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UNITED STATES  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
SAVANNAH LOCAL OFFICE

CLARENCE M. HILL,	)	
	)	
Class Agent,	)	EEOC Hearing No.
	)	110-2004-00311X
v.	)	
	)	AGENCY NO.
John E. Potter,	)	4-H-310-0091-04
Postmaster General,	)	
UNITED STATES POSTAL SERVICE,	)	
	)	
Agency.	)	

**ORDER DENYING MOTION TO DISMISS  
AND GRANTING MOTION FOR CERTIFICATION OF CLASS**

The class agent says he received the March 10, 2004, letter from the Agency containing the pre-employment inquiry on March 20, 2004. On May 3, 2004, he made contact with counselor Gary G. Kiphart of the Agency requesting pre-complaint counseling. Thus, it appears he made timely contact with an EEO counselor. The agency's Motion to Dismiss is denied.

On May 9, 2004, Complainant submitted information for pre-complaint counseling with the Agency. On May 20, 2004, the Agency issued in writing a notice of right to file class complaint which was received by the class agent on May 28, 2004.

The class complaint was also filed on May 28, 2004, which alleged that the Agency had violated the rights of applicants who sought disabled veteran preferences by requiring such applicants to provide pre-offer medical information in violation of the Rehabilitation Act of 1973.

The complaint was forwarded to the Commission pursuant to 29 CFR 1614.204 and was dismissed by the Administrative Judge. Upon appeal, the Commission reversed this determination, holding that the elements of a valid class complaint (numerosity, commonality, etc.) were present and that the class agent should be given an opportunity to find counsel in order to resolve the issue of adequate representation. See *Hill v. Potter*, EEOC NO. 01A45646, (April 18, 2006). The class agent selected as counsel the firms of Nicholson Revell, LLP and Nece Allen, LLP, who have acted as class counsel since their original appearance in the matter. There has been no objection from the Agency to these firms being appointed as class counsel.

The Commission also directed the Administrative Judge assigned to the case to make a factual determination in regard to the temporal and geographic scope of the class. The class agent filed his motion for class certification and first amendment setting forth his position with regard to temporal and geographic scope. The Agency has filed its response.

#### ANALYSIS

This claim arises from a nationwide Agency practice of requiring disabled veteran applicants to provide medical records or otherwise provide medical information prior to receiving a conditional job offer. The Agency is divided into nine geographic areas - Capital Metro, Eastern, Great Lakes, New York Metro, Northeast, Pacific, Southeast,

Southwest, and Western. These nine areas are further divided into 80 districts. The Agency admits that the practice of making pre-employment medical inquiries to disabled veteran applicants occurred in all nine areas and in 50 of the Agency's districts during the applicable period.

Complainant made his initial contact with a counselor for the Agency on May 3, 2004. The Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor 29 CFR 1614.204(1)(3). Forty-five (45) days prior to May 3, 2004, is March 19, 2004.

#### DECISION

Based on the foregoing analysis, I find that the geographic scope of the class is nationwide. The Agency admits that the practice at issue occurred in all of its geographic areas and in a majority of its hiring districts. The Complainant has set forth sufficient reason not to limit the geographic scope of the class to the districts where the Agency has admitted to the illegal practice.

With regard to the temporal scope, I find that the class should include all disabled veterans who sought disabled veterans preference and who were asked by the Agency to bring medical documentation in excess of that required to verify their entitlement to the preference to an interview before an offer of employment was made beginning 45 days from the Complainant's initial contact with a counselor which is March 19, 2004, to the present.

Clarence Hill is approved and appointed as Class Agent. Sam G. Nicholson and the law firm of Nicholson Revell LLP and James W. Allen and the law firm of Nece Allen LLP are approved and appointed as class counsel.

### ORDER

I hereby direct notice of the certified class to be sent to all applicants who applied for a veterans preference at any time on or after March 19, 2004, in the entire United States and Puerto Rico within thirty days of the date of this Order. The Agency shall use reasonable means, such as personal delivery, mailing to last known address to notify all class members of the acceptance of the class complaint. Such notice shall contain: (1) the name of the agency or organizational segment, its location, and the date of acceptance of the complaint; (2) a description of the issues accepted as part of the class complaint; (3) an explanation of the binding nature of the final decision or resolution of the complaint on class members; and (4) the name address and telephone number of the class representative.

**Prohibited Communication.** The Agency shall not contact potential class members and shall specifically refrain from communication with prospective class members or other attorneys regarding the substance of this claim or compromise of any individual claims arising hereunder. The parties and their counsel are also directed not to solicit prospective class members, either to participate or not to participate in this case as members of the class, except pursuant to any notice or other communication expressly approved in advance by the Commission. Complainant and his counsel may, however, communicate with prospective class members concerning the decision to become a member of the class.