



AFGE Women's & Fair Practices Departments

**DEFCON – DID YOU KNOW
EEO UPDATE
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EEO CASE UPDATES

SANCTIONS FOR UNTIMELY COMPLETION OF ROI OR FAD

Truman B., v. Department of the Army, EEOC Appeal No. 0120140418 (April 10, 2017)

Complainant Truman B. requested a hearing before the EEOC and at the same time filed a Motion for Sanctions when the Agency failed to issue an ROI within the requisite 180 days. Sometime after the matter was assigned to an AJ, the Complainant withdrew his request for a hearing, and the AJ ordered the Agency to issue a FAD within 60 days. Remarkably, the Agency waited another 170 days before issuing the FAD. Upon ordering sanctions including EEO training, management discipline and attorney fees the EEOC averred that the “Commission must ensure that all parties abide by its regulations orders.” Truman B. at p. 5.

William G. v. DOD (DLA), EEOC Appeal No. 0120160837 (February 14, 2018)

The EEOC found that the “record was bereft” regarding how the five candidates were interviewed and why the RMO ultimately chose the Selectee and note the Complainant.

William G. at p. 3. The EEOC found in favor of the Complainant because the Agency failed to articulate a legitimate, non-discriminatory for the non-selection when the Agency did not to obtain a sworn affidavit from the RMO and failed to provide an affidavit from any RMO who participated in the selection.

Regina M., Complainant v. DVA, EEOC Appeal Number 0120170567 (September 6, 2018)

The Commission sanctioned the Agency for failure to timely issue a Final Agency Decision. The Commission found that the more than 13-month delay merited sanctions in the form of recommended discipline, mandatory training for the RMOs and attorney fees. The Commission went on to state that “[p]rotecting the integrity of the 29 C.F.R. Part 1614 process is central to the Commission’s ability to carry out its charge of eradicating discrimination in the federal sector.” Regina M. at p. 4, citing Cox v. SSA, EEOC Appeal Number 0720050055 (December 24, 2009).

Glynda S. v. BOP, EEOC Appeal Number 0120133361 (February 23, 2016)

In Glynda S., the Commission ordered sanctions when the Agency issued the Complainant's FAD 371 days late. The Commission held that "[t]he Agency's extreme delay 'stranded' the manager in a procedural 'no man's land' wherein she had no recourse within the administrative EEO process until the Agency issued its final decision." Glynda S. at p. 8. The Commission went on to explain that "[u]nlike situations in which a complainant may request a hearing when an agency has not completed an EEO investigation in untimely manner...a complainant who has requested a final decision cannot bypass the Agency's inaction/delay by raising the matter with the Commission." Glynda S. at p. 8. Instead, the complainant must wait for the Agency to issue the FAD.

DAMAGES AWARD INCREASED TO REFLECT INFLATION

Lara G. v. U.S. Postal Service, EEOC Appeal No. 0520130618 (June 9, 2017)

The EEOC increased the Complainant's award of nonpecuniary damages by \$5,000 holding that when using less recent cases for comparison purposes, agencies should make upward adjustments to account for the present-day value of comparable awards.

RETALIATION FOR ENGAGING IN PROTECTED EEO ACTIVITY

Ahmad S., v. UPS, EEOC, Appeal No. 0120170386 (September 25, 2018)

The Commission found that the Complainant was subjected to retaliation when the Agency reassigned him to an undesirable duty station four days after he engaged in protected EEO activity. The Commission held that "reassigning the Complainant instead of the alleged harasser essentially punishes Complainant for reporting harassment." Ahmad S. at p. 4.

MIXED CASE COMPLAINTS

Chasity C. v. DHS, EEOC Appeal No. 0120140557 (November 4, 2016)

The Commission addressed the rare yet confusing issue of the processing of mixed case complaints. The EEOC held that the “fundamental problem in this case is the Agency’s failure to separate the Complainant’s many allegations of harassment from the issue of indefinite suspension that is in fact appealable to the MSPB.” The Commission found that the Agency “inexplicably” issued a Final Agency Decision on the suspension *and* the harassment claims when “[w]hat it should have done was to bifurcate the claim, notify the complainant of her right to request a hearing with an EEOC AJ on all of the non-mixed allegations, and issue a final decision with MSPB appeal rights only with respect to the indefinite suspension. Chasity C. at p. 4.

Herb P., v. BOP, EEOC Appeal No. 0120142584 (November 22, 2016)

In Herb P., the Complainant originally filed an EEO complaint alleging constructive discharge based on race and allegations of harassment for other incidents. The EEOC AJ retained jurisdiction over the harassment claims but required the Agency to process the matter as a mixed case complaint because an allegation of constructive discharge is appealable to the MSPB. The Agency issued a FAD of no discrimination but on appeal the MSPB held that the case was a NON-MIXED case because the Complainant failed to meet the MSPB’s burden of proof for the alleged adverse action. The Decision makes clear that it is the Agency’s responsibility to request a hearing on behalf of the Complainant in the event the MSPB finds that the case is a NON-MIXED complaint.

FAILURE TO PROPERLY SEPARATE THE NEUTRAL FUNCTION OF EEO OFFICE AND DEFENSIVE FUNCTION OF COMPLAINTS

Veronica Montes-Rodriguez v. DOA, EEOC Request No. 0520120295 (December 20, 2012)

The Commission issued sanctions against the Agency for failure to separate the litigation of the EEO case and the EEO office processing of the complaint which should be neutral. The Commission averred that while the “Complainant may not have established a prima facie case, we note that the Commission has the inherent power to protect its administrative processes from abuse by any party and must ensure that agencies and complainants follow its regulations.” Montes-Rodriguez at p. 2.

Mirta Z. v. SSA, EEOC Appeal Number 0720150035 (March 14, 2018),

In Mirta Z. the AJ ordered the Agency counsel “submit to him for review in camera a declaration that outlines the nature and extent of [the Agency attorney’s] involvement in any of the matters at issue, including the names of officials and managers with whom she discussed any such matter.” Mirta Z. at p. 3. The AJ in Mirta Z. also found that “.. ample distance was not maintained between the fact-finding and defense counsel functions of the Agency; Agency defense counsel intruded into or gave the impression of intruding into the investigation and deliberation phase of the EEO investigation...” Mirta Z. at p. 4.