

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 31, 2020

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 2194

In Reply Refer To:

EPA Complaint No. 02r-20-R9

Scott Enright, Chair
Hawaii Department of Agriculture
Office of the Chairperson
1428 South King Street
Honolulu, HI 96814

Re: Rejection of Administrative Complaint No. 02r-20-R9

Dear Chair Enright:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting a complaint filed against the Hawaii Department of Agriculture (hereinafter "the HDOA"), on January 9, 2020. Complainant alleges that the HDOA retaliated against him because of his involvement with an unrelated complaint filed against HDOA with the ECRCO (EPA Complaint No. 44NO-16-R9) under Title VI of the Civil Rights Act of 1964 (Title VI). Specifically, Complainant alleges that after his supervisors designated Complainant as the Non-Discrimination Coordinator as part of the resolution of EPA Complaint No. 44NO-16-R9, Complainant's supervisors subsequently demoted him effective December 18, 2019. In addition, on January 16, 2020, Complainant sent an email stating that he thought his supervisors discriminated against him because of his race/national origin ("SE Asian, first generation Filipino").¹

ECRCO is responsible for processing complaints alleging that applicants for or recipients of EPA financial assistance have discriminated against persons, including on the basis of race, color or national origin, in violation of Title VI and other federal nondiscrimination laws and EPA's nondiscrimination regulation found at 40 C.F.R. Parts 5 and 7. EPA's nondiscrimination regulation prohibits retaliation, in part, for participating in an investigation, proceeding or hearing under 40 C.F.R. Part 7. *See* 40 C.F.R. § 7.100. After careful consideration, ECRCO has determined that it cannot accept this complaint for investigation. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate

¹ Complainant alleges discrimination based on race /national origin ("SE Asian, first generation Filipino"), educational attainment and cultural assimilation in the cited correspondence.

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.

Prohibited retaliation is defined by EPA regulations at 40 C.F.R. § 7.100 as adverse actions taken against a person “(a) for the purpose of interfering with any right or privilege guaranteed by the Acts² or this part, or (b) because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.”

In general, ECRCO will accept, reject, or refer a complaint after considering the four jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject the complaint.³ In an effort to determine jurisdiction, ECRCO conducted an interview with Complainant on January 16, 2020, examined all documents provided by Complainant, and requested additional clarification of certain matters. ECRCO's request for additional clarification sent to Complainant on January 17, 2020, and again on January 21, 2020, received no response.

During the interview on January 16, 2020, ECRCO asked Complainant for information about his participation in the resolution of EPA complaint number 44NO-16-R9. Complainant explained that his supervisors designated him as the HDOA's Nondiscrimination Coordinator. Neither Complainant's interview statements nor the supporting documents provided by Complainant indicated that HDOA management opposed his efforts to help HDOA comply with EPA's nondiscrimination regulation. Rather, emails Complainant provided included messages from the Deputy Attorney General for the HDOA encouraging HDOA staff to cooperate with efforts to post information about the HDOA's nondiscrimination program on the HDOA website and in offices. In addition, Complainant stated that his supervisor listened to and acted on some of his ideas about looking at how other entities have complied with their nondiscrimination obligations.

During the interview Complainant also spoke at length about the difficulty he experienced meeting the demands of management related to a contract concerning pesticide drift monitoring. During the ECRCO interview Complainant stated that his demotion “stemmed from” his management of that contract and that there was no “concrete connection” between

² The Acts here referred to are Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended and Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

³ *See* ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, available at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

Complainant's work on the pesticide drift monitoring contract and his efforts as HDOA's Nondiscrimination Coordinator.

The information Complainant shared during the January 16th interview, and the supporting documentation provided by Complainant via email, contradict the allegation that his demotion is retaliation as defined by EPA regulations at 40 C.F.R. §7.100. As such, ECRCO finds that the allegation is not sufficiently grounded in fact. Accordingly, we cannot accept this complaint for investigation.

With respect to the allegations of discrimination based on race/national origin ("SE Asian, first generation Filipino") against the HDOA, please note that ECRCO has limited jurisdiction over employment complaints (see 40 C.F.R. §7.30 (a)(6).) As such, ECRCO must refer these claims to the EEOC. Federal regulations at 29 C.F.R. §1691.5(c) state that "[a]n agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint." Accordingly, as the EEOC may have jurisdiction over this matter, ECRCO is referring this complaint to the EEOC's Honolulu office for appropriate action.

We have enclosed a copy of our letter to the EEOC referring this complaint, for your information. In light of the above, we are closing this complaint with ECRCO as of the date of this letter. If you have questions about this letter, please contact ECRCO Team Lead Debra McGhee, by phone at (202) 564-4646, by email at mcghee.debra@epa.gov or by mail at 1200 Pennsylvania Avenue, NW, Mail Code 2310A, Room 2524, Washington, DC, 20460-1000.

Sincerely,



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

Enclosure

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

Deborah Jordan
Deputy Regional Administrator
US EPA Region 9

Sylvia Quast
Regional Counsel
US EPA Region 9