

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
33 WHITEHALL STREET, 5th Floor
NEW YORK, NEW YORK 10004

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SANDRA N. McCONNELL, ET AL.,
a/k/a Velva B., Class Agent

Complainant,

v.

MEGAN J. BRENNAN, Postmaster General,
UNITED STATES POSTAL SERVICE,

Agency.

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EEOC Hearing No.: 520-2010-00280X
Previous Appeal Nos.: 0720160006, 0720160007, 0720080054
EEOC Request Nos.: 0520180094 & 0520180095
EEOC Appeal No.: 0120182505
Agency Case No.: 4B-140-0062-06

CASE MANAGEMENT ORDER

PLEASE TAKE NOTICE THAT this **ORDER** is issued in compliance with the Office of Federal Operations (OFO) decision dated November 7, 2018.

TOLLING

It is hereby **ORDERED** that the 90-day period within which the Agency is required to issue a decision on an individual claim is tolled until further notice. **THEREFORE**, no Final Agency Decisions (FADs) will be issued until the fact-finding phase has ended and decisions regarding relief are issued by the undersigned judge.

LIST OF CLAIMANTS WHOSE CLAIMS THE AGENCY DISPUTES

As of OFO's November 7, 2018 decision it is unclear as to how many individual claims for relief the Agency has disputed or will dispute. The Class Agent contends that all the claims are disputed, the agency contends that it has not disputed all claims, however it has not specified how many claims are disputed. **THEREFORE**, the Agency is to provide a list of the names of all class members whose claim for relief the Agency has disputed or intends to dispute **no later than March 12, 2019**¹;

¹ The Agency's submission of February 26, 2019 *USPS Response in Opposition to Motion for entry of Case*

APPOINTMENT OF A SINGLE CLASS COUNSEL FOR PHASE II- INDIVIDUAL RELIEF

Phase I Class Agent Counsel, Thomas & Solomon LLP and Kator, Parks, Harris & Weiser, P.L.L.C. February 11, 2019 *Motion for Entry of Case Management Order and Proposed Order* request to be appointed as class counsel of all class members is **DENIED**.

OFO's November 7, 2018 decision made no finding that Class Agent's Counsel represented all class members or would continue to represent all class members during the relief phase. Nor did it authorize the appointment of a single "class counsel" over the express objections of individual claimants. Indeed, there are several class members who have affirmatively designated and retained other counsel to represent them in this matter, who have affirmatively rejected Class Agent's counsel or wish to proceed *pro se*.

APPOINTMENT OF SPECIAL MASTERS

Phase I Class Agent Counsel, Thomas & Solomon LLP and Kator, Parks, Harris & Weiser, P.L.L.C. February 11, 2019 *Motion for Entry of Case Management Order and Proposed Order* request that the EEOC appoint special masters to assist in the processing individual claims during Phase II- Individual Relief is also **DENIED**.

29 C.F.R. §1614.204 (1)(1) outlines the procedures for relief for individual class members and it explicitly states that the EEOC Administrative Judge "shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members." OFO's September 26, 2017 decision in this matter exclusively ordered EEOC judges to retain jurisdiction during the relief phase. Moreover, counsel points to no binding legal authority, either within EEOC guidelines, rules or regulations or outside of them that allows EEOC judges to appoint special masters. Finally, the appointment and supervision of special masters would unnecessarily complicate the fact-finding process, lengthen an already lengthy litigation and prove to be unwieldy. Therefore, counsel's request is **DENIED**.

CASE MANAGEMENT

DISCOVERY

There will be no discovery propounded in this matter.

If upon receiving the submissions on disputed claims additional information is needed to make a determination, I will issue an order to the parties to meet and confer to determine which party has the information, whether and how it can be produced so as to honor medical confidentiality and a reasonable schedule for production of the needed documents.

Management Order and Proposed Case Management Order states that the Postal Service submitted to the "Administrative Judge notices of which claims it intends to dispute on January 14, 2019 and provided a copy of such notice to the class." I have searched my emails and have not found Counsel's submission. Perhaps due to the government shutdown the filing never reached my inbox. Therefore, I am ordering Agency counsel to resend its January 14, 2019 submission on or before March 15, 2019.

SUBMISSIONS

The Agency:

It is hereby **ORDERED** that the Agency will provide a statement to the undersigned Judge in support of its decision to dispute a class member's claim, attaching all relevant supporting documents/evidence. The Agency's burden is to show **by clear and convincing evidence** that the class member is ***not*** entitled to relief. The agency submission is **due 20 calendar days within receipt this ORDER**. A copy must be provided to the claimant and their counsel, if represented.

The Individual Claimant:

It is hereby **ORDERED** that the class member will submit to the undersigned Judge a statement and any relevant documents in support of their claim for relief.

The submission must include a specific detailed showing that the claimant

- **is a class member;**
- **who was affected by the Agency's discriminatory policy or practice and;**
- **that the discrimination took place during the time-period for which class-wide discrimination was found;**
- the categories of harm alleged by complainant
- the categories of relief for which claimant is seeking damages and the legal foundation in support of said damages

Claimants' submissions are **due 20 calendar days within receipt of the Agency's statement of dispute**. A copy must be provided to the Agency.

Except for relevant exhibits, the parties' respective statements **must not** exceed twenty (20) pages.

All submissions MUST BE FILED ELECTRONICALLY, either by email or FEDSEP with an email to the undersigned judge stating that a filing has been submitted.

HARDCOPY SUBMISSIONS SENT THROUGH THE MAIL WILL NOT BE CONSIDERED

REQUESTS FOR MORE TIME

Requests for an enlargement of time must be for good cause. Requests must be in writing, served on the other party and include an explanation of why additional time is necessary.

WITHDRAWALS

All withdrawals must be in writing. The undersigned judge must be notified with ten (10) days of the parties' agreement to withdraw; upon receipt of the request for withdrawal the undersigned judge will issue an Order dismissing the claim and instructing the Agency to issue a

Final Agency Decision with appeal rights to OFO.

HEARINGS

As per OFO’s November 7, 2018 decision, hearings are not mandatory in this process and is at the discretion of the judge. Therefore, if further development of the record is deemed necessary and factual disputes arise and need to be addressed at hearing, an Order Scheduling a Hearing will be issued, and a conference call will be held to discuss dates, witnesses, etc.

SETTLEMENT

Individual claims may be settled without approval from the undersigned judge. Group settlements must be approved pursuant to 29 C.F.R. §1614.204(g).

CONCLUSION OF FACT-FINDING

As per the November 7, 2018 OFO decision “at the conclusion of the fact finding, the AJ will issue a decision concerning the class member’s claim to the Agency and the class member. The decision will advise the Agency that the 90-day period for issuing a final order on the claim will resume upon receipt of the AJ’s decision. If the Agency does not issue a final order with 90-days, the AJ’s decision becomes the final order of the Agency.”

Date:

SO ORDERD

Date: February 27, 2019

For the Commission:

/s/Monique J. Roberts-Draper
Monique J. Roberts-Draper
Administrative Judge
U.S. Equal Employment Opportunity Commission
New York District Office
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Tel.: (212) 336-3704
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CERTIFICATE OF SERVICE

For timeliness purposes, it will be presumed that this **ORDER** was received immediately upon electronic transmission. I certify this **ORDER** was sent to the following parties on February 27, 2019:

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