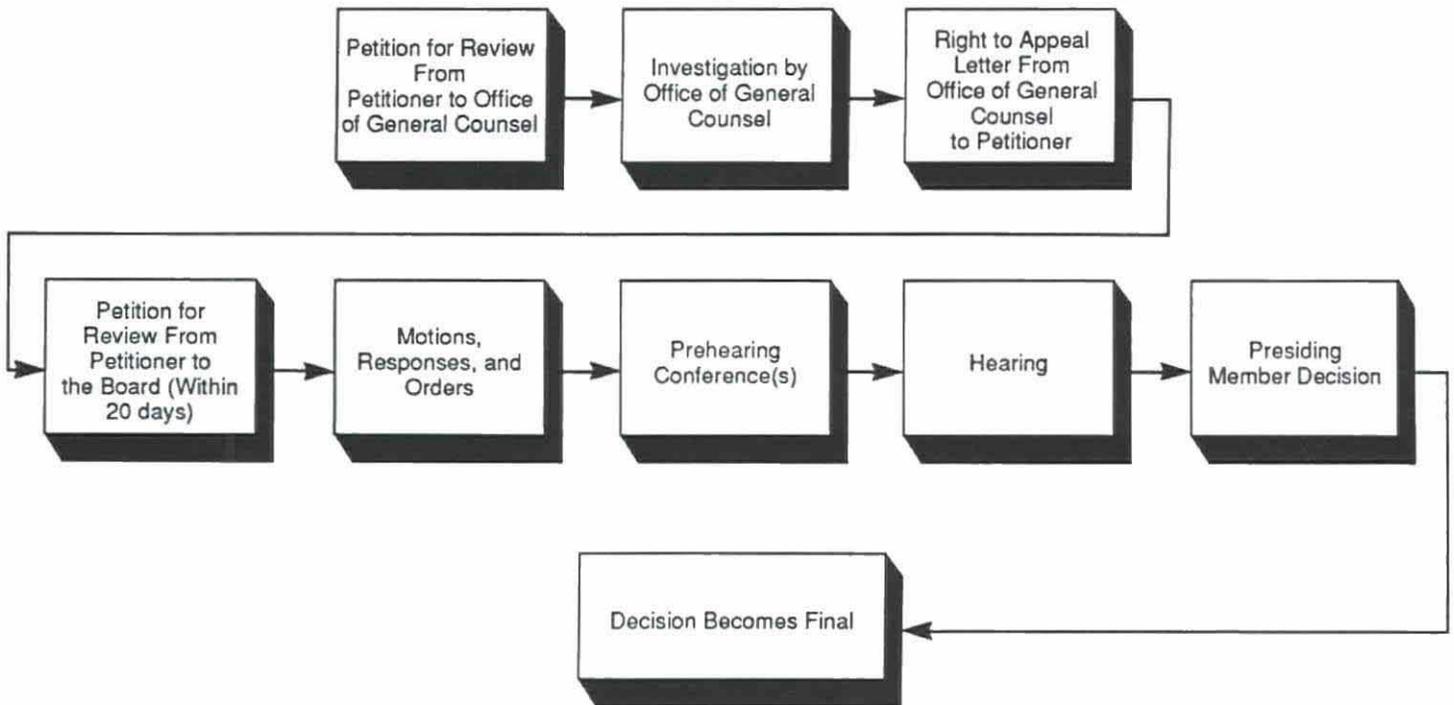
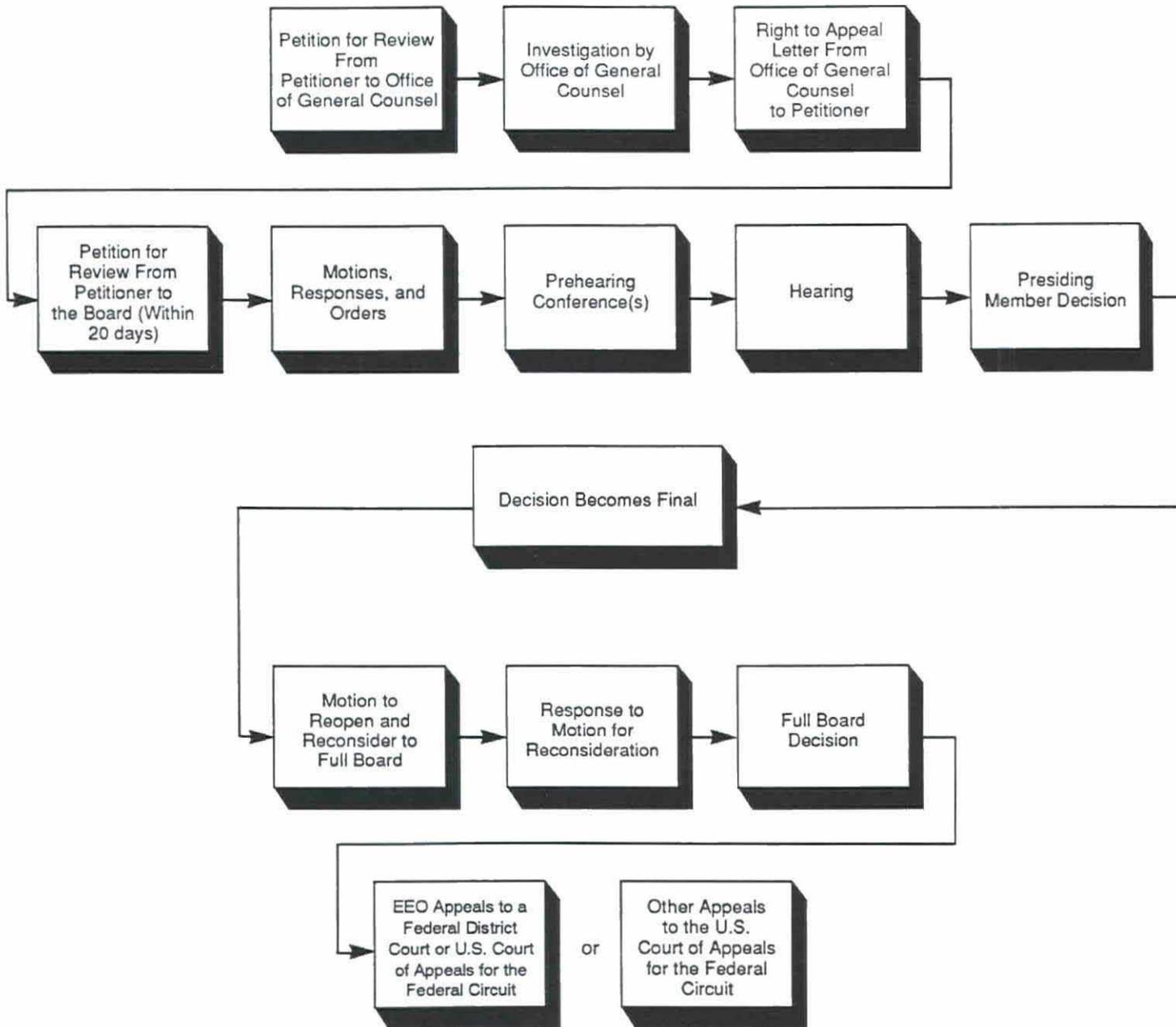


Figure 3.3: Process of Case From Petition for Review to Judicial Review



Individual Cases Filed

The Board has jurisdiction of personnel appeals from the approximately 5,000 GAO employees and from applicants for GAO employment. From fiscal year 1981 (the Board's first year in existence) through fiscal year 1989, a total of 93 individual cases were filed with OGC/PAB. Table 3.4 shows the disposition of these cases as of the end of fiscal year 1989.

The distribution of matters at issue in these cases follows, although the total number of cases shown exceeds 93 because some cases are based on more than one issue:

- EEO issues (52 cases),
- removal or suspension of 14 days or more (23 cases),
- prohibited personnel practices (3 cases), and
- denial of within-grade increases (9 cases).

EEO Class Action Appeals

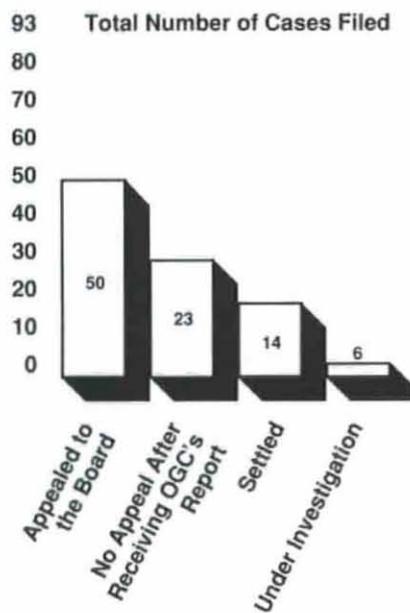
Unlike individual EEO cases, EEO class action appeals go through an administrative hearing in the GAO complaints process. One requirement of that process is that legal counsel represent the class. Thus, when an EEO class appeals to the Board, the case does not go through OGC/PAB's investigative process. Instead, it goes directly to the Board for review.

The first two class action cases to be appealed to the Board both arose in fiscal year 1987. In each case, the class challenged GAO's refusal to certify the class. In one case, the Board sustained GAO's action during fiscal year 1987. No suit was filed in federal court to challenge that decision. In the second case, a Board decision during fiscal year 1988 sustained GAO's rejection of the class action. The class representative filed suit in federal district court, where the matter was pending at the close of the fiscal year 1988-1989.

Appeals to Federal Courts

As already noted, an employee may file a case that raises EEO issues in a federal district court for trial before a federal judge. In one case alleging age discrimination, the Board found no discrimination. Subsequently, the case was filed in district court, which also found no discrimination. The case was appealed to the court of appeals, where it was pending at the close of the fiscal year.

**Figure 3.4: Disposition of Cases Filed
With OCG/PAB FY 1981-FY 1989 EEO
Class Action Appeals**



Since PAB's inception, seven of its decisions have been appealed to federal courts of appeals.⁴ Two of these appeals were initiated by GAO and five by GAO employees. The courts have sustained Board decisions in five cases and reversed the Board in one case. Another appeal was withdrawn from the court before consideration.

Significant Board Decisions

During fiscal year 1989, the Board adjudicated significant cases involving attorneys' fees and age discrimination.

The Board ruled that attorneys' fees may be awarded under the Federal Back Pay Act for the work of an employee's attorney in the GAO internal administrative grievance procedure. The Board decided that, for the purposes of the Back Pay Act, GAO is an appropriate authority for the awarding of attorneys' fees, and the Agency's denial of the employee's within-grade salary increase is a personnel action as defined by the Back Pay Act, 5 U.S.C. sec. 5596 (Case No. 104-AF-17-88, June 21, 1989).

The Board held that the Agency's closing an audit site and transferring an employee to a regional office did not constitute age discrimination nor was there sufficient evidence to support the employee's allegations that GAO had transferred him to force his resignation (Case No. 101-74-12-88, September 26, 1989).

⁴The two most recent cases were affirmed on appeal. *Chennareddy v. GAO*, No. 88-1076 (D.C. Cir. Dec. 30, 1988) and *Carbone v. GAO*, No. 88-1548 (1st Cir. Mar. 20, 1989).

Personnel Appeals Board Administrative Activities

During fiscal year 1989, the Board continued its activities designed to increase GAO employees' awareness of their employment rights and the Board's role in protecting those rights.

Revised Board Regulations

On June 6, 1989, the Federal Register published the PAB's revised regulations. The major substantive and administrative changes are summarized as follows:

Jurisdiction (sec. 28.2)

New Sec. 28.2 defines, in one place, Board jurisdiction over subject matter and parties. This new section does not change the scope of jurisdiction but merely consolidates in one place what had been found throughout various sections of the previous rules.

General Definitions (sec. 28.3)

New definitions were added in this section. The new terms are self-explanatory, except for the term "administrative judge," which is now substituted for the previous terms "presiding member" and "hearing officer" to refer to individuals who conduct hearings for the Board. This term was adopted because of its familiarity to practitioners.

Notice of Appeal Rights (sec. 28.10(a))

The former rule required GAO to advise employees regularly of their appeal rights to the Board to ensure that an employee's procedural interests were not prejudiced by inadequacy of notice. Section 28.10(a) added a further requirement of proof of service in instances of adverse and performance-based actions to further protect an employee's procedural interests. However, no specific form of service is specified. The only requisite is that there be some form of service verifying that an employee has been properly notified of his or her appeal rights to the Board.

Filing a Charge With the General Counsel and Individual Charges in EEO Cases (sec. 28.11(b)(1) and sec. 29.98(b)(2))

The amendment to this section extends the required waiting period from the previous 80 days to 120 days. Thus, to file an EEO complaint with the General Counsel, an employee must first file a formal complaint of discrimination with GAO. If GAO does not issue a final agency decision within 120 days, the employee may then proceed to file an EEO complaint with the Office of the General Counsel.

Revocation, Amendment, or Waiver of Rules (sec. 28.16)

In the past, the Board has followed a particular process for formulating, amending, or repealing a rule. Section 28.16 was created to clarify the Board's rule-making procedure.

Internal Appeals of Board Employees (sec. 28.17(a))

This section outlines the grievance procedure for employees of the Board. Now, Board employees are to receive the same right to neutral review in their adverse action, performance-based action, or EEO complaint as GAO employees receive when appealing to the Board.

Filing a Petition for Review and Request for Hearing With the Board (sec. 28.18(f) and sec. 28.21(c))

Sections 28.18(f) and 28.21(c) changed the previous rule allowing either party to a proceeding a "right" to a hearing before the Board. Now, only employees (or applicants in EEO cases) have a "right" to a hearing, whereas a request for a hearing by GAO is a matter of "privilege," and therefore within the discretionary powers of the administrative judge. However, anytime a request for a hearing by GAO is denied, there must be a statement of the basis for the denial. The purpose of this change was to make the right to a hearing consistent with the practice used in the executive branch. Hearings are held in unfair labor practice cases.

Class Actions in EEO and Non-EEO Cases (sec. 28.18(g) and sec. 28.97(e))

The language in these sections was changed to reflect the Board's intention that the requirements of the Federal Rules of Civil Procedure be used as a guide in both EEO and non-EEO class actions.

Filing Time Limits (sec. 28.20(c), sec. 28.58(b), and sec. 28.82(a))

The time limit for responses to all pleadings has been extended from 10 to 20 days. The time limit for filing motions to correct a transcript has been extended from 15 to 30 days of receipt of the transcript. The time limit for filing an interlocutory appeal has been extended from 5 to 10 days.

Prehearing Procedures and Motions Practice (sec. 28.21(a))

Language was added to provide standards for the Board's use of its discretionary power to allow amendments to a petition for review. Additionally, sec. 28.21(d) makes it clear that the PAB General Counsel is not required to seek Board approval of a settlement reached during the investigative stage, thus making the settlement agreement dispositive of the case.

Public Hearings (sec. 28.57(b))

This section was added to provide an exception to the rule that allows administrative judges, within their discretionary powers, to decide who shall be excluded from a hearing. Now four individuals, as a matter of right, can attend all sessions of a hearing: (1) the GAO technical representative, (2) the GAO representative, (3) the petitioner, and (4) the petitioner's representative. All other persons attending a hearing do so at the discretion of the administrative judge.

Intervenor (sec. 28.27)

The language in former section 28.27, which allowed the PAB Office of General Counsel to intervene in a hearing as a matter of right, has been deleted. Instead, sections 28.12(f) and 28.27(f) provide for permissive intervention of the OGC/PAB in appropriate circumstances in that office may need to participate in a case in which it is not already participating.

Transcripts (sec. 28.53)

Transcripts of the hearing are now available free of cost to the parties. However, a party requesting additional copies of the transcript will have to pay the additional cost for them.

Scheduling the Hearing (sec. 28.55)

This section has been changed to allow motions to postpone a hearing to be made orally when the parties agree on the need for a postponement. When the parties do not agree on the need for it, the motion for postponement must be in writing and accompanied by an affidavit setting forth the reasons for the request. In both cases, postponement shall be granted only upon a showing of good cause.

Public Hearings (sec. 28.57)

This section reverses the prior rule that made Board hearings closed to the public. Now, hearings are open unless there is an interest to be served by closing them to the public.

Board Procedures for Non-Board Members to Conduct Hearings (sec. 28.86)

This section further refines the process by which a final Board decision would be produced when a non-Board member originally hears the case. However, this provision clearly does not delegate the Board's decision-making authority, and cases heard by non-Board members result only in recommended decisions to the Board.

Board Procedures in Initial Decisions (sec. 28.87)

This section expands the scope of the Board's review power, allowing the Board to conduct a *de novo* review of the law and facts for each initial decision that the Board is called upon to reconsider.

Board Procedures—Judicial Review (sec. 28.90)

This new section expands the Board's right to have legal representation in any judicial proceeding that involves a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

Meetings With GAO Offices

The Board continued its practice of meetings with GAO offices. During fiscal year 1989, the Board held meetings in Chicago, Dallas, Los Angeles, and Seattle.

The Board's meeting format follows:

1. Employees initially view a videotape describing the Board's functions and procedures.
2. Board members make a presentation to the office staff on PAB's organization and functions and answer questions about its mission.
3. Board members meet with the management team.
4. Board members meet with employee group representatives.

Publication of Board Decisions and Decision Summaries

During 1988 the Board initiated a project designed to give its decisions the widest possible circulation. The project called for two publications. The first is a book of case summaries in alphabetical order of every decision issued by the Board to date. Each summary identifies the parties to the decision, the most significant legal issues involved in the case, the holding in the case, and the facts upon which the holding is based. This format was developed to allow readers who are not attorneys to easily understand the Board's decisions. At the end of the book is a topical index, also arranged alphabetically. The soft-cover book is printed in a format similar to that of the monthly index of the Comptroller General's decisions. The summaries book was completed in April 1989.

Chapter 4
Personnel Appeals Board
Administrative Activities

The companion publication is a hard-cover volume of the full text of all decisions issued by the Board since its inception. This publication is similar to the standard case reports found in law libraries. A topic digest at the end of the book provides reference to the volume. This publication is expected to be in print during fiscal year 1990 or early 1991.

Information Investigations by the Office of General Counsel

As discussed in chapter 3, OGC/PAB investigates almost all employee cases before they are appealed to the Board. In addition, OGC/PAB conducts self-initiated information investigations.

When information comes to OGC/PAB's attention suggesting that a prohibited personnel practice has occurred, is occurring, or will occur, it may investigate the matter regardless of whether an employee appeal or complaint is filed. In most cases in which an individual raises the allegation, such individual may remain anonymous. If OGC/PAB finds insufficient evidence of a prohibited personnel practice, it prepares a report to close the investigation. The report is sent to the individual who brought the issue to OGC/PAB's attention and to GAO management. If OGC/PAB finds evidence of a prohibited personnel practice, three courses of action or a combination thereof are available: seeking a stay of the personnel action, proposing corrective action, and/or proposing disciplinary action.

Stay Proceedings

When an employee requests that OGC/PAB seek a stay of a personnel action, OGC/PAB conducts an investigation into the allegations. If it finds reasonable grounds to believe that the personnel action was taken, or will be taken, as a result of a prohibited personnel practice, OGC/PAB may request that the Board stay the personnel action. If a stay is granted, it may remain in effect pending further investigation by OGC/PAB or until the matter is litigated before the Board. If OGC/PAB finds no reasonable grounds to believe that a prohibited personnel practice is involved in the personnel action, the Board may not entertain a stay request. However, the employee may pursue an appeal to the Board, as described in chapter 3.

During fiscal year 1989, two employees requested that OGC/PAB seek a stay of a personnel action. In both instances, OGC/PAB found insufficient evidence to support a stay.

Corrective Action Proceedings

When OGC/PAB finds reasonable evidence to believe that a prohibited personnel practice exists, it may prepare a report for GAO management recommending corrective action. If GAO does not take the recommended corrective action, OGC/PAB may petition the Board to order corrective action.

A corrective action request that was filed in fiscal year 1988 was completed

in fiscal year 1989. The investigation addressed allegations that attacked the legal validity and implementation of the performance appraisal system for evaluator and evaluator-related positions. In March 1989, the investigation was closed.

The investigation concluded that the appraisal system's implementation frequently resulted in performance appraisals that constituted prohibited personnel practices. While GAO disagreed with that conclusion, it agreed to take most of the corrective actions recommended by OGC/PAB. Therefore, no further action was pursued by OGC/PAB.

During fiscal year 1989, three corrective action requests were filed with OGC/PAB. One case alleged discrimination based on race in a series of promotions in certain staff offices. Two cases alleged that certain promotions were made in violation of the regulations regarding competitive promotion. All three cases were closed due to insufficient evidence.

Also during fiscal year 1989, a case was filed with OGC/PAB by two employee councils. Though not technically a corrective action investigation, it resembled a corrective action proceeding. The case challenged certain restrictions imposed by GAO on the formation of collective bargaining units by GAO employees. OGC/PAB found evidence to support the allegation, and the case was filed with the Board a few days after fiscal year 1989 ended.

Disciplinary Proceedings

When OGC/PAB finds reasonable evidence to believe that a prohibited personnel practice exists, it may propose disciplinary action against the employee responsible for the practice. Also, it may propose discipline for any GAO employee engaging in prohibited political activity. In either case, OGC/PAB's proposal for discipline is presented to the Board and to the employee. After hearing the case, the Board decides whether discipline is warranted and what discipline is appropriate.

No disciplinary proceedings were instituted during fiscal year 1989.

EEO Oversight Activities

The GAO Personnel Act gives the Board oversight responsibilities for GAO's equal employment opportunity program.

Oversight Study of Career Ladder Promotion Processes

Based on an OGC/PAB study, the Board issued a report at the end of fiscal year 1987 on GAO's career ladder promotion processes from 1980 through 1985. In reviewing the statistics by gender and race in the five major career ladders, the study identified statistical disparities associated with race in evaluator career ladder promotions, particularly in comparisons between black and white evaluators.

In response to the draft report, GAO described positive actions it was pursuing regarding the career ladder promotion process. GAO stated that there was some evidence to suggest that the conditions noted in the report might have changed in recent years. GAO was planning to make its own analysis to determine whether the disparities still existed.

In May 1989, GAO delivered its report on the 1986 and 1987 career ladder promotion process. The data was evaluated, and the Board considered the report and all follow-up reviews. In February 1990, it notified GAO that it was terminating a further analysis of the career ladder process because of GAO's replacement of the career ladder with pay for performance. The Board was shifting its focus to the latter.

New Directions for Oversight

During fiscal year 1988, the Board reviewed its oversight mission and decided to put greater emphasis on this program. It shifted administrative responsibility for this function from its OGC/PAB to the newly created Office of EEO Oversight, freeing up the OGC/PAB to perform other duties. At the same time, it created an office whose sole function was oversight. The Oversight Office was charged with developing a program that would include reviews of GAO's EEO processes as well as a reporting system.

Study of Equal Employment Opportunity for Disabled Employees

In late fiscal year 1988, the Board notified GAO that its next EEO oversight review would be a functional, in-depth study of GAO's equal employment opportunity for disabled applicants and employees. The study looks at what the law requires concerning the disabled and whether GAO has met the legal

requirements. The study covers recruitment and hiring practices, an assessment of building accessibility, accommodation afforded the disabled, and affirmative action programs. During fiscal year 1989, investigative activity and evaluation was undertaken by the PAB Oversight Office. The Oversight study, which is expected to be completed in fiscal year 1990, involves a review of GAO records; interviews with and/or questionnaires to employees and managers; on-site viewing of buildings and facilities; and, as necessary, outside consultation.

