

## Department of the Army, DoD

## § 588.23

Commander, or a designee, and made part of the complaint file. A copy of the terms of the settlement will be given to the complainant, his or her representative, and the ADO. (See appendix H.)

(e) An informal adjustment may include an award of attorney fees and/or costs if there was a finding or admission of discrimination. (See § 588.55 for special procedures on no-fault settlements without a finding or admission of discrimination.) If the parties agree on an adjustment of the complaint, but cannot agree on the issue of attorney fees and/or costs, that issue will be handled separately. The issue of attorney fees and costs will then be the subject of the final decision by the Secretary of the Army or his or her designee. (See § 588.51 for guidance.)

(f) If the complainant does not agree to meet, or if an adjustment is not reached, the Activity Commander will give the complainant a Notice of Proposed Disposition of Discrimination Complaint with a copy furnished to the ADO. (See appendix I.) The notice, which must first be reviewed by the labor counselor for legal sufficiency, will—

(1) Indicate the date a meeting was held to attempt adjustment or that the complainant refused to meet.

(2) Notify the complainant of his or her right to a final Army decision with or without a hearing, and of the 15-calendar-day time limit to make the request. Decisions regarding attorney fees and/or costs will be made in accord with §§ 588.54 and 588.55.

(3) Contain an analysis of the case and the rationale for the proposed disposition.

(4) Be issued within 20 calendar days of receipt by the EEO officer of the USACARA ROI.

(g) If the complainant does not respond within 15 calendar days from receipt of the Notice of Proposed Disposition, the Activity Commander will adopt the proposed disposition as the final Army decision and notify the complainant accordingly, advising him or her of the right to appeal to the Office of Review and Appeals, Equal Employment Opportunity Commission, and the right to file a civil action (app B). Although complaint adjustments

are specifically provided for in this paragraph, the activity should continue to be alert to the possibility of adjustments at any stage of the complaint process.

### **§ 588.21 MACOM review of proposed dispositions.**

When a USACARA investigator recommends a finding of discrimination and the Activity Commander rejects that recommendation in favor of a proposed disposition finding no discrimination, that proposed disposition (along with the complaint file) will be forwarded to the Activity Commander's MACOM commander for review. The MACOM review will be performed within 30 calendar days after the issuance of the proposed disposition. The MACOM commander's review of the proposed disposition will be made a part of the complaint file. The MACOM review will be performed concurrent with the processing of a complaint for a hearing in accord with § 588.24 or as part of the processing of a complaint for an Army decision without a hearing in accord with § 588.16.

### **§ 588.22 Failure to carry out the terms of the adjustment.**

If the activity does not carry out, or if it cancels, any action specified by the adjustment, for any reason not due to acts or conduct of the complainant, the complaint will be reinstated for further processing at the written request of the complainant. The complaint should be reinstated at the point where processing stopped. If the Activity Commander determines that the terms of the adjustment have been implemented, a decision declining to reinstate the complaint will be issued. Documents evidencing implementation will be attached to the decision with an advisement of appeal rights to the EEOC.

### **§ 588.23 Request for Army decision without a hearing.**

When the complainant, dissatisfied with the Activity Commander's proposed disposition asks for an Army decision without a hearing, the EEO officer sends the original and one copy of the complaint file the ERROCCRA, ATTN: SFCR, WASH, DC 20310-1813.

**§ 588.24**

(For a list of the contents of the complaint file, see § 588.76. The EEO officer ensures that all copies of the file are complete, legible, and identical.

**§ 588.24 Arranging a hearing.**

(a) When the complainant asks for a hearing, the EEO officer requests assignment of a complaints examiner from the EEOC District Office that has geographic jurisdiction over the activity where the hearing is to be held. (See appendix L.) The hearing will usually be held at the activity where the complaint is permanently assigned or has applied for employment. If another location is preferred, the written request to EEOC will specify the alternative location. However, EEOC will decide where a hearing is to be held. For travel funding and other costs, see § 588.79.

(b) The written request to EEOC will include the original complaint file (See § 588.76). In addition, one copy of the tabbed complaint file will be sent to EEOCRA.

(c) The request to the EEOC will ask that the complaints examiner send the complaint file with the final report and four copies of the hearing transcript to the Director, EEOCRA, ATTN: SFCR, WASH, DC 20310-1913. When there is more than one complainant, the EEO officer will ask that an additional copy of the report and transcript be sent to EEOCRA for each additional complainant. If the complaints examiner sends the report to the activity rather than to EEOCRA, the EEO officer will immediately return the file to the EEOC by certified mail, return receipt requested, with instructions to transmit it to the Director, EEOCRA, ATTN: SFCR, WASH, DC 20310-1813.

(d) The request to the EEOC will also provide the name, title, address, and telephone number of the labor counselor as the Army representative at the hearing. A copy of the request will be given to the complainant.

(e) The EEO officer will arrange for the services of a court reporter at the hearing. Activities may not use Army court reporters and should attempt to arrange for a court reporter from Navy or Air Force installations under an interservice support agreement. If no reporter is available, the activity may

**32 CFR Ch. V (7-1-98 Edition)**

then contract for a court reporter through their contracting office using the General Services Administration (GSA) Federal Supply Schedule.

**§ 588.25 The hearing.**

(a) The hearing is conducted by an EEOC complaints examiner subject to EEOC regulations and procedures. This paragraph is provided for information and general guidance and does not control the EEOC complaints examiner's activities.

(b) Before scheduling the hearing, the complaints examiner reviews the complaint file to determine if further investigation is needed and, if so, asks the activity to conduct the additional investigation. If a complaints examiner asks an activity to conduct further investigation, the EEO officer will promptly forward the request to the responsible USACARA Regional Office with an information copy of the transmittal letter furnished the complainant and the complaints examiner. The examiner may also ask the activity to arrange for the witnesses needed to testify at the hearing. (See § 588.70) If a prehearing adjustment of the complaint is reached, the original copy of the agreement will be forwarded immediately to the activity EEO officer who will send necessary closeout document to EEOCRA.

(c) Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint. The activity will make available all DA personnel called as witnesses for a hearing, unless the presence of a prospective witness is administratively impractical. The complaint examiner conducts the hearing to bring out pertinent facts and accept pertinent document. Rules of evidence are not applied strictly, but the examiner will exclude irrelevant or unduly repetitious evidence. Information that has a bearing on the complaint, including employment policies or practices relevant to the complaint, will be received in evidence. The complainant, his or her representative, if any, and the labor counselor at the hearing are given the opportunity to cross-examine witnesses who appear and testify. Testimony is given under oath or affirmation. (See