

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 26, 2019

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 2064

In Reply Refer to:

EPA Complaint No: 01D-20-R5

Rosemary Fox
Director
U.S. Equal Employment Opportunity Commission
310 West Wisconsin Avenue Suite 500
Milwaukee, WI 53203-2292

Re: Referral of Administrative Complaint

Dear Ms. Fox:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is referring a complaint received December 4, 2019, from ^{(b) (6) Privacy, (b) (7)(C) Enforcement Privacy}, a former employee of the Wisconsin Department of Natural Resources (WI DNR). The complaint alleges that the WI DNR discriminated against Mr. ^{(b) (6) Privacy, (b)} on the basis of disability by denying his request for reasonable accommodation due to his disability and retaliating against him by terminating his employment as of February 7, 2019, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504).

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

However, as described in 29 CFR 37.6(c)(1) (and 29 C.F.R. Part 1640), "[i]f an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and

processing under title I of the ADA.” In the present case, ECRCO has rejected this complaint because it was not filed within 180 days of the alleged discriminatory act and a waiver of the deadline is not reasonable given the circumstances of the case. Accordingly, as the EEOC may have jurisdiction over this matter under Title I of the ADA, ECRCO is referring this complaint to the EEOC’s Milwaukee office for appropriate action. We have notified the complainant through certified mail that the complaint is being referred to the EEOC and provided your contact information. A copy of our rejection and referral letter as well as the original complaint are enclosed.

Thank you in advance for your assistance. If you have any questions about this correspondence, please contact Dale Rhines, Deputy Director, at (202) 564-4174, by e-mail at rhines.dale@epa.gov or by mail at U.S. EPA External Civil Rights Compliance Office, (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilian S. Dorka".

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosures

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Leverett T. Nelson
Regional Counsel
EPA Region 5

Cheryl Newton
Acting Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 26, 2019

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2057

In Reply Refer To:

EPA Complaint No. 01D-20-R5

Ralph Neal Smith
202 North Segoe Road #38
Madison, WI 53705

Re: Rejection and Referral of Administrative Complaint

Dear Mr. Smith:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting and referring your complaint filed against the Wisconsin Department Natural Resources (WI DNR), which was received by ECRCO on December 4, 2019. The complaint alleges that the WI DNR discriminated against you on the basis of disability by denying your request for reasonable accommodation for your disability and retaliating against you by terminating your employment as of February 7, 2019, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504.) After careful consideration, ECRCO has determined that it must reject this complaint and refer it to the U.S. Equal Employment Opportunity Commission (EEOC).

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

During a telephone conversation on December 4, 2019, ECRCO staff explained our preliminary review process to you and sought clarification about the allegations raised in the complaint. ECRCO staff explained that complaints of discrimination based on disability processed under EPA's nondiscrimination regulation must be filed within 180 days of the last instance of the alleged discrimination unless an appropriate reason exists to waive the filing deadline. In your complaint, you indicated that you are seeking such a waiver. In response to a request for clarification from ECRCO staff, you indicated that you had been incapacitated by illness and

Mr. Ralph Smith

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cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Cheryl Newton
Acting Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 5

T. Leverett Nelson
Regional Counsel
US EPA Region 5

Ralph Neal Smith
202 N. Segoe Road #3B
Madison, WI 53705
rnsmithemail@gmail.com
C: (608) 449-7556

December 3, 2019

U.S. EPA External Civil Rights
Compliance Office (2310A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dear U.S. EPA External Civil Rights Office (ECRCO)

I am writing to file a complaint of discrimination against the State of Wisconsin, Department of Natural Resources (WI DNR), Environmental Management Program, Petroleum Environmental Cleanup Program (PECFA) which receives EPA funding for their program on behalf of both myself and others with disabilities currently employed by the WI DNR. This discrimination continues to take place from June 30, 2015 to present time. I am filing this complaint because I was denied reasonable accommodations for work and job as a Senior Hydrogeologist, because of my being hearing impaired and the difficulties this presented to work in a noisy environment. I requested reasonable accommodations to move to a different, empty cubicle – of which there were several vacant cubicles nearby within the work area of the program. I requested moves to different cubicles from ~2015 to ~February 7, 2019 – the day I was terminated for other reasons and which I believe was retaliation for requesting accommodations for my hearing disability. I know I was depressed by the inaction of management in DNR from the entire duration mentioned above, and this resulted in decreased job performance. I also complained to the Dept. Personnel Office at the time of my request for accommodations in 2018. My workload was kept minimal as compared to other colleagues and I requested increased workload and was given assurances of comparable workload balancing which never took place – which resulted in me feeling further alienated and not valued.

I am also sending this complaint of discrimination on behalf of Andy Alles, a former colleague who is presently employed by the Department of Natural Resources. He has consistently been ignored by management when requesting information and advice from his managers on business matters in the PECFA Program, and is made to feel diminished and not valued as well. He also filed a request for accommodations at or about the same time as I did in 2018 (I had no prior knowledge of his

Ralph Smith Complaint

December 3, 2019

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filing a request for accommodations, so this was done independently of my actions). These documents are in the files of DNR Personnel Office, I don't have copies of them, but they should be available upon request. I was terminated on February 7, 2019, and I believe this would not have happened if I was not depressed and despondent honestly. I was informed by management (Darsi Foss) that my request for accommodations was perceived as a threat to management. Thus when I went through the appeal process of trying to retain my job, I believed I was fired with retaliation being a major factor in their decision to terminate my employment. At any rate, those documents should be available with the Department as well, within the files.

Therefore, I am filing this complaint on behalf of both myself and Andy Alles. I request reinstatement in a comparable position with the same or higher salary with the Department of Natural Resources as the Advanced Hydrogeologist job classification. Furthermore, we requested that position descriptions be provided and those were never provided. Why? In my view, it was in order to prevent staff from advancing in their careers or to be treated the same as our colleagues within the same program with the Department of Natural Resources with the goal being to reduce staff. Thus this is another long-term practice of discrimination against both Andy Alles and I in order to do our jobs to the standards necessary to ensure compliance with fair labor laws and equal opportunity for disabled employees within the State of Wisconsin, Department of Natural Resources, Environmental Management, Remediation and Redevelopment Program office in Madison, WI.

I still continue to be depressed over this egregious conduct by the Department, and have been in the care of mental health professionals ever since, and thus I believe that any deadlines for the dispute process should be extended for these extenuating circumstances. The loss of my career and my reputation, not being able to obtain unemployment compensation, or even considering my immediate supervisor for a reference has hampered my ability to support myself and my family in job search efforts for a family supporting living wage.

Again, more details are in my personnel file and in my former work computer/work server, which upon further examination should provide detailed information to help corroborate these issues and exact timelines for further clarity.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Ralph N. Smith". The signature is written in a cursive, slightly slanted style.

Ralph N. Smith