

## SIGNIFICANT CASES

### 1. Settlement agreements

**Why significant: Agencies so often get wrong the processing of settlement agreement breach claims, as reflected in the following selection**

1. Complainant v. Department of the Interior, Appeal No. 0120140607 (April 8, 2014) a patchwork assemblage of agreements: written, then handwritten addendum, and a strange “oral” agreement (?), which is generally only legitimate if memorialized before an AJ. . but that was not the case here.
2. Complainant v. Department of the Navy, Appeal No. 0120133028 (May 15, 2014). Mirror image of the above case (almost). . Here, a viable settlement agreement executed, and totally ignored by the Agency in its final decision. What’s going on here?
3. Complainant v. USPS Appeal No.0120132605 (November 8, 2013) ambiguity in drafting of decision. The “backslash”, which causes considerable confusion, is sloppy drafting.
4. **CASE INVOLVING CONFLICTS WITH CBA** Iglesias v. USPS, Request No. 0520110503 (March 30, 2012). .an older case, but offered for a historical perspective. . .Commission takes Agency to task for not anticipating potential conflicts with cba during settlement agreement negotiations.
5. **CASE INVOLVING CONFLICTS WITH CBA** Complainant v. USPS, Appeal No. 0120133172 (January 29, 2014). Again, as in Iglesias, Agency tries to argue that there is a conflict with cba. . Note: Union rep first negotiates with the complainant in executing the settlement agreement, but then turns around and tries to execute a “separate deal” with the Agency indicating the agreement indeed conflicts with CBA (?!)

## **2. Agency Actions Which Potentially Mislead Complainants**

**Why significant: reflective of confusion complainants (especially pro se), have to sometimes experience in pursuing the EEO complaint process**

1. Complainant v. Department of Veterans Affairs, Appeal No. 0120140863 (May 6, 2014). Agency indicates official whom complainant contacted for initial EEO contact purposes was not the proper contact, dismissed on the grounds of untimely EEO contact. . .but the poster in the record has name and picture and phone number of the party whom Complainant contacted.
2. Complainant v. USPS, Appeal No. 0120140949 (May 14, 2014). Complainant wants to file a breach claim, but Agency officials ask him for patience, indicating the problem will be resolved. . .this goes on for quite a while. . Complainant finally files a breach claim, and the Agency says he filed the breach claim late (after previously asking him to consider holding off for a while (!))

## **3. Transmittal of Agency Correspondence by Electronic Mail and its Impact on Time Limits**

**Why significant: of great interest, apparently, to various agency officials**

1. Bolt v HHS, Appeal No. 0120102899 (September 29, 2010). . . Older case, but included to put in historical context long held EEOC position of not recognizing electronic mail as a proper means of correspondence (in this case, the notice of right to file a formal complaint was sent by email. Agency found complaint untimely filed, we reversed.) Note please, I discussed this case as a “throwaway” little case, in case presentation before EEO Directors, some years ago, and there was a din and cry over our position.
2. CASE NOT YET RELEASED, BUT BEING REVIEWED ON CIRCULATION THAT MAY WELL CHANGE ALL THIS. PLEASE NOTE, I will send you a CONFIDENTIAL draft of this case, under separate cover. . .Complainant v. SSA, Appeal No. 0120122444. . . what is on the table right now in this draft is as follows: when a complainant opens an email can create a rebuttable presumption that he or she has received the document that

he or she has opened the email. However, this presumption will only be recognized if the agency has previously obtained from the complainant informed consent that service by email of EEO documents is acceptable.

#### **4. Per se reprisal violations**

**Why significant: extremely common violation: seems to happen constantly**

1. Complainant v. Department of Justice, Appeal No. 0120123111 (March 27, 2014). The FBI violated Title VII when a supervisor announced in a meeting of subordinates that certain subordinates had contacted the EEO office, and he made a threat based upon reprisal
2. Complainant v. Department of Defense, Appeal No. 0120132112 (November 8, 2013) another per se finding. “EEO is crap” speech, made by a supervisor, in a meeting with other supervisors. BUT CONTRAST (an old case) Blocher v. Department of Veterans Affairs, Appeal No. 012011937 (April 17, 2013).

#### **5. SEXUAL STEREOTYPING**

1. Complainant v. Department of the Treasury, Appeal No. 012013362 (May 9, 2014) no stereotyping found
2. Complainant v. USPS, Appeal No. 07230133009 (May 14, 2014). COMPARE, stereotyping found in this case.