



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE FIELD OFFICE - 531

10 South Howard Street, 3rd Floor
Baltimore, MD 21201
(410) 209-2782
FAX (410) 209-2777

JAMES G. H [REDACTED]
Complainant

vs.

ROBERT M. GATES, SECRETARY,
DEPARTMENT OF DEFENSE
(Department of the Air Force)
Agency

) EEOC No. 531-2011-00114X
)
)
)

) Agency No. 0U1R10002
)
)

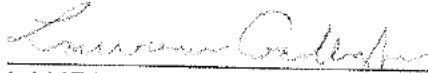
) Date: May 23, 2012
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)

ORDER OF DISMISSAL

The Complainant and Agency have entered into a settlement agreement in the above captioned EEO complaint of discrimination. Therefore, the above captioned case is hereby DISMISSED.

It is so ORDERED.

For the Commission:


LAURENCE GALLAGHER
Administrative Judge
Telephone: (410) 209-2782
Facsimile: (410) 209-2777

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE FIELD OFFICE

JAMES G. H. [REDACTED], Complainant,)	EEOC CASE NO.
)	531-2011-00114X
)	AGENCY CASE NO.
)	OU1R10002
MICHAEL B. DONLEY, SECRETARY, DEPARTMENT OF THE AIR FORCE Agency.)	DATE: 14 May 2012

SETTLEMENT AGREEMENT AND RELEASE

1. The Complainant, JAMES G. H. [REDACTED], in exchange for the promises of the Agency contained in paragraph 4 of this Agreement, hereby agrees freely without fear of coercion or intimidation to hereby withdraw his formal discrimination case, EEO Docket No. 531-2011-00114X, and releases the government, the Agency, its employees, in both their official and individual capacities, from any and all liability, claims, causes of action, etc., including appeals to the Merit Systems Protection Board, resulting from or relating to, in any manner whatsoever his employment with the Agency, occurring prior to the effective date of this Agreement; this agreement being a complete accord and satisfaction of any and all claims, including any and all equitable and legal relief, e.g., back pay, attorney fees and costs, compensatory and consequential damages, including any claims for damages for personal physical injuries, etc.
2. This agreement resolves all disputes, all issues, and all disagreements between the Complainant and the Agency arising out of or connected with Complainant's employment or contractual relationship with the Agency occurring prior to the effective date of this Agreement. The Complainant further waives all right to personal recovery, including but not limited to compensatory damages not otherwise agreed to by the parties herein, in any lawsuit brought against the Agency by either Complainant or the Equal Employment Opportunity

Commission, any other type of EEO complaint or any other civil and criminal litigation in any court or other administrative forum, for all acts, events and circumstances arising out of or connected with his employment or contractual relationship with the Agency up to the effective date of this Agreement. Complainant shall retain his rights to rescission of this Agreement and other remedies pursuant to 29 C.F.R. § 1614.504 in the event of breach of this Agreement, subject to the conditions outlined in paragraph 10.

3. Complainant specifically waives and releases any and all further or additional relief, remedies, and causes of action of any and all kinds which is known to him or should be known by him against the Air Force and any and all of its officers, managers, supervisors, and employees up and until the date of the signing of this agreement. This release does not include future claims that arise after the date of this agreement.

4. In exchange for the promises of the Complainant in paragraphs 1-3 of this agreement, the parties agree that:

A. The Agency shall reinstate the Complainant, effective May 16, 2010, to YK-1811-02, Criminal Investigator, and will promote him effective the same day to YK-1811-03, Criminal Investigator, earning \$90,343 per annum (base pay). Appropriate locality pay and LEAP are in addition to this rate, which will place the Complainant at the equivalent GS-14 Step 3. Complainant agrees that this grade and step represents where he would be placed on the GS-14 pay chart provided all within grade increases and pay increases due to NSPS share/pay raise allocations he would have received (median rate given to all Agency who received a rating of 3) had taken place during the period October 2006 to May 16, 2010 and his promotion was effective May 16, 2010.

B. The Agency shall provide back pay to the complainant in the amount he would have earned 2006-2010, with LEAP at the corresponding rates, less disability amounts received from OWCP, with interest.

1. For purposes of this calculation, Complainant acknowledges that he did receive LEAP at the 2006 rate from OWCP for all periods except April 26, 2010 to May 16, 2010.

2. For purposes of this paragraph, the Agency acknowledges that Complainant was not paid at all during the time April 26, 2010 through May 16, 2010.

3. For purposes of this paragraph, the Agency acknowledges that scheduled award payments are not to be considered.

4. Complainant will also be paid NSPS bonuses for NSPS years 2008-2010 in the amounts of \$1,171.00, \$809.00, and \$451.00, respectively.

Complainant acknowledges that the Defense Finance and Accounting Center (DFAS) will calculate OPM estimated earnings, subtract OWCP payments, and the Agency is liable for the difference.

- C. During the period between May 16, 2010 and the effective date of the agreement, certain additional personnel actions would have occurred, as follows:
1. Complainant would have converted out of NSPS on July 18, 2010. Because he had just been promoted, there would have been no pay adjustments in July 2010.
 2. The Complainant's next within grade increase would have occurred May 22, 2011, placing the complainant at GS-14, Step 4.
 3. Complainant's next within grade increase will occur on or about May 22, 2013. The Agency shall provide back pay to the Complainant in the amount he would have earned year to year, with LEAP at the corresponding rates, less amounts received for OWCP, if any, with interest. There shall be no offset for scheduled award payments.
- D. Complainant agrees to have the following deducted from his back pay: all Federal, state and local taxes (not to include Agency's share of Social Security and Medicare), and any other ordinary withholdings, including but not limited to Complainant's contributions to FLERS retirement; Social Security; Medicare; Complainant's contributions to TSP at previously elected rates, provided, however, such elections are within the IRS allowance for maximum elective deferrals for each year; and any increased amounts withheld for FEGLI premiums. The Agency agrees to make the required agency contributions to FLERS retirement and Social Security and the maximum employer contribution to TSP in accordance with government regulations and Complainant's contributions (e.g., maximum TSP contribution by employer, provided Complainant's previous TSP elections reach the threshold for maximum employer matching contributions).
- E. Complainant shall be restored annual leave at the rate of 8 hours per pay period, and sick leave at the rate of 4 hours per pay period for the period of time between July 1, 2008 and May 16, 2010, subject to limits on the amount of maximum annual leave restoration, if any, and subject to the length of time in which such leave must be used or forfeited.
- F. Complainant will reach minimum retirement eligibility with 20 years of covered LEO service by September 30, 2020, and Complainant agrees to retire by this date provided all other terms of the agreement are met. Complainant agrees that in the event he fails to submit an SF-52 – Request for Personnel Action to retire that this agreement serves as the Agency's authorization to retire him from Federal Service effective September 30, 2020. Complainant understands and agrees that the SF-3107 – Application for Immediate Retirement should be submitted to AFPC/DPIEB, 550 C Street West, suite 45, Randolph AFB, TX 78155, 120 days prior to retirement. If not submitted to AFPC/DPIEB then the SF 31307 – Application for Immediate Retirement and a copy of this executed settlement agreement will be submitted to U.S. Office of Personnel Management (OPM), Retirement Operations Center, P.O. Box 45, Boyers, PA 16017-0045, to fulfill compliance with this agreement. Employee understands that retirement pay cannot begin until the OPM receives and processes his SF-3107 – Application for Immediate Retirement.
- G. The Agency will restore the Complainant's original badge number, 525.

- H. The Complainant is free to compete for all career-enhancing training and promotional opportunities that are available to other agents, and acknowledges that many opportunities are granted through a competitive process and that Complainant is not afforded any competitive advantage over his peers with respect to selection. The Agency will not deny Complainant non-competitive training opportunities solely on the basis of monocular vision. The Agency will initiate training opportunities for the Collections Manager position as soon as practicable.
- I. The Agency acknowledges that, with complainant's acceptance of the Collections Manager, GS-1811-14 position within the ICON, a secondary position (the minimum duties for which, as outlined in the email communication between counsel on Thursday, May 10 at 7:27 p.m., are incorporated into the agreement by reference) that it has, for all purposes up to the effective date of the agreement, resolved all issues of direct threat and that no further individualized assessment with respect to monocular vision is necessary, warranted, or to be conducted. The complainant agrees to not volunteer for deployment. The Agency agrees that it will not revoke or change terms of this agreement due to "policy changes," to include any minimum physical standards for monocular vision as may be developed in the future, and will allow complainant to fulfill the remainder of his career to retirement, as agreed in this settlement.
- J. The Agency acknowledges that Complainant may re-qualify regularly under the standard AFOSI weapons qualifications courses as dictated by AFOSI and USAF regulations, as they are now or may be in the future; provided, however, they are applied uniformly to the general AFOSI civilian agent population. Complainant's arming privileges, provided he qualifies, will not be revoked or hindered by the Agency or any local commander due solely to monocular vision.
- K. The Agency shall, subject to Air Force Systems of Records retention instructions, destroy from its files and the Complainant's Official Personnel File the Notice of Proposed Removal issued January 15, 2008; the rescission of the Notice of Proposed Removal dated May 6, 2010; the Offer of the Counterintelligence Analyst position dated April 29, 2010; the Memoranda dated April 24 and April 29, 2009, which included the order to provide neuro-cognitive assessment records to the physician conducting the Fitness for Duty Determination, and notice that failure to comply could result in disciplinary action being taken; and the complainant's medical and neurocognitive records.
- L. Neither side will make disparaging comments about the case, the Complainant, the Agency or any other person involved in the case.
- M. All issues broadly described as potential disciplinary matters uncovered during the investigation or throughout the discovery of the case are considered closed and resolved.

- N. The Agency will provide live EEO training at the next AFOSI Gettysburg or Aurora meeting for a period of 2 hours, by an individual of the Agency's choice, on the topic of the Rehabilitation Act and the ADAAA, with specific reference to the analysis of direct threat and reasonable accommodation for affected employees.
- O. The Agency will make a lump-sum payment in lieu of compensatory damages in the amount of \$275,000.00.
- P. The Agency will reimburse the Complainant for reasonable attorney's fees not to exceed \$191,353.50, subject to a verified statement of attorney's fees provided within ten days of the effective date of the agreement. Attorney's fees shall be paid to the firm [REDACTED], a firm which employs Complainant's Counsel, a signatory to the Agreement.
- Q. Deadlines:
1. The Agency shall complete the terms of the agreement, for all but the actual position creation, within 60 days of its effective date, as to the terms over which it has exclusive control.
 2. The Agency shall make best efforts to have the Defense Finance Accounting Center (DFAS) restore hours of sick and annual leave, and to make all payments for back pay, compensatory damages and attorney's fees within 60 days, but Complainant acknowledges that because DFAS is not within Agency control, that DFAS's failure to meet a 60-day deadline will not be considered a material breach of this agreement. In the event that DFAS has not tendered payment as specified in the agreement within 120 calendar days, the Agency agrees that, after receipt of notice by Agency counsel Barbara J. Z[REDACTED], Esq. (at Barbara.Z[REDACTED]@pentagon.af.mil, or 1500 W. Perimeter Road, Suite 1370, Joint Base Andrews, Maryland, 20762) from Complainant and/or his counsel of DFAS' nonpayment, the Agency will make contact with an appropriate point of contact at DFAS to notify DFAS of this nonpayment and to encourage DFAS to expedite completion of the payments.
 3. The Agency will make best efforts to have the Collections Manager, GS-1811-14 position within the ICON, a secondary position (the minimum duties for which, as outlined in the email communication between counsel on Thursday, May 10 at 7:27 p.m., are incorporated into the agreement by reference) graded and classified within 120 days of the effective date of the agreement, but in any event, complainant acknowledges that because he will receive pay as outlined in paragraph 4A.-C., the Agency's failure to meet the 120-day deadline will not be considered a material breach of this agreement.
 4. The Complainant shall be afforded 90 days from the effective date of the agreement to re-acclimate to the role of an 1811 Criminal Investigator position prior to any standardized annual weapons testing being ordered.
5. This agreement constitutes the complete understanding between the Complainant and the Agency with respect to the matters encompassed herein and supersedes all prior and contemporaneous discussions, agreements, understandings, etc., whether oral or written. No

other promises or agreements will be binding unless signed by both parties.

6. The terms of this agreement will not establish any precedent, nor will the agreement be used as a basis by the Complainant or any representative organization to seek or justify similar terms in any subsequent case.

7. This agreement does not constitute an admission by the Agency of any violation of the Civil Rights Act of 1964, Title VII, as amended, or of any other federal or state statute or regulation.

8. The respective parties will bear their own costs, including attorney fees, except as specifically provided in this Agreement.

9. This agreement is entered into based on the authority provided by Section 717 of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, and 29 C.F.R. Section 1614.603. The parties agree that this agreement may be used as evidence in a later proceeding in which either of the parties alleges a material breach of the agreement.

10. In accordance with 29 C.F.R. Section 1614.504, the parties further agree that, if the Complainant believes that the provisions of this negotiated settlement agreement are being violated, he take the following actions:

a. The Complainant must notify the Andrews Joint Base Equal Employment Opportunity Office, in writing of the alleged noncompliance within 30 days of becoming aware of the noncompliance. The address of that office is EO Office, 1500 W. Perimeter Drive, Ste 2510, Joint Base Andrews, MD, 20762. The office phone number is 240-612-6345.

b. The Agency has 30 days from the date of the Agency's receipt of the Complainant's written allegations of noncompliance with the settlement agreement to resolve the matter and respond to the Complainant.

c. If after 30 days from the date of the Agency's receipt of the Complainant's written allegation of noncompliance with the settlement agreement, the Agency has not responded to the Complainant in writing, or if the Complainant is not satisfied with the Agency's attempt to resolve the matter, the Complainant may appeal to the Commission for a determination as to whether the Agency has complied with the terms of the settlement agreement. The Complainant may file such an appeal 35 days after service of the allegations of noncompliance, but must file an appeal within 30 days of receipt if an Agency's determination. The current address of the Commission is:

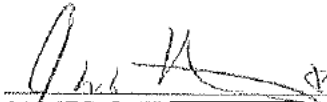
Equal Employment Opportunity Commission
Office of Federal Operations (EEOC/OFO)
P.O. Box 19848
Washington D.C. 20036

11. All parties have entered into this agreement voluntarily and with a complete and thorough understanding of its terms, meaning, and effect. Each of the undersigned is signing the agreement voluntarily and freely, without coercion, having had the opportunity to read and raise questions about its meaning prior to signing.

12. This Agreement may be executed in counterparts, and signatures may be transmitted by fax machine or e-mail. The effective date of this Agreement shall be the date of the last signature of the signatories listed below.

FOR THE PARTIES:


MICHAEL J. J. [REDACTED] (date)
Agency Settlement Authority

 14 May 2012

JAMES G. H. [REDACTED] (date)
Complainant

AS TO FORM AND LEGAL SUFFICIENCY:

BARBARA J. Z. [REDACTED] (date)
Agency Representative

 14 May 2012

JOHN P. MAHONEY (date)
Complainant's Counsel

FOR THE PARTIES:

Michael J. J. [redacted] *14 May 2012*
MICHAEL J. J. [redacted] (date)
Agency Settlement Authority

JAMES G. H. [redacted] (date)
Complainant

AS TO FORM AND LEGAL SUFFICIENCY:

Barbara J. Z. [redacted] *5/14/12*
BARBARA J. Z. [redacted] (date)
Agency Representative

JOHN P. MAHONEY (date)
Complainant's Counsel

CERTIFICATE OF SERVICE

For timeliness purposes, it shall be presumed that the parties received the foregoing **ORDER OF DISMISSAL** within five (5) calendar days after the date it was sent *via* first class mail. I certify that on May 23, 2012 the foregoing **ORDER** was sent *via* first class mail to the following:

James H. [REDACTED]

[REDACTED]

John P. Mahoney, Esq.

[REDACTED] 0.

Barbara Za [REDACTED]

[REDACTED]

SAF/MRBA (AFCARO)
1535 Command Drive, Suite E309
Andrews AFB, MD 20762-7002

LaMar Anderson

[REDACTED]