

further investigation or for a new hearing, or may have an EEOC investigator look into the case. The office issues a written decision that sets forth its reasons for the decision and sends copies of the decision to the complainant, the designated representative and EEOCCRA. EEOCCRA will send the decision to the activity. If corrective action is ordered, the activity must take the action. The activity will promptly report to the EEOC compliance officer, with copies to the complainant, the MACOM, and EEOCCRA, that the action has been taken.

(h) For purposes of an appeal to the EEOC, the Army decision is final only when all issues in the complaint, including the award of attorney fees and/or costs, have been resolved. If fees and/or costs are to be awarded, the decision will not be final until the procedure for determining the amount of the award has been completed.

§ 588.58 Review by the EEOC commissioners.

(a) The EEOC commissioners may, at their discretion, reopen and reconsider any previous decision when the requesting party files written argument or evidence that tends to establish one or more of the following:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy.

(3) The previous decision may set a precedent involving a new or unreviewed policy consideration that may have effects beyond the case at hand or, is otherwise of such an exceptional nature as to merit the special attention of the Commission.

(b) A copy of any statement or brief in support of a request to reopen and reconsider must be submitted to the EEOCCRA as well as to the activity EEO officer.

(c) An Activity Commander or a designee who wishes to request reopening will consult the labor counselor to determine if the request meets the requirements of this paragraph. If so, the commander will send the request to

EEOCCRA for action. Any Army request to reopen and reconsider must be made within 30 days of the date of the EEOC Office of Review and Appeals decision.

(1) The request will be fully self-contained and will explain how the criteria of above applies to the case. It will be prepared to show an Army position rather than a local position and will be typed on plain bond paper.

(2) The request will be sent to EEOCCRA as early as possible but not later than 7 work days before the 30-calendar-day time limit for requesting reopening and reconsideration expires.

(3) The request to reopen and reconsider will be prepared in a format that will permit forwarding to EEOC without editing or retyping.

(4) EEOCCRA will check the submission for consistency with the case file and, if otherwise proper, will obtain approval from the Director of EEO.

(i) An Army request to reopen and reconsider may be submitted to EEOC only if approved by the Director of EEO.

(ii) Approval will be granted only when the Director of EEO finds that the submission is timely, meets EEOC criteria, and is in the best interest of the Army. Approval will not be granted routinely.

§ 588.59 Civil actions.

(a) A complainant in an individual complaint or an agent in a class complaint has the right to file a civil action in a Federal District Court. Time limits for filing, except for complaints based on age (see § 588.6(c)(1)(iii)), are as follows:

(1) Within 30 calendar days after receiving the notice of the final Army decision on the complaint or claim.

(2) After 180 calendar days from the date of filing a complaint with the Army if there has been no decision.

(3) Within 30 calendar days after receiving the notice of the final EEOC decision on the complaint.

(4) After 180 calendar days from the date of filing an appeal with the EEOC if the EEOC has not made a decision.

(b) In complaints alleging age discrimination, the complainant can file a civil action in Federal District Court 30 days after providing notice to the

EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 days of the occurrence of the alleged discriminatory act. If a complainant elects to pursue his or her age complaint through the administrative procedures outlined in subpart B then he or she may not file a civil action in Federal District Court until all administrative remedies (including an appeal of the final Army decision to the EEOC) have been exhausted.

(c) All Army decisions must notify the complainant of the right to file a civil action and of the time limits for doing so. For civil action purposes, the Army decision is final only when a determination has been made on all the issues in the complaint, including whether or not to award attorney fees and/or costs. If attorney fees and/or costs are to be awarded, the decision will not be final until the procedure outlined in subpart E for determining the amount of the award has been followed.

(d) The labor counselor will inform the activity EEO officer and the EEOCRA (ATTN: SFCR, WASH DC 20310-1813) when litigation is initiated on any EEO complaint. The following will be provided:

- (1) EEOCRA docket number.
- (2) Federal Court docket number.
- (3) Federal Court where the suit has been filed.
- (4) Date of filing.
- (5) Copy of Federal Court complaint.
- (6) Date suit terminated.
- (7) Copy of court order terminating suit.

Subpart G—Participation by the Alleged Discriminating Official

§ 588.60 General guidance.

(a) The purpose of the discrimination complaint procedure is to determine whether discrimination has occurred so that appropriate remedial action can be taken. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes. Their purpose is to develop and record evidence on which an informed and impartial decision can be based. It is not the purpose of the complaint procedure to try individual officials. Complaints

are lodged “against” the Army, not “against” individuals.

(b) Employees and applicants must be free to avail themselves of the discrimination complaint procedures without fear of reprisal. However, ensuring these rights of complainants is not done without regard for the rights of persons against whom allegations of discrimination have been made. Persons, named or otherwise, identified as ADOs have clearly defined rights and a significant role in the complaint process.

(c) A complainant cannot always be expected to know which person, if any, might have been responsible for a specific action or policy. Therefore, a complainant must not be required to identify ADO(s) in complaints of discrimination, but may do so if he or she believes particular persons have discriminated against him or her.

(d) The Army must ensure that persons named as ADOs are informed of all allegations made against them and are given a full and fair opportunity to respond to these allegations.

§ 588.61 The ADO at the informal stage.

(a) The informal counseling stage, the EEO counselor must solicit the views of an identified ADO unless the counselor obtains and provides information which clears the official to the satisfaction of the aggrieved person.

(b) Before the counselor interviews the ADO, the ADO must be told that he or she has been identified as a potential ADO. The ADO must be informed of the nature of any allegations made and must be told of the right to have a representative at the interview to advise him or her on how to respond to any questions the counselor may ask.

(c) The counselor must not reveal the identity of the aggrieved person when the aggrieved person has not authorized him or her to do so.

§ 588.62 The ADO during the USACARA investigation.

(a) The USACARA investigator must give an ADO the opportunity to respond to all allegations made against him or her and to review all documents that name or implicate the ADO and are to be included in the investigative