



UNITED STATES MARINE CORPS

HEADQUARTERS MARINE CORPS AIR STATION MIRAMAR  
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28 AUG 1998  
StaO 12713.3

STATION ORDER 12713.3

From: Commanding Officer  
To: Distribution List

Subj: DISCRIMINATION COMPLAINT PROCESSING PROCEDURES

Ref: (a) CPI 713 (NOTAL)  
(b) 29 CFR, Part 1614 (NOTAL)  
(c) EEOC MD 110 (NOTAL)  
(d) MCO 12713.5

1. Purpose. To publish procedures to be followed by civilian employees, applicants for employment and former employees when filing a complaint of discrimination on the basis of race, color, religion, age, sex, national origin, physical handicap, mental handicap or reprisal for prior Equal Employment Opportunity (EEO) complaint involvement.

2. Information

a. Complaints of discrimination are processed per references (a) and (d) and under the authority of, and in compliance with references (b) and (c). Complaints may be filed by an aggrieved employee, former employee or applicant for employment whether or not in the competitive service and whether paid from appropriated or nonappropriated funds. The provisions of this Order do not cover applicants for employment or employees of private contractors.

(1) Allegations which fall outside the control and jurisdiction of this activity will not be accepted for processing, but the complainant will be advised of the appropriate course of action.

(2) Services performed for tenant activities under a servicing agreement are considered activity actions for the purpose of this order.

(3) A complaint may be filed by an organization for an individual, but the complaint must be signed by the complainant.

b. Equal Employment Opportunity Purview. Acceptable bases for discrimination complaints are race, color, sex, religion, national origin, age, physical or mental handicapping conditions and reprisal or retaliation for prior EEO-complaint involvement.

4. Action

a. Counseling Requirements. An individual who alleges discrimination and desires corrective action must contact an EEO counselor within 45 calendar days of the alleged act or the effective date of an alleged discriminatory personnel action. The EEO counselor will make necessary inquiries concerning the issues identified and assist management officials in attempting informal resolution. If the matter is not resolved within 30 calendar days, a final interview will be conducted with the complainant and a notice issued informing the complainant of the right to file a formal complaint within 15 calendar days of receipt of this notice. No official report will be provided unless a formal complaint is filed. When requested, the anonymity of the complainant shall be respected during the counseling stage. Pertinent information on the process for filing a complaint is posted throughout this activity.

b. Formal Complaints. A formal complaint of discrimination must be submitted to the EEO Officer (head of the activity), or to the Deputy EEO Officer, in writing and signed by the complainant, within 15 calendar days of receipt of the counselor's notice of final interview. If vague or unidentifiable allegations cannot be made more specific by reference to the counselor's report, the complainant will be requested to provide additional information in order to define the issues more clearly. A formal complaint is deemed filed on the date it is received, if delivered to an appropriate official, or if mailed, on the date it is postmarked, if addressed to an appropriate official designated to receive complaints.

c. Acceptance, Dismissal or Referral of New Issues

(1) Acceptance. The EEO Officer (EEOO) or the Deputy EEO of the activity in which the complaint arose shall accept the complaint if it is within the purview of EEO, is submitted in a timely manner, and sets forth matters which are not identical to those contained in a previous complaint which is pending before or has been decided by the Department of the Navy (DON).

Two or more complaints consisting of substantially similar allegations of discrimination may be consolidated after the parties have been notified. Two or more complaints from the same individual may, at the discretion of the EEOO or the Equal Employment Opportunity Commission (EEOC), be consolidated for processing after the individual has been notified. The Deputy EEOO will ensure that all formal complaints which are accepted for processing identify the complainant and the Secretary of the Navy (SECNAV). The Deputy EEOO will assign a DON(MC) docket number to each formal discrimination complaint.

(2) Dismissal of Complaint. A dismissal of a complaint can occur when a formal complaint is first received or later in the administrative process. The entire complaint or a portion of a complaint may be dismissed. A dismissal may not be based on an evaluation of the merits of the allegations. The EEOO shall provide written notice of the decision to dismiss all or part of a complaint to the complainant and the complainant's representative. The decision letter shall inform the complainant of the right to appeal the decision to the EEOC, the time limit for filing an appeal, and the complainant's right to file a civil action as described in reference (a). The EEOO shall dismiss a complaint or a portion of a complaint:

(a) That fails to state a claim of discrimination based on race, color, religion, sex, national origin, age, handicapping condition or reprisal for prior EEO complaint involvement.

(b) That states the same claim by the complainant that is pending before, or has been previously decided by DON or the EEOC.

(c) That is moot or alleges that the agency or activity is proposing to take an action that is discriminatory.

(d) That is the basis of a pending civil action in a United States Court in which the complainant is a party, provided that 180 days have passed since filing the formal complaint, or that was the basis of a civil action decided by a United States Court in which the complaint was a party.

(e) That is filed untimely, unless the time limits were extended in accordance with reference (a).

(f) That the complainant elected to pursue under a negotiated grievance procedure as identified in reference (a) or by appealing to the Merit Systems Protection Board (MSPB).

(g) Where the complainant has been provided with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt, or the complainant's response does not address the activity's request. The request must also state that if the complainant has failed to satisfy this requirement within 15 calendar days of its receipt, the complaint may be dismissed for failure to cooperate. However, instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available.

(h) If the complainant refuses to accept an offer of full relief in settlement of the complaint, the EEOC shall extend the offer in writing, provide certification that the offer constitutes full relief for the complaint, and notify the complainant that if the offer is not accepted within 30 calendar days of its receipt, the complaint may be dismissed.

d. Investigation

(1) Upon acceptance of a formal complaint by the activity, the Deputy EEOC will request an investigator be assigned from the appropriate Office of Civilian Personnel Management (OCPM) Discrimination Complaint Investigation Division (DCID).

(2) The Deputy EEOC shall furnish the investigator written authorization to:

(a) Investigate all facts and circumstances surrounding a complaint of discrimination.

(b) Require all employees of the DON to cooperate with the investigator in conducting the investigation.

(c) Require employees of DON having knowledge of the complaint to furnish testimony under oath or without a pledge of confidence.

(d) Issue a complete factual record from which to make findings raised by the written complaint.

(3) The Investigator will:

(a) Investigate all aspects of the complaint, notify the EEOC of cases in which further attempts of settlement appear warranted, obtain written agreement from the complainant and the activity to extend the time period for investigation up to an additional 90 days, and prepare an investigation file that is sufficient to make findings on the matters raised by the written complaint.

(b) Forward a copy of the investigative file to the complainant not later than the 180th day of filing the written complaint, and provide the complainant with a notice of his or her right to request a final agency decision, with or without a hearing, within 30 days of receipt of the investigative file.

(c) Note any nonalleged acts which appear to be illegal discrimination found during the investigation and submit a separate report to the EEOC.

(d) Conduct supplemental investigations directed by the EEOC or the Employee Appeals and Review Board (EARB).

(e) Provide copies of all certified mail receipts to the office responsible for processing the complaint.

e. Receipt of the Investigative File. Within 30 calendar days of receipt of the investigative file, the complainant may request a final DON decision, with or without a hearing. During this time frame, the EEOC shall review the file and attempt to resolve the complaint. Although there is no requirement for an informal adjustment meeting, the EEOC or his designee, is strongly encouraged to meet with the complainant to explore possible settlement opportunities. Even if the complainant requests a final agency decision prior to the 30th day, settlement of the complaint can take place at any time prior to the issuance of the final agency decision by SECNAV. If the complaint is resolved, the terms of the resolution shall be developed and made a part of the complaint file.

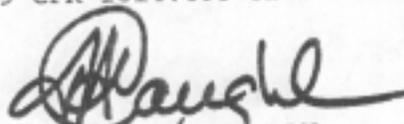
f. Request for a Decision by SECNAV. Within 30 calendar days from receipt of an investigative file, the complainant may request a decision by SECNAV with or without a hearing, and shall submit his or her request to the EEOC.

g. Decision Without a Hearing. The EARB shall issue a final agency decision on the merits of each issue in the complaint within 60 days of the EEOC's receipt of a complainant's request for a final decision by the SECNAV, without a hearing, or within 60 days of the end of the 30 day period if the complainant has failed to request a final agency decision.

h. Decision With a Hearing. Within 60 days of receiving the findings and conclusions of an administrative judge, the EARB shall issue a final agency decision on the merits which shall include a copy of the EEOC administrative judge's findings and conclusions and a copy of the hearing transcript. When the EARB's decision does not agree with the findings and conclusions of the administrative judge, the EARB's decision shall set forth in detail the reasons for rejection or modification of the administrative judge's recommendations. EEOC regulations at 29 CFR 1614.109(g) provide that the findings and conclusions of the administrative judge and the relief ordered shall become the final decision of the agency, if an agency does not within 60 days of receipt, reject or modify the findings and conclusions of the administrative judge.

i. Findings of Discrimination. When the SECNAV decision finds discrimination, the decision letter will require any remedial or corrective action authorized by law determined to be necessary or desirable to resolve the issue of discrimination, and which promotes the policy of EEO.

j. Right of Appeal. The SECNAV decision shall inform the complainant of his or her time limits and right to appeal the decision to the EEOC Office of Federal Operations (OFO), and shall include the text of 29 CFR 1614.402(a) or (b), as appropriate, or to file a civil action per 29 CFR 1614.408 or 29 CFR 1614.409.

  
T. A. CAUGHLAN

Distribution: MCAS: A