

and the Activity Commander, after coordination with the EEO officer, the labor counselor, and the CPO. A written resolution may include a finding on the issue of discrimination and an award of attorney fees and/or costs. It must also include any corrective action agreed on. The corrective action must be consistent with the law, executive orders, negotiated agreements, and Federal regulations, rules, and instructions. A copy of the signed resolution will be given to the class agent.

(d) Notice of the resolution will be given to all class members in the same way as the notification of the acceptance of the class complaint. This notice will state the terms of the corrective action, if any, to be granted by the Army. A resolution binds all members of the class, except those who have properly removed themselves.

(e) If the Army does not carry out, or rescind, any action specified by the resolution, for reasons not due to acts or conduct of the class agent, the representative, or class members, it will reinstate the complaint for processing at the class agent's written request. The complaint should be reinstated at the point where processing stopped. The agent may appeal to the EEOC Office of Review and Appeals the Army's failure to reinstate the complaint.

§ 588.41 Procedures for the hearing.

(a) At the end of the period allowed to prepare the case, the complaints examiner will set a date for a hearing. Witnesses and representatives at the hearing are authorized as provided for a subpart H. Only persons directly connected to the complaint (as determined by the examiner) may attend the hearing.

(b) The complaints examiner will conduct the hearing and give an opportunity to the parties to introduce evidence and to cross-examine witnesses. Testimony will be under oath or affirmation. Rules of evidence are not applied strictly, but the complaints examiner may exclude irrelevant or unduly repetitious evidence. The examiner may also exclude any person from the hearing for conduct that obstructs the hearing.

(c) The hearing is recorded verbatim and the transcript is made a part of the

record. The complaints examiner sends to EEOCCRA the record of the hearing, the report of findings, and a recommended decision on the complaint. This decision includes corrective action where appropriate. The examiner notifies the class agent of the date the report of findings and recommendations was sent to the EEOCCRA.

§ 588.42 Final Army decision.

(a) Within 30 calendar days after the Army receives the examiner's report, the Secretary of the Army or his or her designee must issue a written decision to accept, reject, or modify the findings and recommendations of the examiner.

(b) The decision is sent to the class agent and to his or her representative, with a copy of the transcript of the hearing and of the findings and recommendations of the examiner.

(c) If the Army decision is to reject or modify the findings and recommendations of the complaints examiner, the decision must state, in detail, the specific reasons for the Army action.

(d) If the Army has not issued a decision within 30 calendar days after receiving the examiner's report, the findings and recommendations of the examiner will become the final Army decision. This decision and the record of the hearing must then be sent by EEOCCRA to the class agent or his or her representative. A copy of the final Army decision will be sent to the MACOM, the Activity Commander, and to the activity EEO officer.

(e) Within 10 calendar days of the transmittal of the final Army decision to the class agent, the EEO officer will notify all members of the class of the final Army decision by the same means used to notify the class of the existence of the class complaint. (See § 508.31(a))

(f) The final Army decision will direct any remedial action authorized by law determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal employment opportunity. When discrimination is found, the notice of decision will—

(1) Advise the class agent and his or her representative, if any, the attorney fees and/or costs may be awarded. The

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payment of attorney fees and/or costs is not authorized in administrative complaints of age discrimination.

(2) State that a request for such award must be filed within 20 calendar days after receipt.

(3) List the documents that must be sent with the request. (See § 588.54.)

(g) The notice of decision must inform the class agent and his or her representative, if any, of the right to appeal the Army decision to the EEO Office of Revenue and Appeals, of the right to file a civil action, and of the applicable time limits. (For details on appeals and civil actions, see subpart F.)

(h) A final Army decision on a class complaint filed under this regulation is binding on the Army and all members of the class, except those who have properly removed themselves from the class.

§ 588.43 Corrective action.

(a) If discrimination is found, the Army must eliminate or change the personnel policy or practice that gave rise to the complaint, so that the policy or practice will no longer cause such discrimination. Also, the Army must provide individual remedial action to the class agent including an award of attorney fees and/or costs, as appropriate, as provided in subpart E. (The Army must fulfill obligations to consult or negotiate with the unions that have exclusive recognition before doing away with or changing personnel policies or practices.)

(b) If discrimination is found and a class member believes that, but for that discrimination, he or she would have been given employment or an employment benefit, the class member may file a written claim within 30 calendar days with any of the persons listed below. The claim will be filed within 30 calendar days after the notification.

- (1) The activity EEO officer.
- (2) The director of EEOCCRA.
- (3) The director of EEO for the Army.
- (4) The Secretary of the Army.

(c) The claim must include details showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice with-

in no more than 135 calendar days before the class complaint was filed.

(d) The Army will try in good faith to resolve the claim within 60 calendar days of receipt. If the Army and the claimant do not agree that the claimant is a member of the class or do not agree on the relief to which the claimant is entitled, the Army will refer the claim, with its recommendations, to the complaints examiner

(e) The complaints examiner will notify the claimant of the right to a hearing on the claim and will give the parties to the claim an opportunity to submit evidence and representations on the claim. If a hearing is requested, it will be conducted in accord with § 588.25. If a hearing is not requested, the complaints examiner, at his or her discretion, may hold a hearing to obtain the necessary evidence on the claim.

(f) The complaints examiner will issue a report of findings and recommendations on the claim to the Director, EEOCCRA. The Army will issue a final decision within 30 calendar days of receipt of the examiner's report. If a decision is not issued within 30 calendar days, the examiner's findings and recommendations will become the final decision.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not filed in a timely manner, he or she will recommend rejection of the claim and give notice of this action to the Army, the claimant, and the claimant's representative. The notice will inform the claimant of the right to appeal to the EEOC Office of Review and Appeals or to file a civil action in accord with subpart F.

§ 588.44 The complaint file.

The complaint file will be indexed and tabbed in reverse chronological order and will contain legible copies of the documents listed in § 588.76.

Subpart D—Miscellaneous Complaints

§ 588.45 Reprisal.

A complainant, his or her representative, a witness, or an EEO official may allege restraint, interference, coercion,