



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

Ronald Jantz,
Petitioner,

v.

Michael J. Astrue,
Commissioner,
Social Security Administration,
Agency.

Petition No. 0420110004

Appeal No. 0720090019, Request No. 0520110045

Agency No. HQ-06-2518

DECISION ON A PETITION FOR CLARIFICATION

On January 11, 2011, the Equal Employment Opportunity Commission (EEOC or Commission) docketed a petition for clarification of its class certification decision in Ronald Jantz v. Social Security Administration, Appeal No. 0720090019 (August 25, 2010), request for reconsideration denied, EEOC Request No. 0520110045 (January 4, 2011). The Commission accepts this petition for clarification pursuant to 29 C.F.R. § 1614.503.

By motion for clarification, dated January 11, 2011, the class agents sought clarification from the Commission regarding the definition of the class that was certified in the above-captioned decision. The class agents noted that the EEOC Administrative Judge (AJ) who issued the decision to certify the class complaint defined the class as:

all current and former employees with targeted disabilities at the Social Security Administration who, on or after *August 22, 2003*, have applied for and made a Best Qualified List for promotion, but were not selected for promotion [emphasis added].

However, in EEOC Appeal No. 0720090019, as affirmed in Request No. 0520110045, the Commission defined the beginning of the class period as "*August 22, 2005*" [emphasis added]. The class agents argue that because the appellate decision provided no explanation for why it modified the class period as defined by the AJ, it was their belief that the difference in

year was a “typographical error.” The class agents request that the Commission correct this error.

Also on January 11, 2011, the Agency filed a cross-motion for clarification. In its cross-motion, the Agency argues that it is not clear that the change in date was a typographical error as asserted by the class agents, but may instead be “consistent with relevant law.” However, the Agency provides no further explanation or argument about what “relevant law” it might be referring to. The Agency also notes another difference in the language between the appellate decision and the AJ’s definition, which it proffers as further indication that clarification by the Commission is needed. Specifically, the Agency states that the class initially proposed the phrase, “and been denied promotional opportunities” in the class definition, but the AJ found it was more precise to say, “but were not selected for promotion.” Therefore, in addition to clarification on the date, the Agency also requests clarification on which phrase should be incorporated into the class definition.

In response to the two motions, the Commission clarifies that its decision in EEOC Appeal No. 0720090019, request for reconsideration denied, EEOC Request No. 0520110045, affirmed the AJ’s certification decision *in its entirety*. As such, the Commission’s decision intended to affirm the class definition as articulated by the AJ without revision and as restated below:

all current and former employees with targeted disabilities at the Social Security Administration who, on or after *August 22, 2003*, have applied for and made a Best Qualified List for promotion, *but were not selected for promotion* [emphasis added].

Accordingly, with this clarification concerning the class definition, the Commission REMANDS the matter for further processing in accordance with our previous ORDER restated 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 Baltimore 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).

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 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.

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

MAR 15 2011

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:

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A. Jacy Thurmond, Associate Commissioner
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MAR 15 2011

Date



Equal Opportunity Assistant