

§ 588.50 General allegations of discrimination.

General allegations of discrimination made by persons and special interest organizations, that are not within the scope of individual or class complaints, will be promptly answered by the Activity Commander or a designee. A copy of the response to the general allegation will be sent to the MACOM EEO officer and the Director of EEOCRA.

Subpart E—Remedial Actions**§ 588.51 General guidance.**

(a) Upon a finding of discrimination, a complainant is entitled to remedial action that makes him or her whole unless the record establishes by clear and convincing evidence that the action complained of would have occurred even absent the identified discrimination. The aim of remedial action is to “make the complainant whole” or, to place the complainant in the situation he or she would be in if there had been no discrimination. Attorney fees and/or costs may also be awarded as outlined in § 588.54. Remedial action may include—

(1) Retroactive appointment or promotion with back pay.

(2) An opportunity for the complainant to have the benefit that had been denied, such as training, overtime scheduling, detailing, or other employment benefits.

(3) Cancellation of an unwarranted personnel action and expunction from the Army’s records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action.

(b) Corrective action may also be taken to change or eliminate personnel policies or practices and to take disciplinary action against ADOs. Disciplinary action against an ADO is not a personal remedy that may be requested by a complainant. It is, therefore, not an issue for decision in a hearing or inquiry and is not to be specified in a decision on the complaint.

(c) The Army may also resolve complaints informally and award back pay and other remedial relief including attorney fees and/or costs without a finding of discrimination. The monetary

award in such settlements, however, may not exceed the maximum backpay or other amount that would be recoverable under this regulation if a finding of discrimination had been made. The requirements of §§ 588.20(d), 588.20(e), 588.55 apply to such settlements.

§ 588.52 Remedial action involving an applicant.

Upon a finding of discrimination, the Army will offer the applicant the position denied him or her or employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even without discrimination. The remedial relief available to the applicant will conform to the following guidance:

(a) The offer is made in writing, giving the applicant 15 calendar days from receipt to accept or decline the offer. Failure to notify the Army of a decision within the 15-day period will be considered a declination of the offer, unless the applicant can show that circumstances beyond his or her control did not permit responding within the time limit.

(1) If the offer is accepted, the appointment is retroactive to the date the applicant would have been hired, subject to the limitation in b below. Back pay is awarded from the beginning of the retroactive period, subject to the same limitation, until the date the person actually enters on duty. The applicant is deemed to have worked for the Army during the (retroactive) period for all purposes except for meeting service requirements for completion of a probationary or trail period as required.

(2) If the offer is declined, the Army awards the applicant a sum equal to the back pay he or she would have received. Back pay will be computed from the date he or she would have been appointed until the date the offer was made, subject to the limitation of b below. The Army informs the applicant, in its offer, of his or her right to this award if the offer of employment is declined.

(b) Back pay may not accrue from a date earlier than 2 years before the date the complaint was initially filed by the applicant.