



U.S. Department of Justice  
Complaint Adjudication Office

Agency Complaint No. BOP-2010-0305  
DJ Number 187-3-3004

950 Pennsylvania Ave, NW  
Patrick Henry Building, Room A4810  
Washington, DC 20530

NOV 02 2011

DEPARTMENT OF JUSTICE FINAL DECISION

in the matter of

Victor Wilson v. Federal Bureau of Prisons

On March 31, 2010, complainant Victor Wilson filed an employment discrimination complaint against the Federal Bureau of Prisons pursuant to Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16, Section 15 of the Age Discrimination in Employment Act, 29 U.S.C. §633(a), Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791, and 29 C.F.R. §1614.101(a). Complainant claimed that he was discriminated against based on race (black), age (46 at time of the selections) and disability (back, foot, wrist and knee injuries) when he was not selected for the position of Fabric Worker Supervisor in January 2010. After an EEO investigation was conducted, complainant requested a hearing before an Administrative Judge of the Equal Employment Opportunity Commission. On April 8, 2011, the AJ issued an Order indicating that complainant had waived his right to a hearing because he failed to comply with the November 2, 2010, Acknowledgment and Supplemental Order. On May 6, 2011, this office issued a Final Order accepting the AJ's decision and indicated it would issue a final Department of Justice decision under separate cover.

Facts

I. Complainant's allegations

Complainant, a Woodworking Machine Operator/UNICOR Foreman at the Federal Correctional Institution in Talladega, Alabama ("FCI-Talladega"), claimed that he was discriminated against based on race, age and disability when he was not selected for one of three UNICOR Fabric Worker Supervisor positions at FCI-Talladega for which he applied in December 2010. Complainant said that there were eight UNICOR applicants for the three positions - six white applicants and two black applicants - and

that management selected three white applicants to fill the vacancies (Ex. 1, p. 2). He said that all of the applicants were found to be qualified for the position. Complainant was the only candidate listed on the Veteran's Exception Certificate because he had a service-connected disability of 30% or more (Ex. 23, p. 2). The selecting official for the Fabric Worker Supervisor position was Paul Laird (white, age 44), Assistant Director, Industries, Education and Vocational Training (IEVT) Division, in Washington, D.C.

Complainant said that, when he returned to BOP after a 3½ year military deployment, his disability rating from the Veterans Administration was increased to 80% (Ex. 8, p. 9). He said his disability rating was only 10% when he was deployed. Complainant said he suffered from "a disability of my back, left foot, right wrist, right and left knee" and that his impairment prevented him from lifting over 15 pounds and caused him to live with daily pain (id. at 7). He said Laird should have been aware of his disability because his VA rating was included in his paperwork. Complainant said that he believed his disability was a factor in his not being selected because management felt that "it wouldn't be worth their while to hire me for this new position" because of his 80% disability rating (id. at 7). He added, "what better way could the Bureau use to get rid of me than to use my percentage of disability and service to my country in the US Army" (id. at 9).

Complainant further stated that he believed his age was a factor in management's decision because two of the selectees were younger than he (ibid.). He said, if management had selected him "with the amount of time that I have left with the Bureau, then they thought that [I] would have retired and left them sort of hanging with only one foreman left in the factory" (ibid.). With regard to his race, complainant said that he had the same amount of training as the three white selectees (id. at 11).

## II. Management's response

Selecting official Paul Laird said he made his selections from the qualified list of candidates and also considered the recommendation of Deputy Assistant Director Paul Sibal (Ex. 9, p. 2). Laird said that Sibal recommended Alan Harris (white, age 45), Paul Joseph (white, age 49) and Karl Sikole (white, age 41) as the best qualified candidates (Supplemental ROI, Ex. 3, p. 14). He said he did not receive any recommendations



regarding complainant and that he never discussed complainant's race, age or disability with anyone (id. at 3).

Phil Sibal (white, age 55), the Deputy Assistant Director of the IEVT Division, said he supervises the General Manager of the Office Furniture Group and had responsibility for the furniture factory at FCI-Talladega (Ex. 10, p. 2). Sibal said he did not recall the specific selections, but that his role would have been to take the promotion certificate to Laird with the recommendation of the "General Manager" of the Clothing and Textiles Group at FCI-Talladega (ibid.).<sup>1</sup> Sibal said he recommended candidates to Laird based on input from the General Manager, and that the General Manager's recommendation was based on input from the Warden at FCI-Talladega (id. at 3). Sibal said he did not recall any specific recommendation regarding complainant (ibid.). In his supplemental affidavit, Sibal stated that, "I do not recall receiving any direct input from management officials at FCI-Talladega. However, the recommendation of the Warden was communicated to me by the General Manager of the Clothing and Textiles Business Group." (Supplemental ROI, Ex. 4, p. 18).

Former FCI-Talladega Warden Constance Reese, who retired from BOP on December 31, 2009, said she had no involvement in the selection process for the Fabric Worker Supervisor positions (Ex. 12, p. 3).

Current FCI-Talladega Warden John Rathman said that he was not sure who made the final selection for the Fabric Worker Supervisor positions in question because he was still the Warden at FDC-Miami at the time (Ex. 11, p. 3). Rathman said he had no involvement in the selections.

FCI-Talladega Supervisor of Industries Joey Blackerby (white, age 46) said he is responsible for oversight of the Unicor operation and is complainant's second-line supervisor (Ex. 13, p. 3). Blackerby said he played no part in the selection process for the Fabric Worker Supervisor positions and

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1 While Sibal refers to the "General Manager of the Clothing and Textiles Group" at FCI-Talladega, it is not clear from the record to whom he is referring. There is no affidavit from, or any other reference in the record to, a General Manager. Joey Blackerby is identified as the Supervisor of Industries at FCI-Talladega, but it is unclear if he is the person to whom Sibal is referring. Blackerby claimed no involvement in the selection.



did not provide any recommendations (id. at 5). Blackerby said all the candidates had the same amount of training (id. at 6).

FCI-Talladega Employee Services Manager Michelle Blake said that the Warden usually makes selections, but the Fabric Worker Supervisor selection was "an unusual case" (Ex. 14, p. 6). Blake said that Warden Reese retired at the end of December 2009, and the new Warden did not arrive for approximately two months. She said there was an Associate Warden serving as the Acting Warden at the time of the selections and the Associate Warden could not make personnel selections (ibid.). Blake said that BOP UNICOR officials in Washington, D.C., told her to send the selection certificate to them, adding that they made the selections themselves (ibid.).

### III. Statements of other employees

Woodworking Machine Operator Supervisor Robert Wilson (black, age 42) also applied for the Fabric Worker Supervisor position. Wilson said he believes race was a factor because he and complainant are both black disabled veterans and should have been given preference over other candidates (Ex. 15, p. 4). Wilson added that there are no black Fabric Worker Supervisors in UNICOR at FCI-Talladega.

Correctional Officer Wendell Scott (black) was complainant's union representative. Scott said he believes complainant was discriminated against because "he's a military guy and I think they've discriminated a lot because of that too" (Ex. 19, p. 6). Scott also emphasized that all three selectees were white.

### IV. Other evidence

Complainant's application indicates that he served a temporary duty assignment at FCC-Yazoo City's textiles factory from September 2009 to December 2009 and gained knowledge of "three different articles of production products" (Ex. 23, p. 2). From February 2001 to July 2009, complainant was a Woodworking Machine Operator Supervisor at the UNICOR factory at FCI-Talladega. He said he supervised 100 to 200 inmates and trained them in all phases of the furniture production process (id. at 4). On his Employee Performance Appraisal for the rating period 4/1/09 to 3/31/10, complainant received a rating of "Excellent" and was told he was doing a "Great Job!" (Ex. 28, p. 1).



Selectee Alan Harris' application indicates that he had been a Woodworking Machine Operator Supervisor at FCI-Talladega since February 2001 at the time of his selection (Ex. 24, p. 2). He said he had also served stints as the Factory Manager, Quality Assurance Manager and the Superintendent of Industries.

Selectee Joseph Paul had been a UNICOR Factory Foreman at FCI-Talladega since September 2006 (id. at 5). Paul said he managed an inmate detail of 20 to 35 inmates in the production of beds, nightstands and wardrobes (ibid.). From September 2002 to April 2006, Paul was an ISM Manager.

Selectee Karl Sikole also went on a TDY assignment to FCC-Yazoo City's textiles factory in September 2009 and supervised inmates in the manufacturing of the Improved Outer Tactical Vest (id. at 13). Sikole served as a Woodworking Machine Operator Supervisor from August 2006 to September 2009 at FCI-Talladega.

### Analysis

Complainant claimed that he was not selected for a Fabric Worker Supervisor position at FCI-Talladega in January 2010 because of his race, age and disability. Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16, and 29 C.F.R. §1614.101(a), prohibit federal employers from discriminating against employees based on race. Section 15 of the Age Discrimination in Employment Act, as amended, 29 U.S.C. §633(a), prohibits federal employers from discriminating against individuals 40 years old or over on the basis of age. In addition, Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791, prohibits discrimination against otherwise qualified federal employees with disabilities on the basis of those disabilities. Based on a thorough review of the record, including the supplemental ROI submitted by BOP, the record, as it currently stands, compels the conclusion that complainant was discriminated against based on race when he was not selected for a Fabric Worker Supervisor position. The record does not establish that complainant was discriminated against based on age or disability.

In disparate treatment cases, the U.S. Supreme Court has fashioned a tripartite method of assessing circumstantial evidence of discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). The first step is to determine whether the record establishes a *prima facie* case of discrimination. Once the record establishes a *prima facie* case,



the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for the action taken against the employee. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981) (quoting McDonnell Douglas, 411 U.S. at 802). The employer may meet this burden by introducing evidence that clearly sets forth the reason for the employment action taken against the complainant. Burdine, 450 U.S. at 255. Once management has provided a legitimate, non-discriminatory reason, it must be determined whether the employer's proffered reason is the true reason for the employment decision or merely a pretext for discriminatory conduct. Id. at 253, 256; Hicks, 509 U.S. at 507-08; Brooks v. Apfel, EEOC No. 01963156 (March 27, 1998).

In a disparate treatment selection case based on race or age, a complainant can establish a *prima facie* case of discrimination if he demonstrates that: 1) he was a member of a protected class; 2) he applied for and was qualified for the position at issue; (3) he was considered for and denied the position; and (4) a similarly situated individual, not a member of his protected group, was selected for the position. See Huber v. Dept. of Transportation, EEOC No. 0120070399 (July 9, 2009). With regard to age discrimination, the record must show that the selectees were under age 40 or that they were significantly younger than complainant. See Varley v. Department of Justice, EEOC No. 01972338 (December 3, 1998); O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312 (1996). In this case, the record clearly establishes a *prima facie* case of race discrimination because complainant is black and all three of the selectees were white. However, the record does not establish a *prima facie* case of age discrimination because the record demonstrates that the selectees were not significantly younger than complainant. Joseph Paul was actually three years older than complainant, and Alan Harris and Karl Sikole were only one and five years younger, respectively (Ex. 24).

In order to establish a *prima facie* case with regard to complainant's disability discrimination claim, the record must demonstrate that: (1) he is an "individual with a disability"; (2) he was "qualified" for the position held or desired; (3) he was subjected to an adverse employment action; and (4) the circumstances surrounding the adverse action give rise to an inference of discrimination. Harvey v. Dept. of the Navy, EEOC No. 0120110684 (April 21, 2011). The threshold issue is whether complainant's impairment constituted a disability within the meaning of the Rehabilitation Act. Complainant stated that he



has back, foot, wrist and knee problems that affect him if he is lifting over 15 pounds and if he stands for a long period of time (Ex. 8, p. 7). He said that, when he returned to BOP after military deployment, he had a VA disability rating of 80%. He also said that he could perform all of the functions of the position without any accommodation (*id.* at 8). It is well-established that disability ratings from the Department of Veterans Affairs do not necessarily indicate that an individual is disabled under the Rehabilitation Act. While such a rating may provide some evidence of disability, it does not constitute proof of disability under the Rehabilitation Act. Muskopf v. USPS, EEOC No. 01975667 (February 25, 2000). Here, the record contains no medical documentation regarding complainant's impairments and he clearly indicated that he could perform the duties of the position without accommodation. Without additional medical documentation, there is insufficient evidence that complainant was an individual with a disability entitled to coverage under the Rehabilitation Act. Thus, the record also fails to establish a *prima facie* case of disability discrimination.

Because the record establishes a *prima facie* case of race discrimination, the burden shifts to BOP to articulate a legitimate, non-discriminatory reason for rejecting complainant, or for preferring the selectees. The explanation provided must be legally sufficient to rebut the inference raised by the *prima facie* case. Burdine, 450 U.S. at 255. Management's explanation must "frame the factual issue with sufficient clarity so that [the complainant] will have a full and fair opportunity to demonstrate pretext." *Id.* at 255-56. An employer's failure to provide a legitimate, non-discriminatory reason for the alleged adverse employment action may result in a failure to rebut the complainant's *prima facie* case and could lead to an adverse inference being drawn and a finding of discrimination. See Obas v. Dept. of Justice, EEOC No. 0120083050 (October 28, 2010). A review of the record demonstrates that BOP management officials involved in the Fabric Worker Supervisor selections failed to provide a legitimate, non-discriminatory reason for making the selections they did. In his affidavit in the original ROI, selecting official Paul Laird stated only that he made his selections from the qualified list of candidates he received and that he considered the recommendations of his Deputy, Paul Sibal (Ex. 9, p. 2). Sibal said he did not recall the selections, but that he would have taken the promotion certificate to Laird with the recommendation of the General Manager of the Clothing and Textiles Group from FCI-Talladega (Ex. 10, p. 2). However, there is no affidavit in the record from this General Manager,



nor is this person even identified. Sibal also said that the input from the General Manager would have been based on input from FCI-Talladega's warden. The record indicates that Warden Constance Reese retired on December 31, 2009, and said she had no input into the selection process (Ex. 12, p. 2). Reese's replacement, John Rathman, did not arrive at FCI-Talladega until after the selection was made on January 12, 2010. Rathman also claimed to have had no input into the selections. Employee Services Manager Michelle Blake said that the AW who was serving as the Acting Warden after Reese retired was not allowed to make personnel selections (Ex. 14, p. 6). In addition, Joey Blackerby, who is the Supervisor of Industries at FCI-Talladega and complainant's second-level supervisor, said he had no input into the selections of the Fabric Worker Supervisors in January 2010 (Ex. 13, p. 5).

On April 21, 2011, this office requested additional information from BOP regarding "any FCI-Talladega management official who provided input to Laird or Sibal regarding the candidates for the Fabric Worker Supervisor positions." BOP failed to provide any additional affidavits. BOP provided no affidavit from either the General Manager of the Clothing and Textiles Group or the candidates' direct supervisor at FCI-Talladega, Factory Manager Brad Sowter. Even after this office's request for supplemental information, BOP provided no new information regarding the reasons that Harris, Paul and Sikole were selected over complainant. Sibal simply reiterated his statement in his original affidavit that the recommendations he received were communicated to the General Manager by the Warden at FCI-Talladega. No information regarding the substance of those recommendations was ever provided. There is also no discussion in the record of the merits of the selectees and why BOP management officials involved in the selection process believed they were superior candidates to complainant. Employee Services Manager Michelle Blake did provide evidence that this selection was unusual in the sense that FCI-Talladega was in between wardens at the time and the Acting Warden was not allowed to make personnel selections. She said the UNICOR Central Office personnel asked for the list of names so they could make the selection themselves (Ex. 14, p. 6). However, BOP management officials were still obligated to provide, with sufficient clarity, their reasons for preferring the selectees over complainant such that complainant had a full and fair opportunity to demonstrate that those reasons were a pretext for discrimination and this office had an opportunity to consider a full record. BOP failed to do so in this case. Moreover, the fact that Laird or Sibal may not have known the respective races



of the candidates for the Fabric Worker Supervisor position is not dispositive because, ultimately, both stated they relied on the recommendations of management officials at FCI-Talladega who would have been familiar with all of the candidates.

The EEOC has reached findings of discrimination under similar circumstances. For example, in Reed v. Dept. of State, EEOC No. 01A43945 (May 2, 2006), the EEOC found that management retaliated against complainant because management failed to articulate a "specific, clear and individualized legitimate, nondiscriminatory reason" for failing to assign the complainant to an Acting Division Director position. The EEOC cited the U.S. Supreme Court's decision in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993), in stating that, "[b]ecause the agency failed to rebut complainant's *prima facie* case, the burden never shifted back to complainant to establish pretext." Similarly in Obas v. Dept. of Justice, *supra*, the agency's failure to provide information directly comparing complainant's qualifications to those of the selectees led to a finding of discrimination. The EEOC stated that, "the lack of specificity as to why the Agency chose the Selectees instead of Complainant makes it impossible for Complainant to prove the reasons for not selecting him were a pretext for discrimination."

In Hicks, the Supreme Court indicated that a trier of fact may look to the entire record, even in the absence of an articulated management reason, to assess whether discrimination motivated an adverse employment action. 509 U.S. at 520. Here, based on a review of the candidates' Applicant Data Reports, complainant certainly appears to possess at least similar or better qualifications and experience than the three selectees. All had served as Woodworking Machine Operator Supervisors and it appears that complainant and at least one of the selectees had served TDY assignments as supervisors in the textile factory at FCC-Yazoo City in late 2009. A review of the Applicant Data Reports also demonstrates that complainant had at least five more years of UNICOR supervisory experience than both Paul and Sikole (Exs. 23-24). Importantly, Joey Blackerby, who was the second-level supervisor for all of the UNICOR foremen at FCI-Talladega, said that all of the candidates had the same amount of training (Ex. 13, p. 6). In addition, the fact that complainant received an "Excellent" rating on his 2009-10 Employee Performance Appraisal removes any question as to whether his performance was up to par with that of the selectees. Thus, without specific details regarding the reasons for management's selections, it is at least arguable that



complainant was better qualified than one or more of the selectees for a Fabric Worker Supervisor position.

In light of the record evidence regarding complainant's experience, accomplishments and excellent performance, and BOP's failure to articulate any legitimate, non-discriminatory reasons for not selecting him for one of the three Fabric Worker Supervisor positions, this office finds that BOP failed to rebut complainant's *prima facie* case of race discrimination. Thus, the record establishes that complainant was discriminated against based on his race when he was not selected for one of the Fabric Worker Supervisor positions in January 2010. The record fails to establish a *prima facie* case of either age or disability discrimination.

#### Decision

BOP failed to articulate a legitimate, non-discriminatory reason for not selecting complainant. Thus, the record, as it exists, compels a finding that BOP management officials discriminated against complainant based on his race when they failed to select him for a Fabric Worker Supervisor position in January 2010. Because this office finds that BOP discriminated against complainant under Title VII of the Civil Rights Act of 1964, the following relief is ordered:

1. Within 60 days of the date of this decision, BOP shall offer complainant the position of Fabric Worker Supervisor (UNICOR), WS-3105-07, or a substantially equivalent position at FCI-Talladega. Complainant shall be given 15 days from the receipt of the offer to either accept or decline the offer. Failure to accept the offer within the 15-day period shall be considered a declination of the offer, unless complainant can show that circumstances beyond his control prevented him from responding within the time limit.
2. BOP is directed to award complainant back pay, with interest, and other benefits pursuant to 29 C.F.R. §1614.501. Back pay and benefits shall be calculated from January 12, 2010, up to the date on which complainant is offered a Fabric Worker Supervisor position. If BOP concludes that complainant would not have entered on duty until a later date, it should provide documentation supporting its conclusion. BOP shall determine the appropriate amount of back pay, interest, and other benefits due complainant, pursuant to 29 C.F.R. §1614.501(b), within sixty days of the date complainant either accepts or declines an



offer of employment. Complainant shall cooperate with BOP's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by BOP. If there is a dispute regarding the exact amount of back pay and/or benefits, BOP shall issue a check to complainant for the undisputed amount and complainant may petition this office for enforcement or clarification of the amount in dispute.


3. As the prevailing party in this matter, complainant may be eligible for compensatory damages pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. Complainant will be eligible for compensatory damages if he can demonstrate that he suffered injuries as a direct result of the discrimination found to have occurred in this decision. BOP shall attempt to determine from complainant, using statements from complainant and others who may have witnessed any emotional or other harm complainant suffered from the discrimination, including medical evidence, an appropriate award for any emotional harm suffered as a result of the disability discrimination in this case. In the event the parties are unable to agree upon an appropriate compensatory damages award, they should notify this office so that an appropriate award may be determined.

4. As the prevailing party in this case, complainant is also entitled to an award of reasonable attorney's fees pursuant to 29 C.F.R. 1614.501(e). If complainant employed the services of an attorney, his attorney should provide BOP with a verified statement of costs and an affidavit itemizing the charges for work on those aspects of the case on which the complainant prevailed. Other supporting documentation should also be submitted at this time. In the event the parties are unable to agree upon a reasonable attorney's fee award, they should notify this office so that an appropriate award may be determined.

5. Within thirty days of the date of this decision, BOP shall post a Notice within the UNICOR factory at FCI-Talladega, consistent with the requirements of 29 C.F.R. §1614.501(a).

  
Mark L. Gross

Complaint Adjudication Officer

  
David B. Berry  
Attorney

Complaint Adjudication Office





# Memorandum

Subject:

Victor Wilson v. Federal Bureau of Prisons  
Agency Complaint No. BOP-2010-0305

Date:

NOV 02 2011

To: Thomas Kane  
Acting Director  
Federal Bureau of Prisons

From: Mark L. Gross  
Complaint Adjudication  
Officer  
Department of Justice

There has been a finding of discrimination in the matter of Victor Wilson v. Federal Bureau of Prisons. This office has determined that BOP management officials discriminated against complainant based on his race (black) when they failed to select him for a Fabric Worker Supervisor position at FCI-Talladega in January 2010. Specifically, this office determined that BOP failed to articulate a legitimate, non-discriminatory reason for not selecting complainant for one of the three Fabric Worker Supervisor vacancies. Therefore, the following relief is ordered.

1. Within 60 days of the date of this decision, BOP shall offer complainant the position of Fabric Worker Supervisor (UNICOR), WS-3105-07, or a substantially equivalent position at FCI-Talladega. Complainant shall be given 15 days from the receipt of the offer to either accept or decline the offer. Failure to accept the offer within the 15-day period shall be considered a declination of the offer, unless complainant can show that circumstances beyond his control prevented him from responding within the time limit.

2. BOP is directed to award complainant back pay, with interest, and other benefits pursuant to 29 C.F.R. §1614.501. Back pay and benefits shall be calculated from January 12, 2010, up to the date on which complainant is offered a Fabric Worker Supervisor position. If BOP concludes that complainant would not have entered on duty until a later date, it should provide documentation supporting its conclusion. BOP shall determine the appropriate amount of back pay, interest, and other benefits due



complainant, pursuant to 29 C.F.R. §1614.501(b), within sixty days of the date complainant either accepts or declines an offer of employment. Complainant shall cooperate with BOP's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by BOP. If there is a dispute regarding the exact amount of back pay and/or benefits, BOP shall issue a check to complainant for the undisputed amount and complainant may petition this office for enforcement or clarification of the amount in dispute.

3. As the prevailing party in this matter, complainant may be eligible for compensatory damages pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. Complainant will be eligible for compensatory damages if he can demonstrate that he suffered injuries as a direct result of the discrimination found to have occurred in this decision. BOP shall attempt to determine from complainant, using statements from complainant and others who may have witnessed any emotional or other harm complainant suffered from the discrimination, including medical evidence, an appropriate award for any emotional harm suffered as a result of the disability discrimination in this case. In the event the parties are unable to agree upon an appropriate compensatory damages award, they should notify this office so that an appropriate award may be determined.

4. As the prevailing party in this case, complainant is also entitled to an award of reasonable attorney's fees pursuant to 29 C.F.R. 1614.501(e). If complainant employed the services of an attorney, his attorney should provide BOP with a verified statement of costs and an affidavit itemizing the charges for work on those aspects of the case on which the complainant prevailed. Other supporting documentation should also be submitted at this time. In the event the parties are unable to agree upon a reasonable attorney's fee award, they should notify this office so that an appropriate award may be determined.

5. Within thirty days of the date of this decision, BOP shall post a Notice within the UNICOR factory at FCI-Talladega, consistent with the requirements of 29 C.F.R. §1614.501(a).