



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Shawnta A.,¹
Complainant,

v.

Matthew G. Whitaker,
Acting Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 0120181245

Agency No. BOP-2011-000528

DECISION

Complainant filed a Notice of Appeal with the Equal Employment Opportunity Commission (EEOC or Commission). Complainant attached documents related to the settlement of Class Agent, et al. v. Department Of Justice, EEOC No. 510-2012-00077X, BOP-2011-000528. On December 8, 2017, an EEOC Administrative Judge (AJ) issued a decision granting final settlement approval in this matter.

BACKGROUND

The class action giving rise to the settlement agreement at issue concerns the alleged creation of a hostile work environment at the Agency's Federal Correction Complex (FCC) Coleman in Florida when the Agency failed to correct known egregious sexual harassment perpetrated by inmates. AJ Decision on Class Certification (April 9, 2013) at 2. FCC Coleman is comprised of four institutions, three of the four which house exclusively male inmates. Id.

The record indicates that the AJ certified this matter as a class complaint on April 9, 2013. The class, as set forth by the AJ in her Order on Joint Motion to Redefine Class dated October 28, 2014, is defined as follows:

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

All women who have worked in the U.S. Department of Justice, Federal Correctional Complex Coleman, Florida since February 6, 2011, who were allegedly subjected to discriminatory sexual harassment, except for the period of time that any of these women served in the position of Warden, Associate Warden, Disciplinary Hearing Officer, Executive Assistant, Camp Administrator, or Lieutenant or Captain in the Correctional Services Department or any of these women worked in the UNICOR or computer services (IT) departments. Order on Joint Motion to Redefine Class (Oct. 28, 2014).

In January 2016, the parties began settlement negotiations and the parties reached an agreement on November 15, 2016.² Decision Granting Final Settlement Approval (Dec. 8, 2017) at 2. On January 17, 2017, the AJ issued an Order granting preliminary approval of the settlement. *Id.* at 3.

Complainant and two of her retired co-workers filed an objection to the settlement agreement. They argued that they were excluded from the class due to their dates of retirement from the Agency. Complainant states that she retired on December 31, 2010.

On December 8, 2017, the AJ issued a decision Granting Final Settlement Approval. The AJ found the settlement to be fair, reasonable, and adequate to the class as a whole.³ *Id.* at 9. The AJ noted that three individuals were untimely in their claims and they did not work for the Agency during the period of time as identified in the class definition. *Id.* at 4. The AJ found that they were thus not class members (but were seeking to become part of the class) and did not have standing to object.

The instant appeal followed. Complainant reiterates that she is seeking to become part of the class and states that prior to her retirement, she was informed by union representatives “that a case was being filed to represent all females at FCC Coleman for claims of sexual harassment

² The record reflects that the settlement agreement provided, in pertinent part, for up to \$20,000,000 for compensatory damages to class members, and attorney’s fees and costs. Decision Granting Final Settlement Approval (Dec. 8, 2017) at 2. The settlement also provided for a comprehensive system of programmatic relief including a new standing committee to address inmate sexual misconduct toward staff, a new collateral duty to assist staff with drafting incident reports and concerns about sexual misconduct of inmates, and a change in the regulations to establish a more severe charge toward inmates who engage in sexual misconduct against staff.

³ The Administrative Judge shall issue a decision concerning the fairness, adequacy, and reasonableness of the proposed resolution. EEO MD-110 Ch. 8, VIII(C). Within thirty (30) days of the date of a class member’s receipt of the notice of proposed resolution, the class member may file a petition with the Administrative Judge noting objections to the settlement if the petitioner (class member) believes that the settlement benefits only the class agent or is otherwise not fair, adequate, and reasonable to the class as a whole. *Id.*

and a hostile work environment based on a continuing violation theory...this is why we did not file separate EEO cases we were informed by the union that any claims we too had would be encompassed and brought on our behalf as a part of the present class action lawsuit.”

ANALYSIS AND FINDINGS

Commission guidance sets forth that a class member or petitioner may appeal “[a]n [AJ’s] decision finding a proposed resolution fair, adequate and reasonable to the class as a whole if the class member filed a petition to vacate the resolution or finding that the petitioner is not a member of the class and did not have standing to challenge the resolution.” EEOC Management Directive for 29 C.F.R. 1614 (EEO MD-110) (Aug. 5, 2015) Ch. 9, III (E)(1).

We further find that the AJ properly found that Complainant is not a class member. As set forth above, the definition of the class provides, in pertinent part:

All women who have worked in the U.S. Department of Justice, Federal Correctional Complex Coleman, Florida since February 7, 2011 who were allegedly subjected to discriminatory sexual harassment...” Order on Joint Motion to Redefine Class (Oct. 28, 2014) at 1.

The record reflects that Complainant was not working for the Agency on February 7, 2011. Rather, as she acknowledges on appeal, she retired from the Agency on December 31, 2010. Therefore, she does not meet the definition of a class member and did not have standing to challenge the resolution.

We also are not persuaded by Complainant’s arguments to redefine the class at this juncture. As a matter of policy, the Commission encourages settlement of EEO complaints at any stage of processing. See 29 C.F.R. § 1614.603, EEO MD-110, Ch. 6, XIII. While Complainant asserts union members indicated to her that her claims would be included in the class, we find this assertion is insufficient to redefine the AJ’s definition of the class.

Following a thorough review of Petitioner’s objections, the AJ’s decision excluding her from the class is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

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. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. 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 agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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).

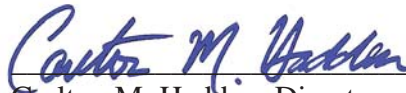
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

June 26, 2019

Date