



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-191802

MAY 17 1978

Mr. Abner W. Sibal
General Counsel
Equal Employment Opportunity
Commission
Washington, D.C. 20506

Dear Mr. Sibal:

We refer to your letter of April 26, 1978 (Re: File Z-2796944, In the Matter of _____), requesting that the Comptroller General certify for payment under the provisions of 31 U.S.C. § 724a, a compromise settlement in the amount of \$4,500 for attorneys' fees agreed upon between EEOC and _____, the plaintiff, in an action brought under title VII of the Civil Rights Act of 1964, as amended, _____ v. EEOC, No. C-75-1085A (N.D. Ga.).

The facts and circumstances leading up to this proposed settlement are as follows: _____, a grade GS-13 attorney stationed in EEOC's Atlanta, Georgia Regional Office, filed suit as indicated in the above-captioned action against the EEOC in 1975, alleging discrimination. EEOC entered into a consent decree with _____. Subsequently two other attorneys were promoted to grade GS-14 positions in _____ office. Thereupon, he brought a contempt action, which the District Court sustained and found that EEOC in its promotion selection process had failed to credit _____ with the constructive experience to which he was entitled under the consent decree. By order dated October 26, 1977, the District Court required EEOC to promote _____ to grade GS-14 retroactively to October 24, 1976, and awarded him attorneys' fees pursuant to 42 U.S.C. § 2000e-5(k) for legal services performed on his behalf through July 7, 1977. In its Order, the Court further stated:

"Because of the pendency of an appeal from the Court's order denying motions to intervene filed by _____ and _____ the Court expressly reserves for future consideration all issues regarding Plaintiff's entitlement to attorney's fees for legal services rendered in connection with the post-trial motions filed by _____ and _____ and their ensuing appeals. Also reserved for future consideration is Plaintiff's entitlement to attorney's fees for

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legal services rendered in connection with all matters occurring in connection with the instant case subsequent to July 7, 1977, the date of the supplemental affidavit of Plaintiff's attorney in support of Plaintiff's application for attorney's fees. Subject to these reservations, an award of attorney's fees to Plaintiff at this time is appropriate * * *."

Subsequent to this Court Order, EEOC reached agreement with plaintiff and his attorneys to settle out of Court in the amount of \$4,500 for attorneys' fees for services rendered after July 7, 1977. You requested our Office to certify payment of this amount under authority contained in 31 U.S.C. § 724a.

We do not believe that 28 U.S.C. § 2414 and 31 U.S.C. § 724a give us the authority to certify the \$4,500 for payment based solely on the agreement of the parties. The above cited statutes only authorize this Office to make payment of compromise settlements that are made by the Attorney General or a person authorized by him.

Accordingly, on the record of the instant case, we would be unable to make payment unless the settlement agreement is presented to the Court for processing as a Consent Decree, so that the Court may approve the award and terminate the proceedings. See Brunswick Corp. v. Chrysler Corp., 408 F.2d 335 (7th Cir. 1969). You may wish to seek advice from the United States Attorney as to the proper form of a Consent Decree that embodies a settlement agreement which will afford maximum legal protection to the Government.

Sincerely yours,

Paul G. Demblins

Paul G. Dembling
General Counsel