

(Pub. L. 104-1, title IV, §405, Jan. 23, 1995, 109 Stat. 33.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(2)(A), (d)(3), and (h), was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3 which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Rule 45(b) of the Federal Rules of Civil Procedure, referred to in subsec. (f)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Subchapter II, referred to in subsec. (g), was in the original “title II”, meaning title II of Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 7, which is classified principally to subchapter II of this chapter. For complete classification of title II to the Code, see Tables.

§ 1406. Appeal to Board

(a) In general

Any party aggrieved by the decision of a hearing officer under section 1405(g) of this title may file a petition for review by the Board not later than 30 days after entry of the decision in the records of the Office.

(b) Parties’ opportunity to submit argument

The parties to the hearing upon which the decision of the hearing officer was made shall have a reasonable opportunity to be heard, through written submission and, in the discretion of the Board, through oral argument.

(c) Standard of review

The Board shall set aside a decision of a hearing officer if the Board determines that the decision was—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (2) not made consistent with required procedures; or
- (3) unsupported by substantial evidence.

(d) Record

In making determinations under subsection (c), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) Decision

The Board shall issue a written decision setting forth the reasons for its decision. The decision may affirm, reverse, or remand to the hearing officer for further proceedings. A decision that does not require further proceedings before a hearing officer shall be entered in the records of the Office as a final decision.

(Pub. L. 104-1, title IV, §406, Jan. 23, 1995, 109 Stat. 35.)

§ 1407. Judicial review of Board decisions and enforcement

(a) Jurisdiction

(1) Judicial review

The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any proceeding commenced by a petition of—

- (A) a party aggrieved by a final decision of the Board under section 1406(e) of this title in cases arising under part A of subchapter II,

(B) a charging individual or a respondent before the Board who files a petition under section 1331(d)(4) of this title,

(C) the General Counsel or a respondent before the Board who files a petition under section 1341(c)(5) of this title, or

(D) the General Counsel or a respondent before the Board who files a petition under section 1351(c)(3) of this title.

The court of appeals shall have exclusive jurisdiction to set aside, suspend (in whole or in part), to determine the validity of, or otherwise review the decision of the Board.

(2) Enforcement

The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 1405(g) or 1406(e) of this title with respect to a violation of part A, B, C, or D of subchapter II.

(b) Procedures

(1) Respondents

(A) In any proceeding commenced by a petition filed under subsection (a)(1)(A) or (B), or filed by a party other than the General Counsel under subsection (a)(1)(C) or (D), the Office shall be named respondent and any party before the Board may be named respondent by filing a notice of election with the court within 30 days after service of the petition.

(B) In any proceeding commenced by a petition filed by the General Counsel under subsection (a)(1)(C) or (D), the prevailing party in the final decision entered under section 1406(e) of this title shall be named respondent, and any other party before the Board may be named respondent by filing a notice of election with the court within 30 days after service of the petition.

(C) In any proceeding commenced by a petition filed under subsection (a)(2), the party under section 1405 or 1406 of this title that the General Counsel determines has failed to comply with a final decision under section 1405(g) or 1406(e) of this title shall be named respondent.

(2) Intervention

Any party that participated in the proceedings before the Board under section 1406 of this title and that was not made respondent under paragraph (1) may intervene as of right.

(c) Law applicable

Chapter 158 of title 28 shall apply to judicial review under paragraph (1) of subsection (a), except that—

(1) with respect to section 2344 of title 28, service of a petition in any proceeding in which the Office is a respondent shall be on the General Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 1406(e) of this title; and

(4) the Office shall be an “agency” as that term is used in chapter 158 of title 28.

(d) Standard of review

To the extent necessary for decision in a proceeding commenced under subsection (a)(1) and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision of the Board if it is determined that the decision was—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (2) not made consistent with required procedures; or
- (3) unsupported by substantial evidence.

(e) Record

In making determinations under subsection (d), the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 104–1, title IV, § 407, Jan. 23, 1995, 109 Stat. 35.)

REFERENCES IN TEXT

Parts A, B, C, and D of subchapter II, referred to in subsec. (a), were in the original references to parts A (§§ 201–207), B (§ 210), C (§ 215), and D (§ 220), respectively, of title II of Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 7, 13, 16, 19, which are classified principally to parts A, B, C, and D, respectively, of subchapter II of this chapter. For complete classification of parts A, B, C, and D to the Code, see Tables.

§ 1408. Civil action

(a) Jurisdiction

The district courts of the United States shall have jurisdiction over any civil action commenced under section 1404 of this title and this section by a covered employee who has completed counseling under section 1402 of this title and mediation under section 1403 of this title. A civil action may be commenced by a covered employee only to seek redress for a violation for which the employee has completed counseling and mediation.

(b) Parties

The defendant shall be the employing office alleged to have committed the violation, or in which the violation is alleged to have occurred.

(c) Jury trial

Any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made applicable by this chapter. In any case in which a violation of section 1311 of this title is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 1311(b)(1) or 1311(b)(3) of this title.

(d) Appearances by House Employment Counsel

(1) In general

The House Employment Counsel of the House of Representatives and any other counsel in the Office of House Employment Counsel of the House of Representatives, including any counsel specially retained by the Office of

House Employment Counsel, shall be entitled, for the purpose of providing legal assistance and representation to employing offices of the House of Representatives under this chapter, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any such person to practice before the United States Supreme Court.

(2) House Employment Counsel defined

In this subsection, the term “Office of House Employment Counsel of the House of Representatives” means—

(A) the Office of House Employment Counsel established and operating under the authority of the Clerk of the House of Representatives as of November 12, 2001;

(B) any successor office to the Office of House Employment Counsel which is established after November 12, 2001; and

(C) any other person authorized and directed in accordance with the Rules of the House of Representatives to provide legal assistance and representation to employing offices of the House of Representatives in connection with actions brought under this subchapter.

(Pub. L. 104–1, title IV, § 408, Jan. 23, 1995, 109 Stat. 37; Pub. L. 107–68, title I, § 119(a), Nov. 12, 2001, 115 Stat. 573.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d)(1), was in the original “this Act”, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–68 added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–68, title I, § 119(b), Nov. 12, 2001, 115 Stat. 574, provided that: “The amendment made by this section [amending this section] shall apply with respect to proceedings occurring on or after the date of the enactment of this Act [Nov. 12, 2001].”

§ 1409. Judicial review of regulations

In any proceeding brought under section 1407 or 1408 of this title in which the application of a regulation issued under this chapter is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5, except that with respect to regulations approved by a joint resolution under section 1384(c) of this title, only the provisions of section 706(2)(B) of title 5 shall apply. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued. Except as provided in this section, the validity of regu-