

Annual Report



PERSONNEL APPEALS BOARD
U.S. GOVERNMENT ACCOUNTABILITY OFFICE

2022

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BIOGRAPHIES OF BOARD MEMBERS



JULIA AKINS CLARK was appointed to the Board in March 2022 and elected Board Chair in October 2022. Until her retirement from federal service, Ms. Clark was the Deputy General Counsel for the Office of Congressional Workplace Rights from 2017- 2019, and was responsible for conducting investigations, making enforcement recommendations, and litigating enforcement actions to ensure compliance with the labor law provisions of the Congressional Accountability Act. She also served two terms (2009-2017) as the Federal Labor Relations Authority's General Counsel, leading that agency's independent investigative and prosecutorial component. From 1988-2009, Ms. Clark represented the International Federation of Professional and Technical Engineers, AFL-CIO, a labor organization representing public and private sector employees in the United States and Canada, and served as the organization's General Counsel from 1995-2009. Ms. Clark began her legal career in the U.S. Department of Justice, Antitrust Division, where she served as an Honors Program Trial Attorney from 1980-1985. Ms. Clark earned her Juris Doctorate from the American University, Washington College of Law in 1980, and her bachelor's degree in Political Science from Oklahoma Baptist University in 1977.



BARBARA S. FREDERICKS was appointed to the Board in January of 2019. In October 2021, Ms. Fredericks was elected Vice Chair of the Board and continues to hold that position. She is a member of the Montgomery County, Maryland Merit System Protection Board. She is also on the faculty of the Graduate School USA in Washington, D.C., teaching courses on topics of administrative and employment law. She is a consultant on the development of rule of law programs and civil service systems. Ms. Fredericks previously served as Assistant General Counsel for Administration at the U.S. Department of Commerce, responsible for advising management on labor issues and transparency. She also was the Department's chief ethics officer. Ms. Fredericks served on the Montgomery County Ethics Commission, and taught a course on Anticorruption Law and Practices at the Georgetown University Law Center. Earlier in her career, she served as Deputy Assistant General Counsel for Administration at the Department of the Treasury, and as a senior labor counsel at the U.S. Postal Service and the National Labor Relations Board. Ms. Fredericks graduated from Boston University School of Law, after obtaining a B.A. at Case Western Reserve University.



ROSA M. KOPPEL was appointed to the Board in April 2017, and became Vice Chair of the Board in October 2020. Ms. Koppel became Chair of the Board in October 2021 and served as Chair until her term ended in October 2022. Ms. Koppel has worked in private practice representing federal and private sector employees in employment law matters since 2014. She served as Solicitor at the Federal Labor Relations Authority (FLRA) between 2008 and 2014, where she led the litigation team in matters before the U.S. Courts of Appeals, Federal District Courts, the Merit Systems Protection Board (MSPB), and the Equal Employment Opportunity Commission (EEOC). She has advised FLRA managers and human resources officials on cases involving Title VII of the Civil Rights Act, the Rehabilitation Act, the Equal Pay Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act. Previously she worked as the Deputy General Counsel and served as the Acting General Counsel at the MSPB between 2005 and 2008, where she led the team that handles appeals before the U.S. Court of Appeals for the Federal Circuit. Between 1984 and 2005, she worked at the Office of the Comptroller of the Currency (OCC), where she rose from trial attorney and legal advisor to the Assistant Director of the Litigation Division. She led the team that represented the OCC before federal and state courts as well as the MSPB, EEOC, and the General Services Board of Contract Appeals. Ms. Koppel received her J.D. from New York University School of Law in 1981 and her Bachelor's degree in Biology from New York University in 1977.



CAROL A. DE DEO was appointed to the Board in January 2017.

Ms. De Deo became Vice Chair in April 2019 and then served as Chair of the Board from October 2020 through October 2021. Except for a brief period spent in private practice, she worked at the Department of Labor from 1983 to 2009, serving as Deputy Solicitor for National Operations (highest ranking non-political appointee in the Office of the Solicitor) from 2004 to 2009. Earlier she served as Associate Solicitor for Labor-Management Laws, Associate Solicitor for Employee Benefits, Deputy Associate Solicitor for Special Appellate and Supreme Court Litigation, and Deputy Associate Solicitor for Labor-Management Laws. She previously worked at the National Labor Relations Board (NLRB) in the Appellate Court Branch as a supervisor from 1978 to 1983, and as a staff attorney for several years. She earned her J.D. from George Washington University (GWU) in 1974, and she received a Bachelor of Arts degree in English from GWU in 1971. Ms. De Deo's term with the Board ended in July 2022.



RICHARD S. UGELOW was appointed to the Board in September 2016, and he served as the Chair of the Board from April 2019 until October 2020. Prior to serving as Chair, Mr. Ugelow served as the Vice Chair beginning in July 2017 through April 2019. Mr. Ugelow retired from the faculty of American University Washington College of Law, where he taught clinical legal education and employment discrimination law. Previously he served as a senior trial attorney and Deputy Section

Chief in the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice from 1973 until 2002. Prior to his employment with the Department of Justice, he served as a Captain in the U.S. Army Judge Advocate General Corps from 1969 until 1973. He also currently serves as a complaint examiner for the District of Columbia Office of Police Complaints. Among his publications, Mr. Ugelow authored the chapter entitled “I-O Psychology and the Department of Justice” in *Employment Discrimination Litigation, Behavioral, Quantitative, and Legal Perspectives* by Frank J. Landy. He has also served as a moderator and presenter in numerous different forums. Mr. Ugelow earned a Bachelor’s degree from Hobart College in 1965. He received his Juris Doctor (J.D.) degree from American University in 1968 and earned a Master of Laws (LL.M.) degree from Georgetown University in 1974. Mr. Ugelow is a member of the Bars of the District of Columbia, Maryland, and Florida. Mr. Ugelow’s term with the Board ended in March 2022.



CAROLE W. WILSON was appointed to the Board in April 2019. Before being appointed to the Board, Ms. Wilson served as an Administrative Judge (unfair labor practice, representation, and mediation matters) for the District of Columbia Public Employee Relations Board for five years. Previously, Ms. Wilson served in various supervisory attorney positions at the Department of Housing and Urban Development, as Associate General Counsel for Litigation, Associate General Counsel for Finance and Regulatory Enforcement, Associate General Counsel for Fair Housing, Associate General Counsel for Human Resources Law, Senior Counsel for Equal Employment Opportunity and Senior Attorney for Administrative Law from 1989-2011. She also served as an Associate General Counsel for the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers from 1978-1989, specializing in pay equity cases (including litigation before the Supreme Court), and co-founding the National Committee for Pay Equity. Ms. Wilson was the Executive Assistant to the Assistant Secretary for Employment Standards, U.S. Department of Labor, 1977-1978, where she worked on labor law reform for the Secretary of Labor. She also served as an Assistant General Counsel at the National Labor Relations Board for ten years. Ms. Wilson earned her J.D. from George Washington University Law School, where she was Managing Editor of the George Washington International Law Review, and her Bachelor's degree in Political Science from Vassar College (with distinction on her senior thesis), and where she founded the Vassar Civil Rights Committee.



KEITH D. GREENBERG was appointed to the Board in July 2022.

Mr. Greenberg is an arbitrator and mediator of private, public, and federal sector labor and employment disputes. He is a member of the National Academy of Arbitrators and serves on its Board of Governors. Mr. Greenberg serves as the impartial Labor Relations Administrator – responsible for resolving unfair labor practice disputes and overseeing the collective bargaining process – for the Washington Suburban

Sanitary Commission; for the city of Richmond, Virginia; and for Loudoun County, Virginia.

Among other professional affiliations, he serves as an officer of the Society of Federal Labor and Employee Relations Professionals (SFLERP) and is a past President of the Maryland Chapter of the Labor and Employment Relations Association. Mr. Greenberg received a Bachelor of Science degree from Cornell University's School of Industrial and Labor Relations, and a J.D. from the University of Michigan Law School.

PERSONNEL APPEALS BOARD

Julia A. Clark*	<i>Chair</i>
Barbara S. Fredericks	<i>Vice Chair</i>
Rosa M Koppel**	<i>Member</i>
Carol A. De Deo***	<i>Member</i>
Richard S. Ugelow****	<i>Member</i>
Carole W. Wilson	<i>Member</i>
Keith D. Greenberg*****	<i>Member</i>

PERSONNEL APPEALS BOARD STAFF

Stuart G. Melnick	<i>Executive Director</i>
Vanessa Gallagher	<i>Director, EEO Oversight</i>
Kevin P. Wilson*****	<i>Solicitor</i>
Patricia V. Reardon-King	<i>Clerk of the Board</i>
Brian Nuterangelo*****	<i>General Counsel</i>
Mariama Liverpool	<i>Senior Trial Attorney</i>
Darian C. Jackson	<i>Paralegal Specialist</i>

*Julia A. Clark joined the Board on March 14, 2022 and became Chair in October 2022.

**Rosa M. Koppel's term as Chair and Member of the Board ended in October 2022.

***Carol A. De Deo's term as a Member of the Board ended in July 2022.

****Richard S. Ugelow's term as a Member of the Board ended in March 2022.

*****Keith D. Greenberg joined the Board on July 19, 2022.

*****Kevin P. Wilson became the Solicitor of the Personnel Appeals Board in October 2022.

*****Brian Nuterangelo became General Counsel in August 2022.

CHAPTER 1: THE PERSONNEL APPEALS BOARD

Section 1: About the PAB

Under the General Accounting Office Personnel Act of 1980 (GAOPA),¹ the Personnel Appeals Board (PAB or Board) is charged with adjudicating disputes, issuing decisions, and ordering corrective or disciplinary action, when appropriate, in cases alleging prohibited personnel practices, discrimination, prohibited political activity, negotiability, and unfair labor practices involving employees of the U.S. Government Accountability Office (GAO or the Agency), a Legislative branch agency.² The GAOPA also authorizes the Board to oversee GAO's employment regulations, procedures, and practices relating to anti-discrimination laws.³

The PAB's authority combines the adjudicatory functions of its Executive branch counterparts: the U.S. Merit Systems Protection Board (MSPB);⁴ the U.S. Equal

¹ Pub. L. No. 96-191 (Feb. 15, 1980). In July 2004, the Agency's name changed from the U.S. General Accounting Office to the U.S. Government Accountability Office. Pub. L. No. 108-271 (Jul. 7, 2004).

² 31 U.S.C. § 753.

³ 31 U.S.C. § 732(f)(2)(A).

⁴ The MSPB was "created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems." 5 C.F.R. § 1200.1. The PAB has similar jurisdiction to hear and decide matters alleging prohibited personnel practices under 5 U.S.C. § 2302(b). 4 C.F.R. § 28.2(b)(2). The PAB also has similar review and study authority over GAO with regard to assessing the EEO impact of GAO's actions and/or inactions. See *supra*, n.3.

Employment Opportunity Commission (EEOC);⁵ and the U.S. Federal Labor Relations Authority (FLRA).⁶ The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of its Executive branch equivalents, which are the Office of Special Counsel (OSC)⁷ and the EEOC.

The GAOPA provides for a Board comprised of five Members⁸ who serve five-year, staggered, nonrenewable terms. A new Board member is appointed each year, which promotes continuity of Board operations. GAO conducts an annual scheduled Board member recruitment process to minimize, to the extent possible, the duration of Board vacancies..

Candidates for the Board are sought through a process that includes advertising and recruitment efforts that focus on organizations whose members are experienced in the adjudication or arbitration of personnel and labor matters. Applicants are expected

⁵ The EEOC ensures that personnel actions that affect employees or applicants for employment in the Executive branch "shall be made free from any discrimination based on race, color, religion, sex (including pregnancy), or national origin." 42 U.S.C. § 2000e-16(a) (Title VII). In addition, the EEOC enforces the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, as amended; and the Genetic Information Nondiscrimination Act, 42 U.S.C. § 2000ff *et seq.* The PAB has similar jurisdiction to hear and decide cases alleging discrimination. 4 C.F.R. §§ 28.95-28.99.

⁶ The FLRA protects the "rights of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them." 5 U.S.C. § 7101. The PAB also has the authority to conduct elections, certify collective bargaining representatives and to adjudicate unfair labor practices. 4 C.F.R. §§ 28.110-28.124.

⁷ The OSC investigates and prosecutes allegations of fourteen prohibited personnel practices, with an emphasis on protecting federal whistleblowers at GAO. 5 U.S.C. §§ 1214, 2302(b). The Board's General Counsel investigates and prosecutes allegations of prohibited personnel practices at GAO. 4 C.F.R. § 28.12.

⁸ Member will be referenced throughout the report as Board Member, Administrative Judge, or Presiding Member.

to have expertise or litigation experience in the area of federal personnel law, demonstrated ability to arbitrate or adjudicate complex legal matters, or experience at a senior level position in resolving complex legal matters.

GAO establishes a screening panel to review applications for Board Member positions and identify the best qualified candidates.⁹ An interview panel composed of some of the screening panel members, including one employee group member selected by the Employee Advisory Council representatives and one selected by the representatives of the GAO Employees Organization, conducts the personal interviews and reports its results to the full screening panel. The screening panel recommends one or more of the candidates to the Comptroller General, who makes an appointment to the Board after considering the recommended candidates. The Board members elect their own Chair and Vice Chair.

Section 2: Board Staff

The Board's Executive Director manages Board staff and Board operations. The Board's Solicitor and Senior Staff Attorney advise Board members and the Executive Director on legal matters and provide procedural advice to litigants before the Board. The Board's Office of Equal Employment Opportunity (EEO) Oversight reviews equal

⁹ The voting members of the screening panel are three senior management officials designated by the Comptroller General. The nonvoting members are one representative from the Human Capital Office, one representative selected by the Attorney Advisory Board, two representatives selected by the Comptroller General's Employee Advisory Council, and four representatives selected by the GAO Employees Organization, IFPTE, Local 1921. GAO Order 2300.4, Personnel Appeals Board Vacancies, Ch. 1, ¶ 7 (Aug. 24, 2022).

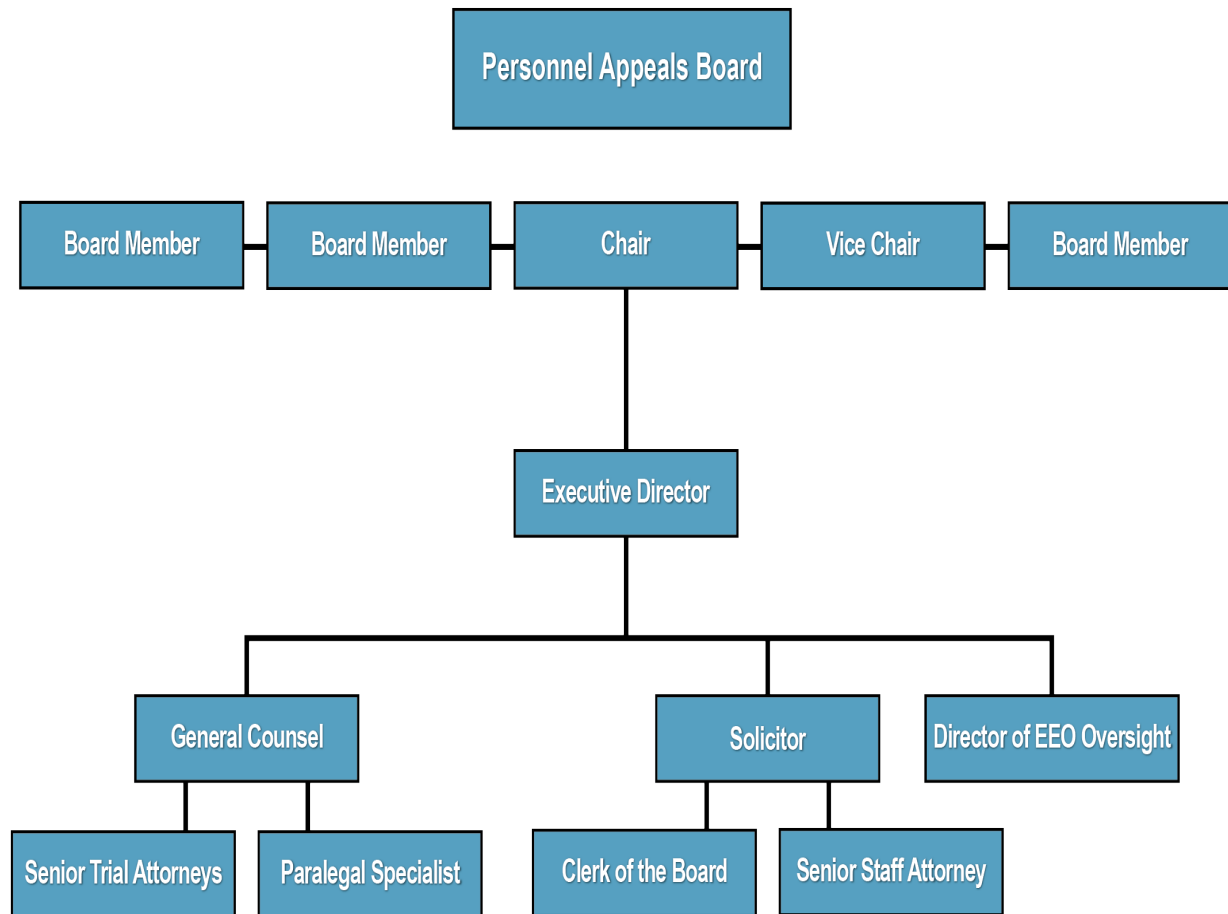
employment opportunity practices and procedures at GAO and issues evaluative reports that contain the Board's findings, conclusions, and recommendations to the Agency.¹⁰ The Clerk of the Board is responsible for receiving filings, distributing Board orders and decisions, and maintaining the Board's official records.

The PAB Office of General Counsel (PAB/OGC) investigates charges of prohibited personnel practices and unfair labor practices filed with its office and, if there is a reasonable basis to believe that a violation of law has occurred, offers to represent the charging party in litigation before the Board. The PAB General Counsel (PAB/GC) supervises the attorneys and paralegal in the conduct of investigations and litigation matters. The Senior Trial Attorneys investigate charges, consult with the General Counsel, and represent employees in litigation before the Board. The Paralegal Specialist assists the attorneys in their investigations and litigation matters.

Figure 1 on the following page shows the organizational make-up of the Personnel Appeals Board.

¹⁰ 31 U.S.C. § 732(f)(2)(A); see 4 C.F.R. §§ 28.91 and 28.92.

Figure 1: PAB Organizational Chart



CHAPTER 2: THE BOARD PROCESS

The Board's litigation process is explained in detail in the *Guide to Practice before the Personnel Appeals Board (Guide to Practice)*.¹¹ A brief summary follows.

An employee, a group of employees,¹² a labor organization, or an applicant for employment at GAO may file a Petition with the Board seeking review of an Agency action or inaction that adversely affected them. Such a Petition may arise 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 (ULP)¹³ or other covered labor-management relations issue; (4) an action involving prohibited discrimination;¹⁴ (5) a prohibited political activity; and (6) any

¹¹ The *Guide to Practice* is available on the PAB's website: <https://pab.gao.gov/procedural-guides/>.

¹² The Board can hear and decide cases filed by a group of petitioners as well as actions filed on behalf of a class.

¹³ A ULP is a violation of the rights and protections of employees, GAO, or the union under the applicable labor laws. 4 C.F.R. § 28.121. When a ULP petition is received, a single Board Member may be assigned to serve as administrative judge or the full Board may handle the petition. If the petition is decided by an administrative judge, their decision may be appealed to the full Board. ULP decisions by the full Board may be appealed to the Court of Appeals for the Federal Circuit. 31 U.S.C. § 755(a).

¹⁴ The complete procedures for filing a discrimination complaint with the Agency may be found in GAO Order 2713.2, Discrimination Complaint Resolution Process (Dec. 14, 2022) (hereafter GAO Order 2713.2). At GAO, the discrimination complaint process begins when the employee consults with a civil rights counselor in the Agency's Office of Opportunity and Inclusiveness (O&I).

Such contact must occur within 45 calendar days of the alleged incident. If the matter cannot be resolved, the employee may file a formal written complaint with O&I within 15 days of receipt of notice of the right to file a complaint from the counselor. The Director of O&I can either accept

other personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

In addition to its litigation activity, the Board is authorized to conduct representation proceedings at GAO, including determining appropriate bargaining units of GAO employees, conducting elections to determine whether employees in any such units wish to select a labor organization to represent them in collective bargaining, and certifying an organization so selected as the designated exclusive bargaining representative.¹⁵ The Board also plays a role in resolving impasses in collective

or dismiss the complaint. (See GAO Order 2713.2, Ch. 3, ¶ 3 for reasons why a complaint may be dismissed).

If the complaint is accepted, it is investigated and a report of the investigation is submitted to the Director of O&I. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who issues a final Agency decision.

An individual may seek relief from the PAB by filing a charge with the PAB Office of General Counsel within 30 days of receipt of GAO's final decision or dismissal of the complaint in whole or in part (GAO Order 2713.2, Ch. 4, ¶ 1).

An individual may also bring their case forward to the PAB when more than 120 days have elapsed since the complaint was filed with O&I and GAO has not issued a final decision.

The PAB's review is *de novo*, which means that the PAB will review all the facts and issues and render a decision independent of the final Agency decision, if there is one. Alternatively, an individual may pursue a discrimination complaint by filing a civil action in the appropriate Federal district court instead of filing a charge with the PAB Office of General Counsel.

¹⁵ Representation petitions are submitted to the Personnel Appeals Board's General Counsel, for pre-investigation and investigation proceedings. See 4 C.F.R. §§ 28.112 – 28.115. At the conclusion of these proceedings, the General Counsel shall submit a report to the Board recommending either approval of any agreements by the parties, dismissal of the petition, or issuance of a notice of hearing. See 4 C.F.R. § 28.115(a)(1) – (3). Where a hearing is ordered, an administrative judge shall be designated by the Board. See 4 C.F.R. § 28.115(d). A decision of a representation petition by the Board is not appealable to the Federal Circuit Court of Appeals. See 4 C.F.R. § 28.115(f).

bargaining,¹⁶ as well as in resolving certain negotiability issues.¹⁷ Additional information on these topics is available in the Board's *Guide to Labor-Management Relations Practice*.¹⁸

Section 1: Filing with the PAB Office of General Counsel

At GAO, an employee, group of employees, or an applicant for a job may file a charge with the PAB Office of General Counsel to initiate the Board process.¹⁹ The PAB/OGC has the authority to investigate charges. The PAB/OGC also may represent employees where the General Counsel finds reasonable grounds to believe a charging

¹⁶ An impasse occurs when GAO and the Union are unable to agree upon a negotiable proposal. The Board investigates whether an impasse exists and informs the parties whether it will assert jurisdiction over the matter. If it does not assert jurisdiction, the Board will provide a written decision stating its reasons. If it does assert jurisdiction, the Board can use several methods, including written submissions, fact finding by a Board Member, or arbitration and mediation with a Board member. If these methods are not successful, the Board can issue a binding, non-appealable Decision and Order. The parties may also request that the Board approve procedures for binding arbitration that the parties have agreed to adopt. GAO Order 2711.1, Labor-Management Relations, Ch. 5, ¶ 1 (Aug. 14, 2013).

¹⁷ The Board has authority to make negotiability determinations when GAO and the union fail to agree upon whether a proposal is subject to negotiation as part of their obligations to bargain in good faith. Negotiability petitions are typically assigned to a single Board Member who will serve as Administrative Judge. 4 C.F.R. § 28.122. The AJ's decision can be appealed to the full Board, and the full Board's decision may be appealed to the U.S. Court of Appeals for the Federal Circuit. 31 U.S.C. § 755(a).

¹⁸ The Board's *Guide to Labor-Management Relations Practice* is available at <https://pab.gao.gov/procedural-guides/>.

¹⁹ See <https://pab.gao.gov> under the link labeled "How to File."

party's rights have been violated regarding alleged violations of law over which the Board has jurisdiction.

A charge that does not involve discrimination may be filed with the PAB/OGC within 30 calendar days after the effective date of the underlying personnel action or within 30 calendar days after the charging party knew, or should have known, of the action.

An individual may file a charge involving alleged discrimination with the PAB/OGC either within 30 calendar days after receipt of the Agency's Office of Opportunity and Inclusiveness's (O&I's) rejection of the complaint in whole or in part, within 30 calendar days after receipt of the Agency's final decision on the complaint, or when more than 120 days have elapsed since the complaint was filed and O&I has not issued a final decision.²⁰

Once an individual charge is filed with the PAB/OGC, the charging party is advised of their rights and informed of the Board's mediation program.²¹ The PAB/OGC then conducts an independent investigation of the matters raised in the charge to determine whether there are reasonable grounds to believe that the employee's rights under the GAOPA have been violated. This process may include obtaining documents and taking oral statements from persons with knowledge of the circumstances that are involved in the allegations.

²⁰ GAO Order 2713.2, Ch. 4, ¶ 1.

²¹ *A Practice Guide to Mediation of Disputes at the Personnel Appeals Board* is available at <https://pab.gao.gov/procedural-guides/>.

Following the investigation, if no settlement occurs, the PAB/OGC issues a Right to Petition Letter notifying the charging party that the investigation has been completed and that the individual has the right to file a Petition with the Board seeking a review of the Agency action or inaction. The PAB/OGC also issues to the charging party alone a confidential Statement of Investigation that includes the results of the investigation and the PAB/OGC's conclusions regarding the legal and factual issues.

If the General Counsel concludes that reasonable grounds exist to believe that a violation of the law has occurred, the General Counsel will offer to represent the charging party in an evidentiary hearing before the Board at no expense to the employee. If the offer of representation is accepted, the PAB/OGC assumes responsibility for the entire case even if the employee has retained private counsel.

If the PAB General Counsel concludes that there are no reasonable grounds to support a claim, the charging party retains the right to file a Petition with the Board and request an evidentiary hearing. A Petitioner may appear *pro se*, or retain private counsel before the Board.

Section 2: The Board Case Process

A Petitioner must file their case with the Board within 30 calendar days after service of the Right to Petition Letter from the PAB/OGC. Alternatively, if 180 days have elapsed from the filing of a charge with the PAB/OGC and no Right to Petition Letter has been issued by the General Counsel, the employee may “opt out” of the investigation and file a Petition with the Board. An employee who chooses that route foregoes the opportunity to have the General Counsel present the case to the Board.

Upon receipt of a Petition, either a single Board member will be appointed to hear and decide the case or the Board will hear the case *en banc* (by all Board members). The Petition to the Board is not a challenge to, or review of, the conclusions of the PAB/OGC, but a fresh consideration of the Petitioner’s claims. The Board does not have access to the investigative work and conclusions of the PAB/OGC; the Administrative Judge is not informed whether the PAB/OGC found reasonable grounds to believe a violation of law existed in a given case, unless a Petitioner voluntarily discloses this information.²²

A Board Member’s initial decision is final unless: (1) the Board Member grants a party’s motion to reconsider; (2) the Board, on its own motion, decides to review the initial decision; or (3) a party timely appeals to the Board for full Board review.²³ Final

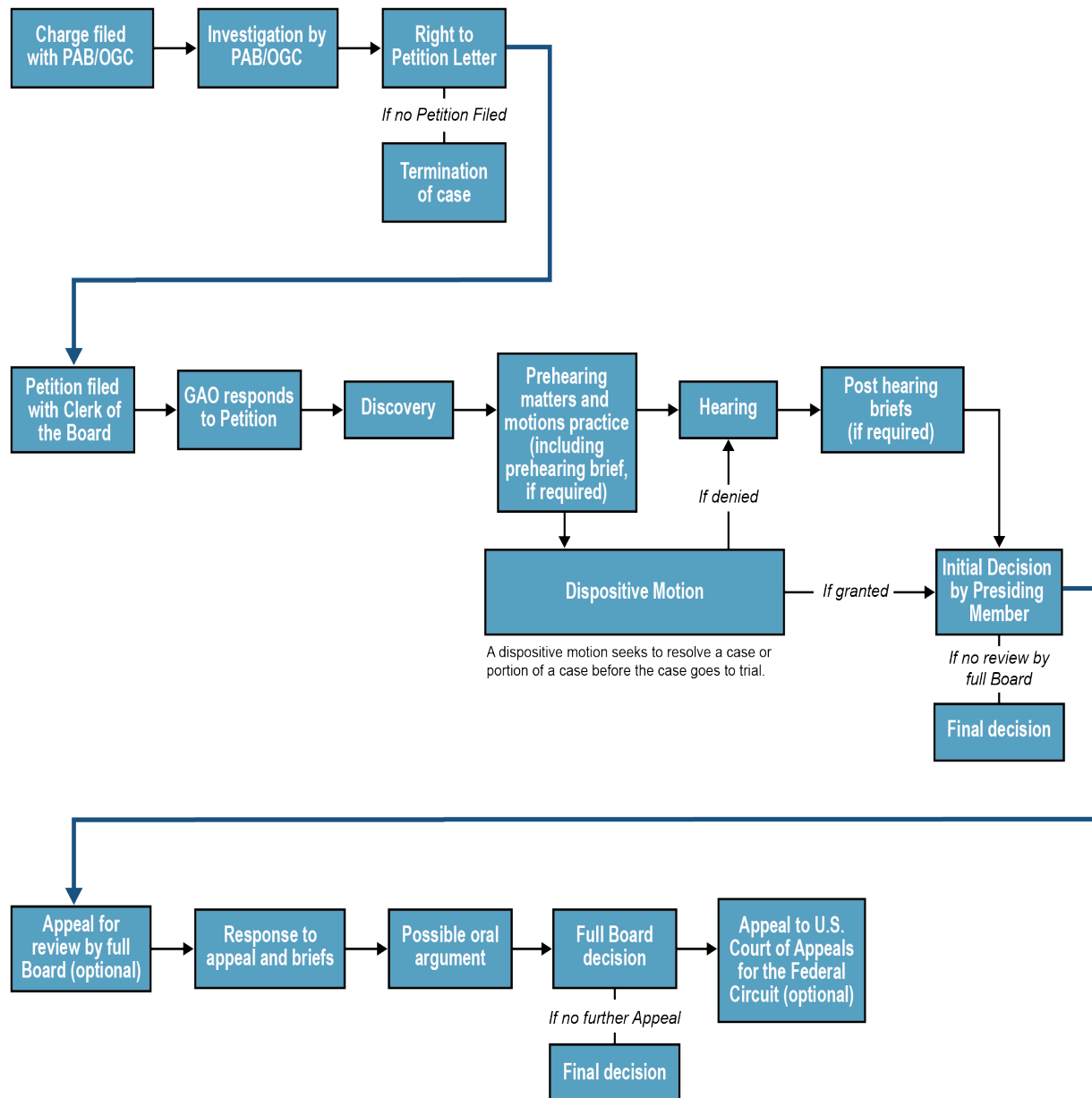
²² If a Petition is filed *pro se*, or Petitioner is represented by outside counsel, the Board has no information regarding why the PAB/OGC is not representing Petitioner. However, if Petitioner is represented by the PAB/OGC, presumably under the regulations, the General Counsel has determined that there is/are reasonable ground(s) for representation. In any event, Petitioner’s representation is not a factor in the Board’s final decision.

²³ See 4 C.F.R. § 28.87 for timelines to seek reconsideration or appeal of an initial decision.

decisions of the Board, with few exceptions, may be appealed to the U.S. Court of Appeals for the Federal Circuit.

The following chart describes the Board process from the time a charge is filed through the completion of all adjudication.

Figure 2: Board Process Illustrated



Section 3: PAB Office of General Counsel Authority

a. PAB/OGC Investigative Authority

As discussed above, the PAB/OGC is authorized to conduct independent investigations into matters raised and presented in charges filed by GAO employees or applicants for employment with GAO. This investigative authority represents the vast majority of investigations conducted by the PAB/OGC. In addition to investigations generated by individual or class charges, the PAB/OGC may initiate its own investigations, otherwise known as “corrective actions.”²⁴ The PAB/OGC may initiate an investigation upon receipt of information that suggests that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. Under this procedure, if an individual brings an allegation to the attention of the PAB/OGC, that individual may remain anonymous.

If, during an informational investigation, the PAB/OGC determines that there are sufficient grounds to believe that a violation of the law has occurred, or is about to occur, the PAB/OGC will contact the Agency with its findings and recommendation. If the recommendation is not followed within a reasonable period, the PAB/OGC may petition the Board to order corrective action.

b. PAB/GC Stay Requests

The PAB/GC may request that the Board issue an *ex parte* temporary stay, not to exceed 30 calendar days, of any proposed personnel action that, in the PAB/GC’s

²⁴ 4 C.F.R. § 28.131.

judgment, may constitute a prohibited personnel practice.²⁵ If the Board Chair grants the request for an *ex parte* stay, the PAB/GC may later request either a further temporary stay or a permanent stay of the proposed action.²⁶ One or more further temporary stays may be granted if the Board Member designated by the Chair, or the Board *en banc*, determines that, under all of the circumstances, the interests of justice would be served by providing more time for the PAB/OGC to pursue the investigation.²⁷ In considering a request for a permanent stay, the Board will consider (1) whether the proposed personnel action arises out of a prohibited personnel practice and (2) the nature and gravity of any harm that could affect each side as a result of granting or denying the stay. The Board may grant or deny a further temporary stay request or a permanent stay request based on the initial request and response alone, require further briefing and/or oral argument from the parties, or the Board may elect to conduct an evidentiary hearing on the request.

c. Disciplinary Proceedings

Following an investigation, the PAB/GC is authorized to file a complaint with the Board requesting disciplinary action against an employee when it is determined that such action is warranted. In such cases, the PAB/GC will provide a written complaint,

²⁵ The Board's stay authority does not extend to any reduction in force action. 31 U.S.C. § 753(b).

²⁶ The purpose of a further temporary stay is to provide the PAB/OGC more time to conduct its investigation. The purpose of a permanent stay is to stay the personnel action until the Board can render a final decision. 4 C.F.R. § 28.133(b).

²⁷ 4 C.F.R. § 28.133(d).

containing a statement of supporting facts, along with supporting documentation to the Board.²⁸ The PAB/GC's authority includes the authority to request disciplinary action for engaging in prohibited political activity.

If, after a hearing, the Board decides discipline is warranted and punishment is appropriate, the Board may order removal, reduction in grade, debarment from GAO employment, reprimand, or an assessment of civil penalty not to exceed \$1,000.

Judicial review of the Board's final order may be obtained in the U.S. Court of Appeals for the Federal Circuit.

d. Labor-Management Relations

The Board's regulations and GAO Order 2711.1 (Labor-Management Relations), authorize the PAB/OGC to process representation petitions filed by a labor organization, an employee or group of employees, or GAO.²⁹ The PAB/OGC reviews the representation petition and coordinates with the parties before preparing a report for the Board, which may recommend approval of appropriate agreements reached during

²⁸ 4 C.F.R. § 28.132.

²⁹ Representation Petitions are initiated when a request is filed with the PAB/OGC who will process and handle the request. The petitions can be filed by the following: 1. A labor organization seeking to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization desiring to replace another labor organization that is currently an exclusive representative; 2. An employee or a group of employees (or an individual on his, her or their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit; 3. GAO, if it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by their current exclusive representative; 4. GAO or a labor organization currently recognized as an exclusive representative desiring the Board to clarify an earlier unit determination or certification; or 5. Any person seeking clarification of, or an amendment to, a certification then in effect or any other matter relating to representation.

consultation with the parties, dismissal of the petition as being without merit, or issuance of a notice of hearing to dispose of unresolved issues raised in the petition. In addition, the PAB/OGC is responsible for investigating ULP charges filed with the Board.

CHAPTER 3: ACTIVITY OF THE PAB

Section 1: Labor-Management Relations

There were no labor-management relations matters before the Board in 2022.

Section 2: Employment Case Activity

a. Petitions before the Board

The Board had three Petitions before it in 2022 with one Petition pending from the previous calendar year and two filed during calendar year 2022. In the Petition pending from the previous year, the Petitioner claimed GAO discriminated against her based on her race (African-American) and age (45) by not selecting her for a promotion to a Senior Analyst position. Petitioner also alleged the non-selection was made in retaliation for her previous EEO activity. After she made the “Best Qualified” list for the Senior Analyst position, Petitioner claimed GAO promoted employees substantially younger than her. During the discovery process of the case, the parties filed a Joint Request for Mediation and Motion to Stay Proceedings in an effort to resolve the matter through settlement negotiations. The Administrative Judge granted the Joint Request for Mediation and Motion to Stay Proceedings until mediation was completed. The parties reached an agreement and settled the matter before the end of the calendar year. The Board received its first new Petition of the calendar year in May 2022. This matter concerned the interplay between GAO’s discrimination complaint resolution process under Order 2713.2 and certain claims of prohibited personnel practices filed with the PAB. Specifically, the Petitioner asked whether an individual who is alleging

discrimination can bypass GAO's EEO process as outlined in GAO Order 2713.2 by instead filing a prohibited personnel practice charge with the PAB/OGC alleging a violation of 5 U.S.C. § 2302(b)(1) and/or (b)(9). The Board elected to treat the question as a petition for a Statement of Policy or Guidance under its regulations. The full Board conducted the review of the petition.

Given the general applicability of the issues, the Board posted a notice in which it solicited employees' and employee groups' opinions on the questions presented. GAO, the Acting PAB General Counsel, the GAO Employees Organization, IFPTE Local 1921 ("Union") as well as two current GAO employees submitted responses. After careful review of all the responses and the factors governing issuance of a Statement of Policy or Guidance, the Board issued a decision on November 21, 2022 denying the request for a Statement of Policy or Guidance. The Board found that its regulations are clear and do not permit an individual to circumvent GAO's discrimination complaint resolution process by filing a charge with the PAB/OGC alleging a violation of section 2302(b)(1). With respect to section 2302(b)(9), however, the Board decided that it can fully and most efficiently clarify any perceived ambiguities in its regulations by publishing proposed amendments in the Federal Register, reviewing comments on the proposed amendments, and then publishing final amendments in the Federal Register.

The second new Petition for the calendar year was filed with the Board in August 2022. Petitioner, through PAB/OGC, alleged the Agency violated Title VII of the Civil Rights Act when it created a hostile work environment based on her race, color, and/or sex. The Agency filed a Motion for Leave to File a Motion to Dismiss in lieu of a

Response to the Petition. Shortly thereafter, Petitioner filed a Request for Mediation. On September 20, 2022, the Administrative Judge granted Petitioner's Request for Mediation, which stayed the proceedings for the duration of the mediation. The matter remained in mediation at the end of the calendar year.

b. Stay Requests

The PAB/OGC did not file any Stay Requests with the Board in 2022.

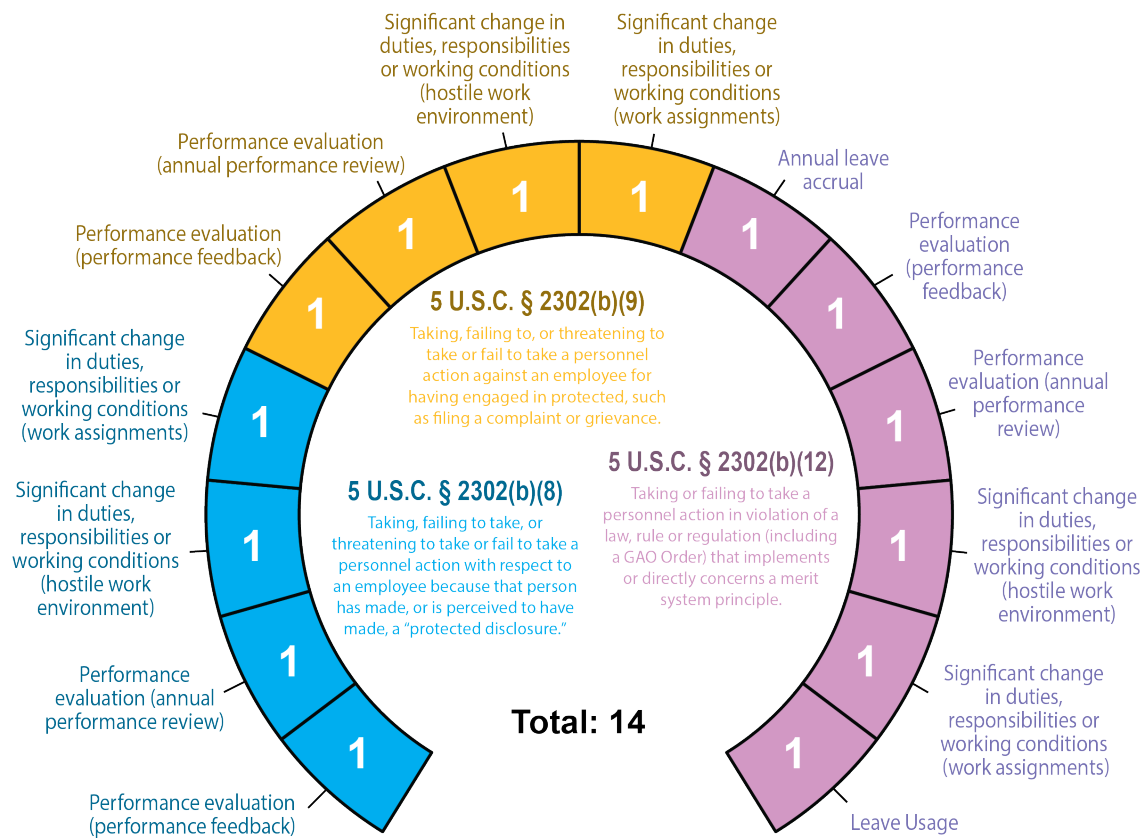
Section 3: PAB Office of General Counsel Activity

a. Case Activity

(1) Charges

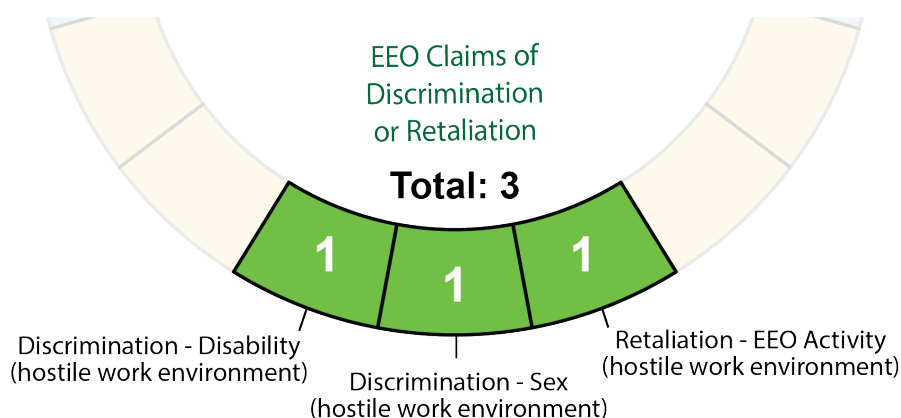
From January 1, 2022, through December 31, 2022, four charges (4) were filed with the PAB/OGC. Those charges involved seventeen (17) different allegations. Figures 3a and 3b below illustrate a breakdown of the different allegations presented in the charges filed with the PAB/OGC.

Figure 3a: Legal Allegations Presented in Charges - Prohibited Personnel Practices



Source: PAB/OGC.

Figure 3b: Legal Allegations Presented in Charges - Discrimination or Retaliation



Source: PAB.

During 2022, the PAB/OGC had a total of eleven (11) open cases, including investigation and litigation matters, on its case docket. By the end of the year, the PAB/OGC closed a total of six (6) investigations and provided comments on one (1) litigation matter in which it was not a party. Three (3) investigations and one (1) litigation matter remained open on the PAB/OGC case docket at the close of 2022. During the course of the year, the PAB/OGC helped facilitate a settlement between the parties in one (1) case at the investigative stage.

(2) Litigation

During calendar year 2022, the PAB/OGC participated in two cases before the Board. First, the Acting PAB General Counsel participated in the petition for a Statement of Policy or Guidance, discussed above, by submitting comments on July 12, 2022, in response to the Board's solicitation of comments by interested employees and employee groups.

Second, on August 31, 2022, the PAB/OGC filed a Petition on behalf of an employee who claimed the Agency violated Title VII of the Civil Rights Act when it created a hostile work environment on the basis of her race, color, and/or sex. At the end of the calendar year, the case was being held in abeyance while the parties engaged in mediation.

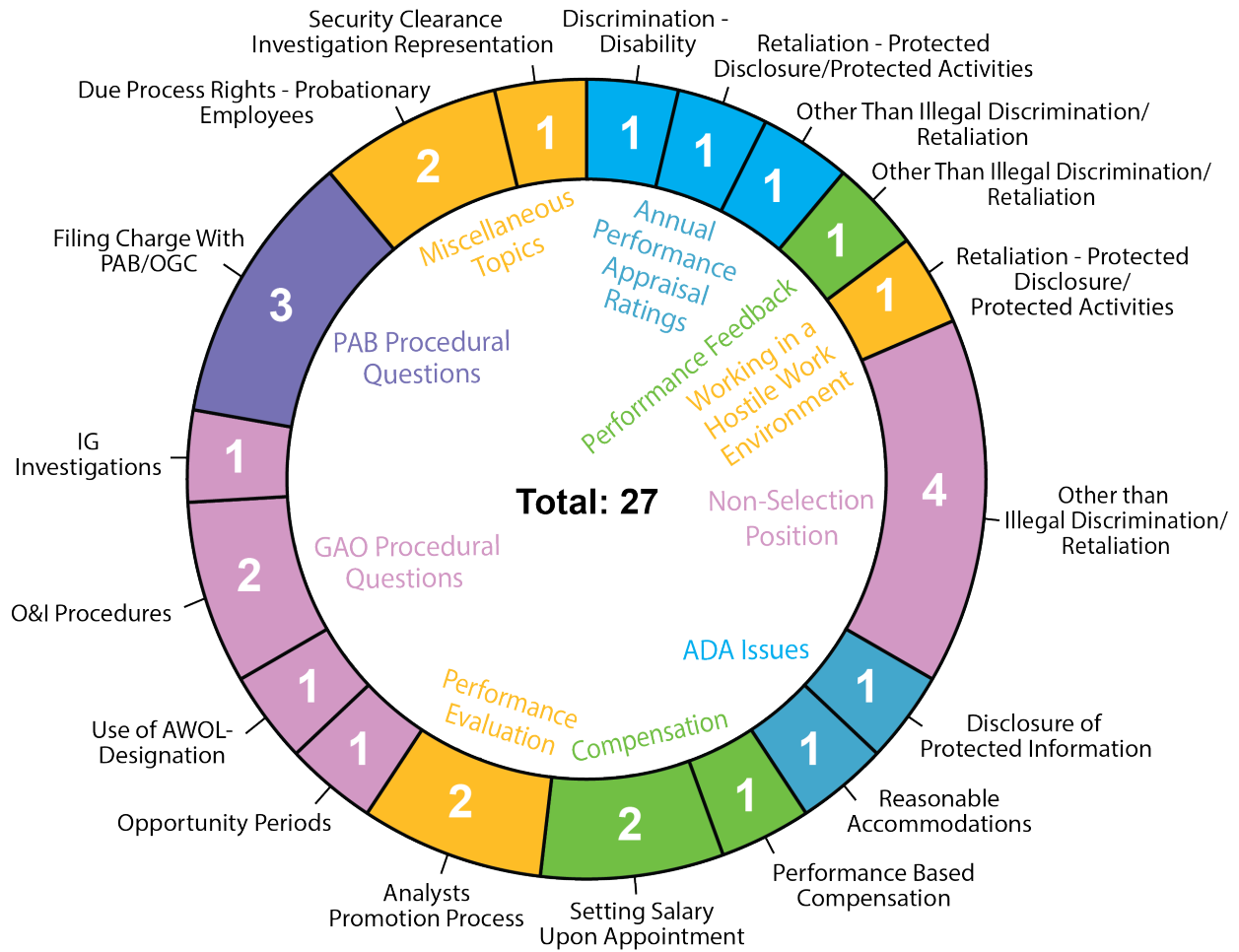
The PAB/OGC did not initiate any corrective actions, informational investigations, or seek any disciplinary action during the calendar year.

b. Other Activity

The PAB/OGC did not participate in any speaking engagements or give any presentations during the calendar year. In addition, the office did not submit comments on any GAO Orders this calendar year.

The PAB/OGC regularly provides information or informal advice to GAO employees about their personnel, labor, and equal employment opportunity rights. This is accomplished by responding to informational inquiries received by phone, email, or through an in-person meeting. The PAB/OGC fielded several informational inquiries covering twenty-seven (27) topics during calendar year 2022. The topics for those inquiries are shown below in Figure 4.

Figure 4: Informational Inquires



Source: PAB.

Section 4: Office of EEO Oversight Activity

The GAOPA authorizes the Personnel Appeals Board to oversee equal employment opportunity at GAO through review and evaluation of GAO's procedures, policies, and practices.³⁰ To fulfill this mandate, the Board established an Office of EEO Oversight to conduct studies of selected issues and prepare evaluative reports of the Board's findings and conclusions, as well as its recommendations to the Agency.³¹

In 2022, the Board continued to work on its study of the structure, operations, and actions of GAO's Office of Opportunity and Inclusiveness (O&I) and O&I's implementation of GAO procedures, policies, and practices that allow for compliance with the requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, Pub. L. 116-283, contained in Title XI, Subtitle B, Sect. 1131-1138 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA).

In addition, the Board Chair and Executive Director corresponded with, and met periodically with GAO leadership regarding GAO's response to the recommendations contained in the Board's December 9, 2019 [Study on Disability and Reasonable Accommodations](#).

³⁰ 31 U.S.C. § 732(f)(2)(A); see applicable regulations at 4 C.F.R. §§ 28.91, 28.92.

³¹ The Board's oversight reports can be found at <https://pab.gao.gov/pab-oversight-reports/>.

Section 5: Administrative and Outreach Activity

a. Mediation Program

The Board's mediation program was established to provide parties to claims and complaints with an alternative avenue for resolving disputes.³² The mediator is a facilitator who has no power or role to impose a specific resolution but is a neutral party trained to assist opposing parties in resolving their disputes without having to pursue litigation. The parties that participate in mediation have the option to meet separately and/or jointly with a mediator to work towards the goal of reaching a voluntary, mutually satisfactory resolution. Further information about the mediation program can be found on the Board's website. As previously discussed in Section 2.a., the Board had two mediation requests during calendar year 2022, which include one new mediation request filed and one pending from the previous year. The mediation matter pending from the previous year was resolved during the year. The new mediation matter was still in the negotiation stage at the end of the year.

b. Website Developments

The Board's website continues to be a valuable resource for information about the PAB.³³ The website allows individuals to research Board decisions by search terms within a decision. The PAB's Annual Report and EEO Oversight Reports are available

³² See the Board's *A Practice Guide to Mediation of Disputes at the Personnel Appeals Board*, which can be found at <https://pab.gao.gov/procedural-guides>.

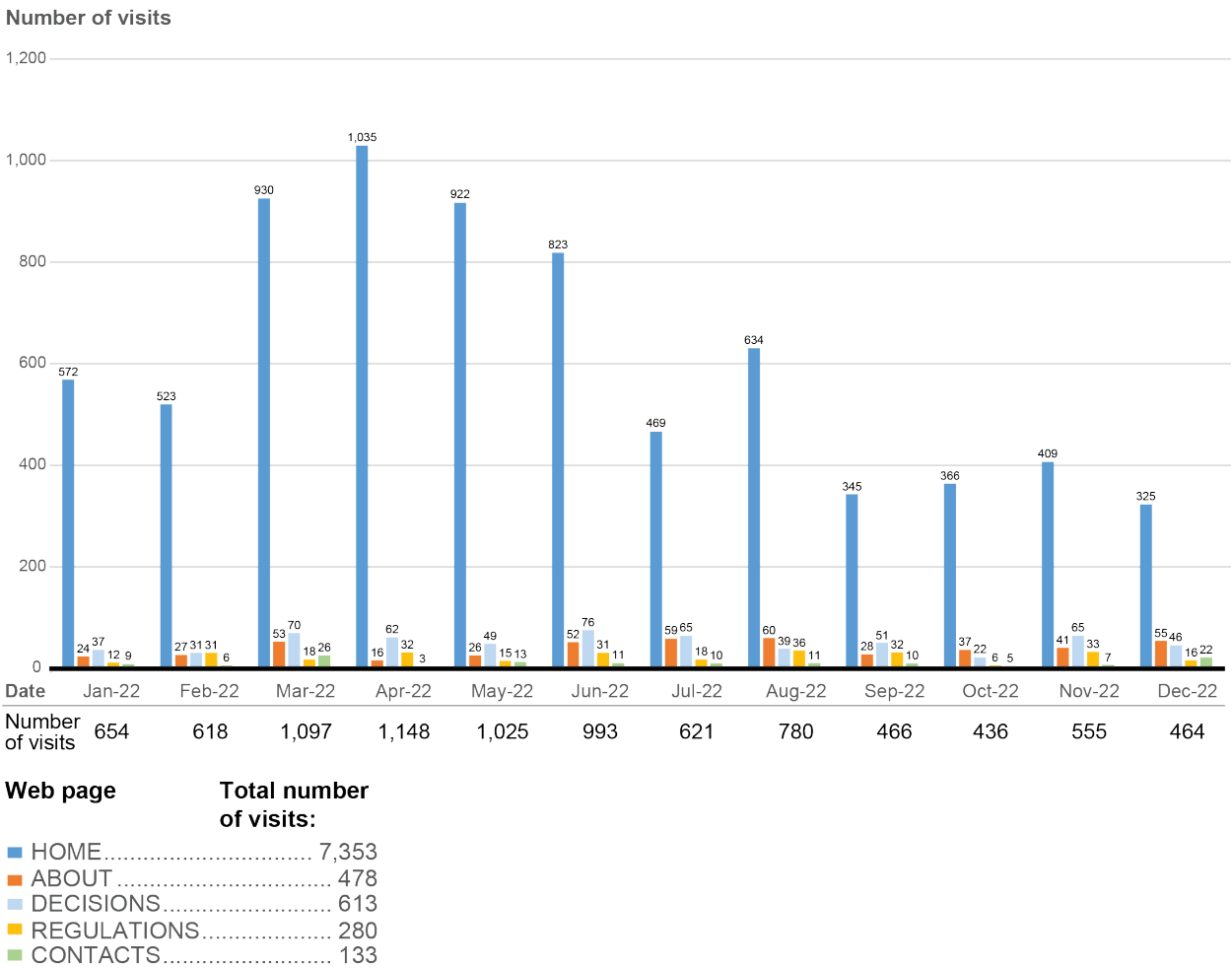
³³ The website can be found at <https://pab.gao.gov>.

exclusively on the website. The website also includes information regarding the procedures for filing documents with the Board and filing charges with the PAB/OGC.

In 2022, the Board staff continued to work on redesigning and modernizing the PAB website to make it more user-friendly and accessible while continuing to provide necessary and helpful information to visitors. The existing PAB website will continue to provide updates, announcements, and new decisions until the redesigned website is completed.

The Board tracks usage of the website for informational purposes only. It does not gather personal data in doing so. The data in the chart below captures the usage of the PAB website for 2022.

Figure 5: Number of Website Visits



c. Other Activity

In 2022, the Board conducted most of its operations via telework as a result of the COVID-19 pandemic. Board staff continued to work on case-related matters as well as administrative and organizational projects designed to facilitate internal research and referencing of Board history. These projects included organizing and consolidating case files. Board staff is also examining the existing administrative filing system and implementing changes with a goal of modernization and maximizing efficiency.

