



512097

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

*Handwritten initials*  
RMTI

14959

B-200035

September 18, 1980

The Honorable Alan Cranston  
United States Senate

Dear Senator Cranston:

*is not available to public 1004725*

This is in further response to your letter of August 7, 1980, requesting the status of the discrimination complaint of Mr. Julian M. Fogle.

Mr. Fogle has written regarding the actions that he has filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (1976) in which he alleges that he has been discriminated against in his employment by the United States General Accounting Office because of race and color. Mr. Fogle has filed two actions in this regard. One is a class action in which Mr. Fogle seeks relief for himself and as agent for all persons similarly situated, namely:

"\* \* \* all past, present and future black applicants for professional positions at GAO \* \* \* and all past, present and future black professional employees at GAO \* \* \*."

The other complaint is by Mr. Fogle as an individual. These formal complaints were filed with GAO on February 8, 1980. Mr. Fogle is represented in both matters by Mr. John H. Erickson and Alice M. Beasley of the law firm of Erickson, Beasley and Hewitt, 12 Geary Street, San Francisco, California 94108.

These matters are being processed under regulations as set forth in 29 C.F.R. Part 1613 (1979). The class action was referred to the Equal Employment Opportunity Commission (EEOC) on February 26, 1980, under the provisions of 29 C.F.R. 1613.604 for a determination by that agency of whether or not Mr. Fogle is representative of the class which he alleges to represent. A determination of that issue has not been made and further processing of the class action by GAO must, under the law and regulations, await a determination of that issue by EEOC.

B-200035

On Mr. Fogle's individual complaint, he has requested a hearing under the provisions of 29 C.F.R. 1613.217. This matter was also referred to EEOC on August 6, 1980, for appointment of a hearing examiner and setting a time and place for hearing. Such a hearing will be conducted in accordance with 29 C.F.R. 1613.218. However, we are informed by the San Francisco Regional Office of EEOC, which will conduct the hearing, that that office has a backlog of cases and it may be some time before a hearing examiner schedules the matter for a hearing. We will make every effort to have EEOC schedule this matter for a hearing as soon as possible.

Regarding Mr. Fogle's assertion in his letter to you of June 20, 1980, that GAO is presently claiming immunity from the provisions of Title VII of the Civil Rights Act of 1964, as amended, quite the opposite is true. In the case of JePhunneh Lawrence v. Elmer B. Staats, et al., Civil Action No. 77-913, filed in the United States District Court, it was alleged by the plaintiff, a former employee of GAO, that employees of GAO were excluded from the provisions of Title VII of the Civil Rights Act of 1964, as amended, and that he was therefore free to bring an action under the due process clause of the Fifth Amendment to the United States Constitution without exhausting his administrative remedies under 5 C.F.R. Part 713 (now 29 C.F.R. Part 1613). The issue was argued before the United States District Court on a Motion to Dismiss filed by the defendant, GAO. In an Order dated July 29, 1977, United States District Judge Thomas A. Flannery ruled against GAO and for the plaintiff to the effect that GAO employees were excluded from the statute. The question presented was certified for appeal under 28 U.S.C. 1292(b) on October 10, 1977, in a Certificate for Appeal signed by Judge Flannery on motion by GAO. The matter was presented for argument before the Court of Appeals, District of Columbia Circuit, in December 1978. No decision has been issued by the Court of Appeals.

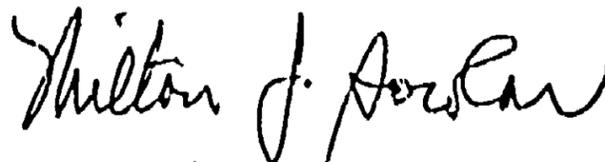
Pending a decision on appeal of the issue of whether GAO employees are excluded from the statute, we have taken the position that GAO employees are covered by Title VII of the Civil Rights Act and we are continuing to process discrimination complaints filed pursuant to this Act.

B-200035

Further, section 8(g) of the General Accounting Office Personnel Act of 1980, Public Law 96-191, February 15, 1980, 94 Stat. 27, 34, amended the Title VII Civil Rights Act of 1964, effective October 1, 1980, to make it clear that the General Accounting Office is not excluded from the provisions thereof.

We trust that this will serve the purpose of your inquiry. The enclosures forwarded with your letter are returned as requested. Since Mr. Fogle is presently being represented by legal counsel, we are forwarding a copy of this letter to his attorneys.

Sincerely yours,



For the Comptroller General  
of the United States

Enclosures

cc: John H. Erickson, Esq.  
Alice M. Beasley, Esq.  
Erickson, Beasley and Hewitt  
12 Geary Street  
San Francisco, California 94108