

GUIDELINES FOR MEDIATION OF DISPUTES AT THE PAB

The Personnel Appeals Board is offering mediation as a means to resolve workplace disputes. Mediation is an informal process in which parties meet separately and/or jointly with a trained neutral to explore voluntary, mutually satisfactory solutions to a dispute.

Confidentiality

Mediations will be conducted on a strictly confidential basis. At the outset of the mediation, the mediator will explain the process to the parties and join the parties in signing an agreement reflecting the confidentiality requirements and the rights and obligations of the parties. No participant in mediation sessions may disclose what occurred in mediation, unless all of the parties and the mediator agree, in writing, or a tribunal of competent jurisdiction determines that a breach of confidentiality is warranted.

Reprisal

No party or individual shall suffer any act of reprisal or retaliation by exercising the right to engage in mediation or by participating in the process or declining to participate in mediation.

Mediation of Claims Raised in Charges

GAO or any employee, former employee or applicant who files a charge with the Board's Office of General Counsel may request mediation of the claims raised in the charge arising from any of the following:

- (i) an appeal from a removal or suspension for more than 14 days;
- (ii) a reduction in grade or pay;
- (iii) a furlough of not more than 30 days;
- (iv) a prohibited personnel practice;
- (v) a prohibited political activity;
- (vi) an action involving prohibited discrimination; or
- (vii) personnel relations issues designated by the Comptroller General by regulation for PAB resolution.

Upon receipt of a charge, the PAB's General Counsel will notify both the charging party and GAO that mediation is available to resolve their dispute, that mediation may be the most beneficial means of resolving the dispute, and that either party may request mediation within **14 days** of the notification. Such request must be in writing and must be filed with the Board's Office of General Counsel within the **14 days**.

The Board's General Counsel will forward a request for mediation to the other party, who may accept or decline the request to participate in mediation within **7 days** of receipt of the request for mediation. If the parties agree to mediation, the General Counsel will advise them that the period of time for the investigation will be extended for the length of the mediation process up to **30 days**. During mediation, the charge will not be investigated.

Once the parties have agreed to mediation, the General Counsel will forward the original written request to the PAB Executive Director or (his or her delegatee) who will designate a mediator from a pre-approved list within **5 days** of receipt of the written request from the PAB General Counsel.

Mediator Responsibilities

Mediation is expected to be completed within **30 days** from the time a mediator is designated. The mediator is responsible for regulating the course of the mediation, including conducting the process within the timeframes provided in this subsection. The mediator makes initial contacts with the parties, and in his or her discretion, may schedule telephonic and/or in-person mediation sessions, meet together or separately with the parties, and permit the parties to meet apart with their representatives, as indicated. As previously noted, the mediator is responsible for explaining the confidentiality requirements to the parties at the outset of mediation. The mediator may render any assistance he or she believes is necessary and appropriate to assist the parties towards resolution, so long as the mediator remains neutral when providing such assistance. The mediator shall ensure, in all appropriate cases, that the settlement process complies with the requirements of the Older Workers Benefits Protection Act, 29 U.S.C. §626.

The mediator must maintain complete neutrality during the mediation proceedings. In the event that the mediator assigned to the case determines that he or she is unable to perform a neutral role in the case, he or she must withdraw from the matter and immediately notify the Executive Director. Any party may ask the Executive Director to disqualify a mediator by filing a written request, including the reasons for such request. The Executive Director's decision on this request is final and will not be reviewed by anyone else.

Timeframe

When the parties agree to mediation, the General Counsel's investigation period will be extended for the length of the mediation process, but not to exceed an additional **30 days**. If the parties cannot complete mediation within **30 days** and they agree that additional time to continue mediation is needed, they may jointly request additional time from the Executive Director. The notification shall include the nature of the request, the underlying reasons, the number of additional days needed to continue mediation, and whether the mediator believes additional time would be beneficial. The Executive Director will grant the parties' request upon a showing of good cause.

Representation

Both the charging party and GAO may elect to have a legal or personal representative present during the mediation process. A party may not, however, designate a representative whose presence would create a conflict of interest or conflict of position. The mediator will resolve questions about the suitability of a representative. The representative must have the direct authority to agree to resolve the dispute or, at the very least, have immediate access to an official who has such authority.

Official Time

A charging party and other GAO employees are considered to be on official time, for compensation purposes, when engaged in the mediation process. Such official time will include a reasonable amount of time to meet the requirements of the mediation process, including but not limited to reviewing or preparing proposals and meeting with counsel.

End of Mediation

The mediator will promptly notify the Executive Director when the mediation has ended, which occurs when either a settlement has been reached, or if there is no settlement, at the end of the **30** day mediation period, or any extension, or sooner if the parties are at an impasse.

When the parties have agreed how to resolve their dispute and have incorporated their pact into a fully executed settlement agreement, the mediator will ensure that the agreement contains an implementation provision that permits enforcement of the terms of the agreement by the Board.

If the mediator informs the Executive Director that the mediation has ended without agreement, the Executive Director will send written notification of the end of mediation to all parties and to the Board's General Counsel. Within **5 days** of receipt of such notice, the General Counsel will commence or resume investigation of the charge.

At the close of the investigation by the Board's Office of General Counsel, but before the issuance of a right to petition letter and summary to a charging party, the General Counsel shall notify the parties that they have **7 days** in which to request mediation if it has not been previously attempted. The procedures governing this procedure are those set forth above.

Mediation of Claims Raised in Petitions

After a petition has been filed with the Personnel Appeals Board, either or both parties to the action may request mediation of the claims raised in the petition. The request, which must be in writing, will be submitted to the administrative judge assigned to the

case. If one party requests mediation pursuant to this section and the other party objects to mediation by filing a response within **5 days** of receipt of the request, there will be no mediation. However, the administrative judge, in his or her discretion, may recommend that the parties engage in mediation before the adjudication of the claims contained in the petition is completed but if either party objects to the recommendation by the administrative judge to engage in mediation, the mediation will not take place.

When the parties agree to engage in mediation, the administrative judge will notify the Executive Director of the request for mediation and the Executive Director will designate a mediator within **5 days** of the request.

The administrative judge may exercise his or her discretion to stay the litigation to allow the parties to engage in the mediation process. In making this determination, the administrative judge will consider the diligence of the parties in litigating the action to date, whether staying the action would unreasonably delay a hearing on the merits, and whether there have been previous attempts at mediation.

Breach of Settlement Agreement

Where the mediation has resulted in a settlement agreement, a party to the agreement may file a petition with the Board if he or she believes that the agreement has been breached or violated. The petition must be filed within **30 days** of the date when a party knew or should have known that a breach may have occurred. The case will be assigned to an administrative judge, who may order written submissions from the parties, and at his or her discretion, may schedule the case for hearing. The administrative judge may take any of the following actions:

- (i) dismiss the claim as lacking merit;
- (ii) upon finding the claim meritorious, direct appropriate remedial action by the breaching party; or
- (iii) set aside the settlement agreement permitting the aggrieved party to proceed from the point at which the matter entered mediation, but only when specific performance of the settlement agreement will not provide appropriate relief.

A party may appeal the administrative judge's determination to the full Board within **15 days** after receiving the administrative judge's determination. A party may subsequently appeal a final decision by the full Board to the United States Court of Appeals for the Federal Circuit pursuant to 31 U.S.C. §755.