

**DECISION**



*D. Agazian*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20540**

*7953*

**FILE:** B-191921

**DATE:** October 4, 1978

**MATTER OF:** Gene A. Albarado - Interest on Backpay Arising  
Out of Discrimination Complaint

**DIGEST:** Pursuant to 5 C.F.R. 713.217, Securities and Exchange Commission adjusted employee's complaint of discrimination by agreement to authorize retroactive promotion and accompanying backpay plus interest. The SEC has no authority to allow payment of interest. It is well-settled rule of law that interest may be assessed against Government only under an express statutory authority and neither Equal Employment Opportunity Act of 1972 nor the incorporated provisions of title VII provide express authorization of interest against Government. See Comp. Gen. docs. and court cases cited.

This action is in response to a request dated May 5, 1978, from Mr. Lawrence H. Haynes, Comptroller of the Securities and Exchange Commission (Commission) for a decision as to whether the Commission may authorize the payment of interest to Mr. Gene A. Albarado, an employee of the Commission, in connection with an award of backpay.

The record shows that on April 6, 1977, Mr. Albarado filed an Equal Employment Opportunity complaint alleging that the Commission had engaged in discrimination against him.

On April 8, 1978, Mr. Albarado and the Commission agreed upon an adjustment of Mr. Albarado's discrimination complaint pursuant to 5 C.F.R. 713.217 and a memorandum was signed setting forth the terms of the informal settlement of the complaint. The terms of the adjustment provided that Mr. Albarado would be granted a retroactive promotion and accompanying backpay for the period September 26, 1976, to April 10, 1977. In a memorandum dated April 18, 1978, the terms of informal adjustment of Mr. Albarado's complaint were amended to include the payment of interest on the backpay award, provided that the General Accounting Office determines that the payment of such interest is proper.

The Equal Employment Opportunity Act of 1972, Public Law 92-261, 86 Stat. 111, amended title VII of the Civil

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Rights Act of 1964, 42 U.S.C. 2000e et seq., to prohibit discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Subsection 2000e-16(h) of title 42 provides in pertinent part that the Civil Service Commission shall have the authority to enforce the provisions of title VII with regard to Federal employees through appropriate remedies including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of title VII and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities.

The Commission's regulations implementing title VII provisions pertaining to complaints of discrimination are found in Part 713 of title 5, C.F.R. Those regulations give each Federal agency broad authority to take remedial action in discrimination cases. Section 713.221 of title 5, C.F.R. provides in pertinent part as follows:

"(c) The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. \* \* \*

See also 5 C.F.R. 713.271(b).

Concerning the payment of interest in connection with a backpay award, it is a well-settled rule of law that interest may be assessed against the Government only under an express statutory or contractual authorization. United States v. Testan, 424 U.S. 392, 399 (1976); 45 Comp. Gen. 169 (1965); and 54 id. 760 (1975). Neither the Equal Employment Opportunity Act of 1972 nor the incorporated provisions of title VII provide an express authorization of interest against the Government. In the absence of an express provision in title VII allowing interest in claims against the Government, there is no basis to allow the payment of interest under title VII. Fischer v. Adams, 572 F.2d 406 (1st Cir. 1978); Richerson v. Jones, 551 F.2d 918, 925 (3d Cir. 1977). Thus, there is no authority for the Commission to authorize the payment of interest in connection with the adjustment of Mr. Albarado's discrimination complaint.

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In accordance with the above, the Commission may not pay  
Mr. Albarado interest in his award of backpay.

*R. G. Kester*  
Deputy Comptroller General  
of the United States