



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Matthew F. Fogg,
Complainant,

v.

Eric H. Holder, Jr.,
Attorney General,
Department of Justice
(United States Marshal Service),
Agency.

Appeal No. 0120073003

Hearing No. 570-2006-00483X

Agency No. M946376

DECISION

On June 20, 2007, Complainant filed a timely appeal with the Commission from the Agency's April 27, 2007 decision and order denying class certification and dismissing both the class and individual complaints. The Commission accepts Complainant's appeal pursuant to 29 C.F.R. § 1614.405(a). For the following reasons, the Commission REVERSES the Agency's final order which adopted an EEOC Administrative Judge's decision denying certification of the class complaint for failure to satisfy the requirements set forth in 29 C.F.R. § 1614.204(a)(2), and REMANDS the complaint back to the Agency for further processing in accordance with this decision.

ISSUE PRESENTED

The issue presented is whether the Agency's final order erred and Complainant's class complaint should have been certified.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Criminal Investigator, GS-1811-13, for the U.S. Marshall's Service (USMS) in Arlington, Virginia. On March 10, 1994, Complainant made contact with the EEO counselor, and on or about July 12, 1994 filed a formal complaint alleging discrimination based on race (Black) and reprisal for prior EEO activity on behalf of a "class of employees, former employees, applicants and/or potential employees" of the USMS. Specifically, Complainant alleged that: (1) the USMS has

not met its Affirmative Action obligation required by section 501 of Title 5 of the Rehabilitation Act of 1973;¹ (2) USMS is not recruiting Black employees at a rate comparable to the recruitment of White employees; (3) the penalties for infractions applied to Black employees in USMS disciplinary proceedings are frequently greater and more severe than those applied to White employees; (4) the USMS purposely delays processing of EEO complaints filed by Black employees; and (5) White USMS employees receive preferential treatment with respect to special assignments.

The complaint was forwarded to the EEOC's Washington Field Office for a determination on whether it met the requirements for class certification. On August 2, 1995, the first administrative judge assigned to the case (AJ-1) issued a request for information (RFI) to both Complainant and the Agency. The case was thereafter assigned to a second administrative judge (AJ-2). The Agency's response to the RFI was received on August 24, 1995. Both AJs granted Complainant multiple extensions of time to file his response. These extensions were premised, in part, on a Freedom of Information Act (FOIA) request Complainant had filed with the Agency. Eventually, AJ-2 reviewed the FOIA request and determined that the information Complainant sought would not lead to information that would be responsive to and/or necessary to respond to the RFI. AJ-2 informed Complainant of this fact on February 22, 1996, and gave him until February 28, 1996, to respond to the RFI. AJ-2 did not receive these responses until after close of business on February 28, 1996. By letter dated March 5, 1996, AJ-2 remanded the complaint to the Agency for dismissal based on Complainant's failure to respond to the RFI. AJ-2 stated that, even considering what she deemed to be an untimely response, she found that it was not responsive, and did not provide adequate and specific information regarding the issues in the complaint. AJ-2 stated further that she recommended that the Agency dismiss the complaint or, in the alternative, issue a final decision in the event it determined there was sufficient information to do so. Notwithstanding a reminder to Complainant that he could pursue EEO counseling on the issues outside of the class complaint, AJ-2 made no remarks pertaining to the individual complaints. The Agency thereafter issued a decision on April 12, 1996, in which it dismissed the class complaint pursuant to § 1614.204(d)(4) on the grounds that the allegations therein lacked specificity and detail.

Complainant subsequently filed an appeal of the Agency's decision with the Commission, which closed that appeal administratively on the grounds that Complainant, by letter dated March 27, 1997, withdrew the class complaint. By decision dated May 26, 2006, the Commission re-opened Complainant's appeal on its own motion. The Commission issued a decision concluding that it had misinterpreted the March 27, 1997 letter. Specifically, it found that the letter did not constitute a withdrawal of Complainant's appeal. Further, the decision addressed AJ-2's dismissal and determined that it had been in error. Specifically, the Commission found that Complainant's February 28, 1996, responses to the RFI were "minimally sufficient to allow [AJ-2] to make a determination" as to whether the prerequisites

¹ Complainant withdrew the Rehabilitation Act class claim in his answers to AJ-1's class certification questions. See August 20, 2007 Appeal, Exhibit 5.

for class certification had been satisfied. Fogg v. Department of Justice (USMS), EEOC Request No. 05A41062 (May 26, 2006). The Commission refrained from making a determination on whether the prerequisites for class certification in fact were met, but found that AJ-2 erred in dismissing the class complaint for vagueness.

The Commission remanded the case to the Washington Field Office, and the case was assigned to a third AJ (AJ-3) for a determination as to whether the prerequisites for class certification had been satisfied. Subsequently, AJ-3 determined that “[i]n the absence of specific examples of how Complainant and other Black individuals have allegedly been discriminated against, coupled with the lack of specifics concerning alleged discriminatory policies or practices ... Complainant is unable to satisfy the commonality, typicality, and numerosity criteria” of 29 C.F.R. § 1614.204. Accordingly, because the class agent failed on the procedural prerequisites for class certification, AJ-3 dismissed the class complaint. The Agency issued a final order on April 27, 2007 fully implementing AJ-3’s denial of class certification and dismissal of the class complaint.

The Commission notes that Complainant has been awarded individual relief in his individual complaints in U.S. District Court; however, the Commission has previously held that an individual award of relief to a class agent, prior to the disposition of a class complaint, does not disqualify the class agent so long as his interests do not become antagonistic to the interest of the other class members. See Washington v. Department of Agriculture, EEOC Request No. 05890052 (May 12, 1989); Tarrats, Rivera, et al. v. Federal Deposit Insurance Corporation, EEOC Appeal No. 01960433 (Jan. 12, 1998).

CONTENTIONS ON APPEAL

On appeal, Complainant argues that we should reverse AJ-3’s decision because: (1) the AJ based his decision on an incomplete record;² (2) the AJ failed to accept the May 26, 2006 decision of the Commission; (3) the AJ failed to recognize the specific examples of how Complainant was discriminated against and satisfied the “aggrieved individual” requirement; (4) the AJ failed to consider specific examples of how other Black USMS employees were discriminated against as illustrated in Complainant’s October 18, 2004 “Comments and Statements in Response to Commission’s Request for Reconsideration;” and (5) the AJ erred in his finding that Complainant had failed to provide specific information regarding allegations of discriminatory policies or practices.

² Complainant asserts that AJ-3 denied class certification without considering the information included in the “Ad Hoc Committee on Personnel Matters” report. The record is silent as to whether this document was available to AJ-3 at the time he rendered his decision. The document is currently present in the record. The document discusses the generalized allegations of racial inequities existing within the USMS prior to July of 1991, and makes specific recommendations to the USMS on addressing these matters.

In response to Complainant's appeal, the Agency requests that we affirm its decision dismissing Complainant's class complaint for failure to meet the prerequisites prescribed in 29 C.F.R. § 1614.204. The Agency submits that Complainant fails to meet the prerequisites prescribed in 29 C.F.R. § 1614.204 because: (1) he fails to specify and identify the particular Agency-wide decision or practice affecting the class and causing the disparity alleged, and (2) he lacks standing because he has not identified any way in which he has been aggrieved by any Agency action.³

ANALYSIS AND FINDINGS

With regard to Complainant's contention that the Agency has not complied with the Commission's decision in EEOC Request No. 05A41062, we find that Complainant has misinterpreted the Commission's May 26, 2006 decision. In that decision, we specifically stated that we "refrain from deciding whether the prerequisites [for class certification] were met. We only go so far as to find that the AJ erred in dismissing the class complaint for vagueness." EEOC Request No. 05A41062 at 3. We remanded the case back to the Washington Field Office and refrained from making any decision on sufficiency of the evidence for that purpose. In addressing the sufficiency of the class complaint, we found only that the evidence was sufficient to permit the AJ to make a decision class certification.

Class Certification

The purpose of class action complaints is to economically address claims "common to [a] class as a whole . . . turn[ing] on questions of law applicable in the same manner to each member of the class." General Telephone Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982); Mitchell, et al. v. Department of the Air Force, EEOC Appeal No. 01A41492 (Oct. 18, 2005); Mastren, et al. v. U.S. Postal Service, EEOC Request No. 05930253 (Oct. 17, 1993). Under EEOC regulations, a class complaint must allege that: (1) the class is so numerous that a consolidated complaint concerning the individual claims of its members is impractical; (2) there are questions of fact common to the class; (3) the class agent's claims are typical of the claims of the class; and (4) the agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class. 29 C.F.R. § 1614.204(a)(2). A class complaint may be rejected if any of the prerequisites are not met. See Garcia v. Department of Justice, EEOC Request No. 05960870 (Oct. 10, 1998) (citing 29 C.F.R. § 1614.204(d)(2)). An agency must forward the class complaint for assignment to an Administrative Judge, who will determine whether the class complaint meets the criteria for certification. See 29 C.F.R. § 1614.204(d).

³In its reply brief, the Agency argues that Complainant's appeal brief was not timely filed. We find that Complainant's appeal brief was timely. By letter dated July 12, 2007, Complainant requested an extension of time to file a statement or brief in support of his appeal. We granted complainant an extension until August 20, 2007. The record reflects that we received Complainant's appeal brief via facsimile on August 20, 2007.

The class agent, as the party seeking certification, bears the burden of proof, and it is his obligation to submit sufficient probative evidence to demonstrate satisfaction of the four regulatory criteria. See Browder et al. v. USPS, EEOC Appeal No. 0120061423 (Mar. 12, 2009). Further, a class complaint must identify the policy or practice adversely affecting the class, as well as the specific action or matter affecting the class agent. 29 C.F.R. § 1614.204(c)(1). When alleging a claim of “across the board” discrimination, allegations of specific discriminatory treatment, absent evidence of some common policy or practice, such as biased testing procedures or proof of an entirely subjective decision-making procedure, do not support class certification. See id., at 159 n. 15.

Commonality and Typicality

In addressing a class complaint, it is important to resolve the requirements of commonality and typicality prior to addressing numerosity in order to “determine the appropriate parameters and the size of the membership of the resulting class.” See Moten v. Federal Energy Regulatory Commission, EEOC Request No. 05960233 (April 8, 1997) (citing Harris v. Pan American World Airways, 74 F.R.D. 25, 45 (N.D. Cal. 1977)).

The purpose of the commonality and typicality requirements is to ensure that class agent possesses the same interests and suffered the same injury as the members of the proposed class. Falcon, 457 U.S. at 156-57. Often, the commonality and typicality prerequisites tend to merge and are very similar. Id. at 157. Commonality requires that there be questions of fact common to the class, that is, the same action or policy affected all members of the class. Generally, this can be accomplished through allegations of specific incidents of discrimination, supporting affidavits containing anecdotal testimony from other employees who were allegedly discriminated against in the same manner as the class agent, and evidence of specific adverse actions taken. Id.; Belser v. Department of the Army, EEOC Appeal No. 01A05565 (Dec. 6, 2001) (citing Mastren v. U.S. Postal Service, EEOC Request No. 05930253 (Oct. 27, 1993)). Mere conclusory allegations, standing alone, do not show commonality. Garcia, EEOC Appeal No. 07A10107 (citing Mastren, EEOC Request No. 05930253). Factors to consider in determining commonality include whether the practice at issue affects the whole class or only a few employees, the degree of centralized administration involved, and the uniformity of the membership of the class, in terms of the likelihood that the members’ treatment will involve common questions of fact. Id.

Typicality, on the other hand, requires that the claims or discriminatory bases alleged by the class agent be typical of the claims of the class, so that the interest of the putative class members are encompassed within the class agent’s claims. Falcon at 156. A class agent must be part of the class he seeks to represent, and must “possess the same interest and suffer the same injuries” as class members. Id. at 160.

In the instant case, we find that AJ-3 improperly determined that the legal requirements of commonality and typicality were not met.⁴ In his October 17, 2004 declaration, which Complainant included in his "Comments and Statements in Response to Commission's Request for Reconsideration," Complainant alleges that during the course of his 17 year employment with the USMS, he was subjected to discrimination based on race and reprisal. Specifically, Complainant alleges that the Agency had a practice of giving "non-Black employees [...] preferential treatment with respect to the assignment of law enforcement positions." Complainant alleges that this practice had the affect of subjecting him to disparate terms and conditions of employment, including but not limited to less preferable work assignments and opportunities to advance within the Agency.

In this same pleading and attached as Exhibits 2 and 3 to his appeal, Complainant includes declarations from 22 Black USMS employees, alleging that they experienced similar incidences of discrimination over the course of their employment with the USMS. See August 20, 2007 Appeal, Exhibits 2 and 3; See Fitzgerald v. Dep't of Defense, EEOC Appeal No. 0720090003 (Mar. 26, 2010) (The Commission certified a class where complainant alleged a lack of promotional opportunity due to: the agency's performance review process, the ability to fill a position without posting the vacancy, the ranking done by the central rating board, and Commander approval, and supported the allegation with affidavits and statistical evidence showing that other African-American employees, also subject to the same agency promotional process, had not risen to the aspired Pay Band).

CM-1 stated that he worked for the USMS for a total of 12 years, and worked at the GS-12 level as a Deputy Marshall for approximately nine years in Alabama. CM-1 states that he was subjected to discrimination based on his race over the course of his employment by being denied promotions in favor of less senior less qualified White employees, and by being assigned less preferable work than similarly situated white employees. CM-1 states that he was discriminated against because of his race upon being hired by the USMS. CM-1 states that although he had a law enforcement background, he was only permitted to enter the USMS at the GS-5 level while White candidates with no law enforcement background were hired at the GS-7 level. In 1998 CM-1 states that he applied for a merit promotion to an instructor position at the Law Enforcement Academy, and that his application tied with a White Deputy's for fifth place on the "Top Five" list. CM-1 states that only the applications of the White applicants were considered for the position. CM-1 states that he inquired about his application being disregarded, and was informed that a mistake had been made; however, nothing was ever done to rectify the mistake.

CM-2 stated that he has worked for the USMS for over 18 years. At the time he made his declaration, CM-2 indicated that he was a GS-13 Supervisory Deputy. CM-2 stated that

⁴ In his formal complaint, Complainant relied on his characterization of the allegations in his four outstanding individual complaints, and states that the alleged actions and practices contained within were common to the class. The Commission notes that these complaints are absent from the record.

despite being eligible to bid on GS-13 positions in 1990, it took him three years after becoming eligible to be promoted to the GS-13 level. CM-2 stated that, in 1991, he applied for a vacant supervisory position in the Fugitive Division. CM-2 states that he had a background in the Division and was the most senior employee in the division. CM-2 says that despite his qualifications his application was denied and a White male who had never worked in the Division was selected. Throughout the 1990s, CM-2 says that he applied for and made the "Top Five" eligibles list for approximately fifty GS-14 positions. Each time, CM-2 states he was denied the promotion and a less or equally qualified White male was selected.

CM-3 stated that he has been employed by the USMS for approximately 25 years. At the time he made the declaration he was employed as a GS-12 Deputy U.S. Marshall for nearly 11 years. CM-3 alleges that he has only been afforded the opportunity to serve in two temporary promotions at the GS-13 level for a total of five months during his tenure with the USMS, while White employees have been granted more extensive and more regular details. CM-3 states that while he has been repeatedly denied promotions throughout his career despite his qualifications, White Deputy Marshalls that started working with USMS at the same time have been promoted to the GS-13 level and beyond.

CM-4 stated that she had been employed by the USMS for 13 years at the time she made her declaration. In 2004 she had been working for 11 years as a Program Analyst at the GS-9 level. In or around 1993, CM-4 states that she began submitting applications for various GS-12 positions but was not selected for any of them. CM-4 states that she was well qualified for the positions and more senior than most of the White employees selected for the positions, as well as, those hired in the recent years.

The record contains evidence of other examples similar to those summarized above. We find that this evidence is sufficient to meet the commonality requirement. Additionally, we find that this evidence is sufficient to establish that the practices at issue affect the whole class and not only a few employees, and sufficiently alleges a claim of "across the board" discrimination. The declarations Complainant provided from 22 Black USMS employees offer preliminary proof of what appears to be a common Agency practice, and an entirely subjective decision-making procedure affecting Black USMS employees. See Falcon, 457 U.S. at 159 n. 15.

Complainant established typicality for many of the same reasons he met the commonality requirement. The Commission notes that it is necessary for Complainant to make some affirmative showing, beyond individual claims and general class allegations, that discrimination has been suffered by the proposed class. See Roliz v. United States Postal Service, EEOC Appeal No. 01891595 (January 22, 1990). As discussed and presented previously above, Complainant has provided evidence to support his contention that common claims exist among the purported class members. The declarations from 22 Black USMS employees Complainant produced supports Complainant's assertion that a class of employees within the Agency has been discriminated against due to their race.

Numerosity

The numerosity prerequisite states that the putative class must be sufficiently numerous so that a consolidated complaint by the members of the class or individual, separate complaints is impractical. See 29 C.F.R. § 1614.204(a)(2)(i). Numerosity requires that the putative class be large enough that joinder is impractical. 29 C.F.R. § 1614.204(a)(2)(i). The exact number of class members need not be shown prior to certification, but the class agent must make some showing of the number of individuals affected by the alleged discriminatory practices who may assert a claim. See Moten v. Federal Energy Regulatory Commission, EEOC Request No. 05910504 (Dec. 30, 1991). The focus in determining whether the class is sufficiently numerous for certification is the number of persons affected by the agency's alleged discriminatory policy or practice. See White, et al. v. Department of the Air Force, EEOC Appeal No. 01A42449 (Sept. 1, 2005); Moten, supra. The Commission has held that the relevant factors to determine whether the numerosity requirement has been met are the size of the class, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each member's claim. Carter, et al. v. U.S. Postal Service, EEOC Appeal No. 01A24926 (Nov. 14, 2003). The Supreme Court has stated that Rule 23 does not impose a numerical minimum or cut-off point for the size of the class but, instead, requires an examination of the facts of each case. General Telephone Co. v. EEOC, 446 U.S. 318, 330 (1980); Harris v. Pan American World Airways, 74 F.R.D. 24 (N.D. Cal. 1977).

Complainant includes declarations from 22 Black USMS employees and defines the class in his formal complaint as consisting of "50 expanding Black USMS employees," in all of his pleadings he speaks about his knowledge that the racial discrimination he has suffered at the USMS is consistent with the racial discrimination suffered by other Blacks at the USMS. We find Complainant has met his burden of showing that the class is so large that a consolidated complaint would not be practical. Therefore, we find that Complainant has met the requirement for numerosity.

Adequacy of Representation

The final requirement is that the class agent, or his representative, adequately represent the class. To satisfy this criterion, the agent or representative must demonstrate that he has sufficient legal training and experience to pursue the claim as a class action, and will fairly and adequately protect the interests of the class. Besler, supra; Woods v. Department of Housing and Urban Development, EEOC Appeal No. 01961033 (Feb.13, 1998). In this regard, it is necessary for the class agent, or the representative, to demonstrate sufficient ability to protect the interests of the class so that the claims of the class members do not fail for reasons other than their merits. Complainant has an attorney representative. Therefore, we find that the class would have adequate representation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order denying certification of the class complaint for failure to satisfy the requirements set forth in 29 C.F.R. § 1614.204(a)(2) and the matter is REMANDED to the Agency for processing in accordance with the Order below.

ORDER

The Agency is ORDERED to perform the following:

1. Notify potential class members of the accepted class claim within fifteen (15) calendar days of the date this decision becomes final, in accordance with 29 C.F.R. § 1614.204(e).
2. Forward a copy of the class complaint file and a copy of the notice to the Hearings Unit of the Washington Field Office within thirty (30) calendar days of the date this decision becomes final. The Agency must request that an Administrative Judge be appointed to hear the certified class claim, including any discovery that may be warranted, in accordance with 29 C.F.R. § 1614.204(f).⁵

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation of the Agency's actions.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative

⁵ On September 29, 2011 the Commission received Complainant's request to amend the class complaint to add two class members. In light of the Commission's decision regarding the class complaint, Complainant should raise his motion to amend the class complaint to include two additional class members to the Administrative Judge appointed to hear the certified class claim.

petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File A Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0610)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (Nov. 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court within ninety (90) calendar days from the date that

you receive this decision. In the alternative, you may file a civil action after one hundred and eighty (180) calendar days of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. Filing a civil action will terminate the administrative processing of your complaint.

RIGHT TO REQUEST COUNSEL (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

JUL 1 1 2012

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Matthew F. Fogg
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Thomas J. Henderson, Esq.
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Lisa Dickinson, Director, EEO Staff
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JUL 1 1 2012

Date

RM

Equal Opportunity Assistant