

(5) Sets forth matters which also form the basis of an appeal filed before the MSPB by the same complainant.

(6) Is untimely.

(i) The matters in a complaint must have been brought to the attention of an EEO counselor within 30 calendar days after the incident, effective date of a personnel action, or the date the aggrieved person became aware of reasonably should have been aware, of the discriminatory event of personnel action.

(ii) Formal complaints must be filed within 15 calendar days after receipt of the Notice of Final Interview.

(iii) The Activity Commander or his or her EEO officer will waive the time limits of this paragraph if the complainant can show either—

(A) That he or she was not notified of the time limits and was not otherwise aware of them.

(B) That he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits of this section.

(C) The time limits of this paragraph may be waived for reasons deemed sufficient at the discretion of the Activity Commander or his or her designee.

(D) The letter accepting the complaint will state the specific basis for any waiver of time limits.

(b) The Secretary of the Army or his or her designee reserves the right to reject a complaint previously accepted by an EEO officer when making the final Army decision on the Basis of one or more of the grounds specified in a above.

§ 588.16 Acceptance and rejection of formal complaints.

(a) As soon as the EEO officer accepts a formal complaint, he or she will give a copy of the EEO counselor's written report on the precomplaint counseling to the complainant. The original report will be kept in the complaint file.

(b) The EEO officer will review the complaint against the criteria of § 588.15 and determine which allegations should be accepted or rejected. The EEO officer will ensure that the complainant was informally counseled on each matter accepted in the formal complaint.

(1) The EEO officer may ask the complainant to give more specifics on allegations or meet with the EEO counselor on a matter not previously discussed in the precomplaint counseling.

(2) The EEO officer may cancel a complaint for failure of the complainant to prosecute his or her complaint if the complainant does not provide the needed information to the EEO officer in the time specified.

(c) The EEO officer will decide whether to accept or reject a complaint in whole or in part. When appropriate, the EEO officer will coordinate acceptance or rejection of a complaint with the labor counselor. The acceptance of any complaint shall always be conditioned upon the final decision of the Secretary of the Army or his or her designee in accord with § 588.15(b).

(d) The EEO officer will provide the complainant and his or her representative, if any, a written decision within 5 calendar days after the complaint is received. The decision will be either hand-delivered to the complainant or sent by certified mail. The complainant must acknowledge receipt of the decision in writing. The decision must specify which allegations or parts of a complaint were accepted and explain the grounds for any rejection or cancellation. The decision will also advise the complainant of the right to appeal the rejections or cancellations.

(e) If a complaint has been rejected in whole or in part, the EEO officer will process the closure in accord with § 588.69(b). The case file will be retained by the EEO officer for 2 years from the date of the final Army decision or until all administrative and judicial appeals are exhausted, whichever is longer.

(f) If any part of a complaint is accepted by the EEO officer, a copy of the complaint will be sent directly to the appropriate USACARA Regional office by the EEO officer requesting the assignment of an investigator and citing applicable funds for payment of travel and per diem. As indicated in § 588.17 the transmittal letter will identify the part(s) of the complaint which have been accepted for investigation.

(g) Immediately upon acceptance of a formal complaint, the Activity Commander should designate the activity

labor counselor as the Army representative. An ADO may not serve as an Army representative. At the request of the labor counselor, the Activity Commander may also appoint a personnel specialist or other activity personnel to assist the labor counselor.

§ 588.17 Arranging for the investigation.

(a) Within 3 calendar days after acceptance of a formal complaint, the EEO officer will request the assignment of a USACARA investigator. (See appendix K.) A copy of the request letter without enclosures will be provided to the complainant, his or her representative, and the labor counselor. The request must contain the following information:

- (1) A clear statement of the issues that were accepted.
- (2) A statement of the parts of the complaint that were rejected.
- (3) The complainant's organization, work location, mailing address, and telephone numbers (both AUTOVON and commercial).
- (4) The complainant's designation of a representative, including the representative's work and mailing addresses and telephone numbers (both AUTOVON and commercial).
- (5) A fund citation for travel and per diem.
- (6) A specific point of contact within the activity EEO office.
- (7) Legible copies of the following documents:
 - (i) The formal complaint.
 - (ii) The EEO counselor's report.
 - (iii) Any relevant documents.
- (b) The EEO officer or a designee will arrange for the investigator's visit. This may include—
 - (1) Arranging for quarters and transportation.
 - (2) Providing a private office, clerical help, and access to a telephone.
 - (3) Making sure that all named witnesses and ADO's are readily available.
 - (4) Giving the investigator any other administrative help needed to conduct an efficient investigation.
- (c) The EEO officer should provide the labor counselor with at least 10 days advance notice of the dates, time, and location of the USACARA investigation.

(d) To avoid the appearance of impropriety, no activity personnel, to include EEO, CPO, management, or labor personnel will express an opinion regarding perceived merits of a complaint, or lack thereof, with the USACARA investigator. However, activity personnel may disclose facts that would assist the USACARA investigator at any time prior to the completion of the investigation and receipt of the USACARA Report of Investigation (ROI).

§ 588.18 Authority assigned to the USACARA investigator.

By designation of the Secretary of the Army, USACARA investigators are authorized to act as shown below.

- (a) Investigate all aspects of a complaint. This includes reviewing and copying all records judged by the investigator to be pertinent to the investigation. Classified documents may be examined only by an investigator who possesses the appropriate security clearance.
- (b) Require all Army personnel to cooperate with the investigator in conducting the investigation.
- (c) Require Army personnel who have any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence, unless this testimony would result in self-incrimination.
- (d) Administer oaths.
- (e) Issue an ROI containing conclusions and recommendations.

§ 588.19 Conducting the investigation.

The investigator—

- (a) Collects facts and develops information on each accepted allegation in the Complaint and reviews the circumstances under which the discrimination is alleged to have taken place. The investigator does not have the authority to expand the scope of the investigation to include any charges of allegations that were not included in the formal complaint or for which precomplaint counseling was not given. The obligation of the investigator to collect facts and develop information does not lessen the responsibility of the complainant and management to prepare, present, and explain their positions as the disputes.