

GAO

July 1987

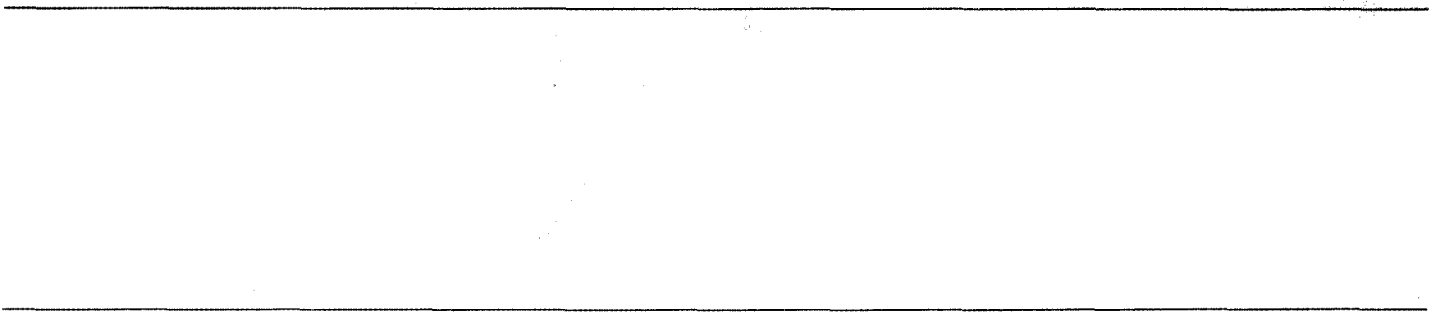
EQUAL EMPLOYMENT OPPORTUNITY

EEOC Birmingham Office Closed Discrimination Charges Without Full Investigation



133450

039461





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-226674

July 15, 1987

The Honorable Augustus F. Hawkins
Chairman, Committee on Education and Labor
House of Representatives

The Honorable Matthew G. Martinez
Chairman, Subcommittee on Employment Opportunities
Committee on Education and Labor
House of Representatives

This report responds to your request for information on the extent to which the Equal Employment Opportunity Commission's Birmingham district office, to meet production goals, closed pending discrimination charges in September 1985 regardless of the status of the investigation.

We are sending copies of this report to the appropriate congressional committees; the Chairman of the Equal Employment Opportunity Commission; the Director, Office of Management and Budget; and other interested parties.

A handwritten signature in cursive script, reading 'Richard L. Fogel'.

Richard L. Fogel
Assistant Comptroller General

Executive Summary

Purpose

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that guarantee every American's right to be free from employment discrimination. In September 1985, staff of EEOC's Birmingham, Alabama, district office, to meet the office's fiscal year 1985 production goals, were instructed to close discrimination charges without completing full investigations, according to the district office staff in December 1985.

Because of their concern that these allegations, if true, were a serious breach of EEOC's responsibilities, the Chairmen of the House Committee on Education and Labor and the Subcommittee on Employment Opportunities requested that GAO investigate these allegations.

Background

Through a structure of field offices that receive, investigate, and resolve charges of employment discrimination, EEOC enforces federal laws that prohibit employment discrimination on grounds such as race, color, religion, sex, and national origin. EEOC's Birmingham district office enforces these laws in Alabama and Mississippi. As of September 1985, the office had a staff that included 44 investigators, 6 supervisors, a compliance manager, and a district director.

EEOC's policy is to fully investigate all charges to determine their merits. Its compliance manual provides detailed guidance on the specific steps EEOC investigators should follow and the kinds of evidence they should obtain to conduct a full investigation. Of primary importance are interviewing witnesses and obtaining documents to (1) corroborate or refute the charging party's (employee's or prospective employee's) allegations or the respondent's (employer's or prospective employer's) position and (2) compare the respondent's treatment of the charging party with the treatment accorded similarly situated employees to determine whether individuals of a different race, sex, color, religion, or national origin are treated differently. (See pp. 10-12.)

To determine whether the 345 charges closed by the Birmingham office during September 1985 were fully investigated, GAO reviewed a random sample of the closed charges. GAO examined the investigations documented by the evidence in each sampled charge and compared it with the investigative criteria contained in the compliance manual, as clarified by the director of EEOC's Office of Program Operations, who oversees all charge processing. When the evidence in the charge file did not meet these criteria, GAO determined that the charge had not been fully

investigated. GAO did not, however, determine whether EEOC correctly decided these charges. (See pp. 12-14.)

To obtain candid information about investigative activities and each charge that was not fully investigated, each investigator and supervisor was provided a pledge of confidentiality.

Results in Brief

Contrary to EEOC's policy of fully investigating discrimination charges, 29 percent of the charges closed by the Birmingham district office in September 1985 were closed prematurely, without completing a full investigation, because of (1) pressure by district office managers to close charges to meet production goals for fiscal year 1985 and (2) the perception on the part of most of the staff that some form of reprisal would be taken against them if they did not follow management's instructions.

The Birmingham staff said that charge processing in September 1985 was no different from processing throughout the year, and district office management said they no longer investigate charges as prescribed by the compliance manual because the production goals are unrealistic.

Principal Findings

GAO found that 29 percent of the charges closed by the Birmingham district office in September 1985 were closed without completing full investigations. None of these charges were decided in favor of the charging party. The rate of deficient investigations was about three times higher than allowed a district office under EEOC's quality assurance standards. (See pp. 15-19.)

Of these 29 percent that were not fully investigated,

- 79 percent lacked comparative evidence documenting the respondent's treatment of the charging party compared with employees similarly situated (see pp. 17-18),
- 29 percent lacked comparative evidence from interviews with witnesses the charging party had identified as similarly situated employees who were treated differently for the same offense,
- 83 percent lacked documentary evidence to corroborate the respondent's statement relative to the charge (see pp. 18-19), and
- 43 percent lacked evidence from interviews with witnesses identified by the charging party who could corroborate the allegations of discrimination.

Eighty-eight percent of the charges GAO classified as not fully investigated had two or more of these deficiencies, and 10 percent were deficient in all four areas.

Over half the investigators in Birmingham told GAO that they were instructed by their superiors to close charges during September 1985, with less than full investigations, to meet production goals mandated by EEOC headquarters. Five of the six supervisors acknowledged that they were told to implement management's instructions to close charges to meet production goals. (See pp. 20-21.)

The instructions were rescinded within a few days. Even so, about 60 percent of the investigators said they perceived or were still told by their supervisors that some adverse action would be taken against them if they did not comply. Over half the investigators and four of the six supervisors said they had been given similar instructions in the past, generally at the end of a quarter or fiscal year. (See pp. 22-23.)

Although GAO only reviewed charges closed in September 1985, 75 percent of the investigators said that they did not process charges differently in September 1985 than during the rest of the year. Furthermore, both the district director and the compliance manager said that they cannot reasonably achieve EEOC's production goals while completing full investigations. (See pp. 23-24.)

Recommendations

To improve the quality of charge investigations by EEOC's Birmingham district office, GAO recommends that the Chairman of EEOC direct the office to implement the Commission's policy to fully investigate all discrimination charges. GAO also recommends that the Chairman direct the Office of Program Operations to (1) review the quality of investigations conducted by the Birmingham office and (2) recommend, where necessary, actions to correct deficiencies in the office's charge investigation process. (See p. 25.)

Agency Comments

EEOC was provided with a draft copy of this report for review and comment. The agency advised GAO that it had no comments on the report.

Contents

Executive Summary		2
Chapter 1		8
Introduction	Background	8
	Objectives, Scope, and Methodology	12
Chapter 2		15
Charges Closed Without Completing Full Investigations	Comparative Evidence Not Obtained	15
	Corroborative Evidence Not Obtained	18
Chapter 3		20
Pressure Exerted to Close Charges to Meet Production Goals	EOSs Instructed to Close Charges With Less Than Full Investigations	20
	EOSs Perceived Management Reprisal	22
	Charges Closed as Usual	22
	Managers Believed Production Goals Unrealistic	23
Chapter 4		25
Conclusions and Recommendations	Recommendations	25
Figures	Figure 1.1: Charges Closed in September 1985, EEOC Birmingham District Office	11
	Figure 1.2: Charges Closed—Fiscal Year 1985 Compared With September 1985, EEOC Birmingham District Office	12

Abbreviations

EEOC	Equal Employment Opportunity Commission
EOS	equal opportunity specialist
GAO	General Accounting Office

Introduction

In late 1985, the staff of the House Committee on Education and Labor visited selected Equal Employment Opportunity Commission (EEOC) district offices to study enforcement and discrimination charge-processing activities. In December 1985, during their visit to EEOC's district office in Birmingham, Alabama, they were told by many EEOC investigators—that is, equal opportunity specialists (EOSS)—that in September 1985, the last month of fiscal year 1985, pending discrimination charges¹ were to be closed, regardless of the status of the investigation. The Committee staff was told that the intent of this action was to increase the number of charges closed by the district office, thereby enabling it to meet its production goals before the end of the fiscal year.

The Committee was concerned that if true, these allegations constituted a serious breach of EEOC's responsibility to ensure that all charges are fully investigated. Thus, in an April 14, 1986, letter, the Chairmen of the House Committee on Education and Labor and the House Subcommittee on Employment Opportunities requested that we investigate these allegations.

Background

Equal employment opportunity is a right of every American. In the past, many citizens were denied equal employment opportunity through discriminatory employment practices. To rectify this situation, a broad range of laws and executive orders were enacted to ensure that all people are afforded an equal opportunity to pursue the work of their choice, subject only to the limits of their qualifications and desires.

Created by title VII of the Civil Rights Act of 1964, EEOC is the federal agency primarily responsible for enforcing that law and other federal equal employment opportunity laws and regulations. Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. It authorizes EEOC to attack employment discrimination by (1) investigating individual charges filed with it alleging discrimination and (2) initiating investigations to identify and eliminate patterns or practices of discrimination, also known as systemic discrimination.

EEOC's jurisdiction under title VII extends to virtually all nonfederal employers with 15 or more employees, including private companies, state and local governments, and educational institutions. EEOC also

¹In the employment discrimination context, a "charge" is a claim, filed by or on behalf of an aggrieved person, alleging that an unlawful employment practice has occurred.

enforces the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, and, in the federal sector, section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination because of handicap.

EEOC enforces equal employment opportunity through a field structure composed of 23 district offices, 16 area offices, and 9 local offices. Under the direction of the Office of Program Operations in EEOC headquarters, the field offices receive, investigate, and resolve employment discrimination charges. In fiscal year 1985, EEOC field offices closed about 62,500 charges.

Rapid charge-processing units in the district offices process individual or small-class charges of discrimination. In fiscal year 1985, these units processed about 79 percent of EEOC's charges. Extended charge-processing units process charges (1) with a strong potential for litigation, (2) affecting a number of individual or class claims, (3) involving multiple types of discrimination (race and sex) or multiple issues (hiring, promotion, and discharge), and (4) involving equal pay. In fiscal year 1985, these units processed about 21 percent of EEOC's charges.

Generally, EEOC categorizes closed discrimination charges in one of four ways:

- No cause determination: A finding that there is no reasonable cause to believe the discrimination charge is true.
- Cause determination: A finding that there is reasonable cause to believe the discrimination charge is true. EEOC attempts to conciliate the charge and, if necessary, take legal action.
- Settlement: An agreement between the charging party and respondent that resolves the charge before EEOC has completed its investigation and determined the merits of the charge.
- Administrative closure: Charges closed without a determination for reasons such as (1) EEOC lacks jurisdiction or (2) the charging party is unwilling to cooperate or cannot be located by EEOC.

EEOC establishes annual performance goals for each district office as part of a district director's Senior Executive Service contract. The goals address both the number of charges the district office is expected to close and the quality with which the charges are investigated. To meet the closure goal, a district office must close a specified number of charges based on the number of EOSS assigned to it. To meet the quality

goals, the number of closed charges found to be deficient in an independent review by EEOC headquarters staff must be no more than 10 percent of the closed charges reviewed. Among other things, the district's performance in achieving these goals is used to determine Senior Executive Service bonuses for the district director and merit pay awards for the compliance manager.

Birmingham District Office

EEOC's enforcement program for the states of Alabama and Mississippi is administered by the Birmingham district office (headed by the district director) and the district's area office in Jackson, Mississippi. Discrimination charges are investigated by EOSS, under the overall direction of the compliance manager. As of September 1985, the district office employed 44 EOSS; 28 were assigned to four rapid charge-processing units and 16 to two extended charge-processing units. Each of the six charge-processing units was headed by a unit supervisor.

According to EEOC statistics for fiscal year 1985, the Birmingham office closed 2,723 discrimination charges compared with a production goal of 2,993.² A total of 345 charges were closed in September. About 76 percent (262) of the September closures occurred during the last 8 days of the fiscal year. About 48 percent (167) of these charges were closed on September 30, the last day of the fiscal year. The number of charges closed on specific dates during September 1985 is shown in figure 1.1.

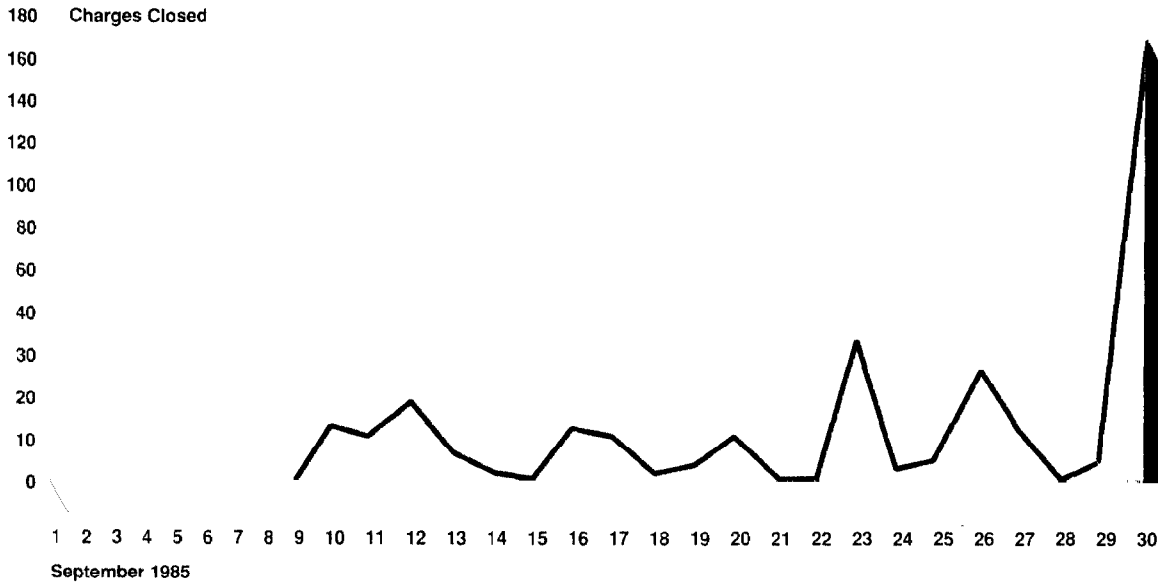
The manner in which charges were closed by the Birmingham district office during fiscal year 1985 and in September 1985 is shown in figure 1.2.

EEOC Investigations Policy

EEOC's investigations policy, adopted in December 1983, requires completing full investigations to determine the merits of the charge. In addressing this task, the EEOC Chairman has said, "Every case brought to the EEOC, no matter how small, should be fully investigated and litigated, if necessary, even at the cost of boosting the backlog." The policy is implemented by field office staff using EEOC's compliance manual, which provides detailed guidance on the various steps the staff are to follow in investigating charges. According to EEOC's director of the Office of Program Operations, however, it is not necessary that each

²The numbers given are for the Birmingham district office only. The entire Birmingham district office (including the Jackson, Mississippi, area office) closed 4,504 charges compared with a goal of 4,160 for fiscal year 1985.

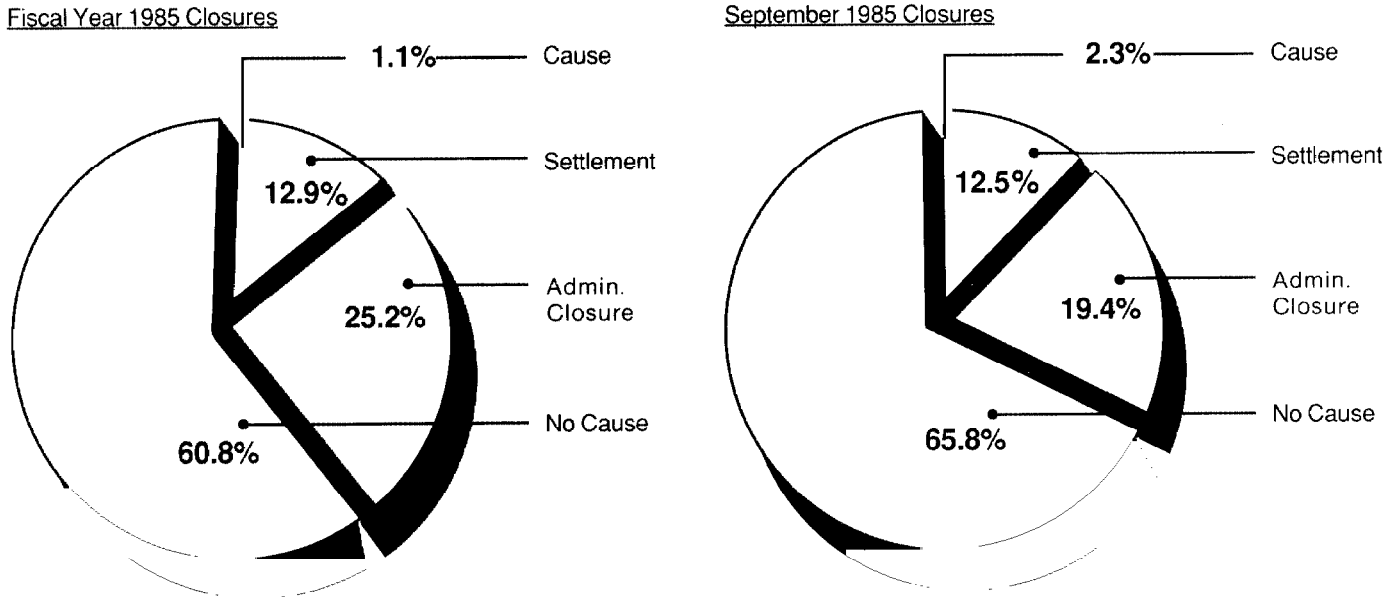
Figure 1.1: Charges Closed in September 1985, EEOC Birmingham District Office



step be performed to fully investigate every charge. EEOC considers a full investigation of a charge to have occurred when sufficient evidence, needed to reach a final decision (cause or no cause) on the charge, has been obtained. In making these determinations, EEOC maintains that the EOSS must obtain enough substantial evidence to support or refute the charging party's (employee's or prospective employee's) allegation of discrimination or the respondent's (employer's or prospective employer's) position on the matter. In this regard, the compliance manual emphasizes the importance of objectively gathering, analyzing, and verifying various kinds of evidence to ensure a balanced record and an accurate determination of a charge's merits.

Although the manual describes several types of evidence relevant to conducting a thorough investigation, two types are of primary importance. First, the EOS should seek comparative evidence to facilitate a comparison of the respondent's treatment of the charging party with the treatment accorded employees similarly situated, thereby determining whether individuals of a different race, sex, color, religion, or national origin are accorded different treatment. Comparative evidence is needed

Figure 1.2: Charges Closed—Fiscal Year 1985 Compared With September 1985, EEOC Birmingham District Office



to process charges of disparate treatment (see pp. 15-18), which represents the most common kind of charge filed with EEOC. Second, the EOS should seek corroborative evidence to support the positions of both the charging party and respondent.

The compliance manual identifies various sources that can be used to obtain corroborative and comparative evidence. Of principal importance are (1) interviews with relevant witnesses and (2) the acquisition of pertinent documents from the respondent. Notwithstanding the discretion given field office managers to determine which investigative procedures to use for each charge, according to the director of the Office of Program Operations, these sources are essential to the full investigation of every charge.

Objectives, Scope, and Methodology

The objectives of our review were to determine whether (1) EEOC's Birmingham district office closed discrimination charges in September 1985 without adequate investigations and (2) these charges were closed in order to achieve the office's fiscal year 1985 production goals established by EEOC headquarters. This review, which was made between June and November 1986, was conducted at EEOC's Birmingham district

office. We interviewed district office and headquarters staff concerning activities during September 1985. We did not attempt to determine whether the district office correctly decided the charges we reviewed, but focused on whether the charges had been fully investigated before they were closed.

To determine whether charges, in general, closed by the Birmingham district office during September 1985 were fully investigated, we reviewed a sample of charges closed during that time. We did not review charges closed by the district's Jackson, Mississippi, area office because the allegations only concerned charge processing in Birmingham.

EEOC's Birmingham district office provided us with a list of the 345 charges closed during that month. From this list we drew a simple random sample of 152 charges. Ten of the 345 files, including 6 of the 152 we selected, could not be located by the Birmingham office until after our review was completed. Therefore, the estimates presented in this report about charges, in general, closed by Birmingham during September 1985 are based on a sample of 146 charges, projected to 335 of the 345 charges closed during that time. The sampling error for the overall sample is plus or minus 6 percentage points. The sampling errors for the portion of the sample representing charges that were not fully investigated range from plus or minus 5 to plus or minus 11 percentage points.

We reviewed the investigation conducted for each sampled charge, as documented by the evidence in the charge file. This was compared with the investigative criteria in EEOC's compliance manual and the checklists used by EEOC headquarters staff to independently review the quality of charge processing in field offices. In selecting our criteria, we focused on the most important criteria involved in investigating discrimination charges, as identified by EEOC. These criteria included interviewing relevant witnesses and obtaining and verifying appropriate evidence. For those charges closed administratively, we reviewed the file to determine whether the justification necessary for the closure, as specified by the compliance manual, was present. When the evidence in the charge file did not meet these criteria, we determined that the district office had not fully investigated the charge.

We also conducted structured interviews with the 40 EOSS and 6 supervisors who had remained in the Birmingham office since September 1985, and were responsible for investigating and closing charges during that month. We wanted to determine, among other things, whether they

- were directed to close charges regardless of their investigative status,
- perceived or were told that some adverse action would be taken against them for failing to comply with such a directive, and
- processed charges during September 1985 in a different way from the normal.

At the request of the Chairmen, we gave all EOSS and supervisors we interviewed our pledge of confidentiality because of the possibility of retaliation against them if they spoke candidly with us. To ensure anonymity for these staff members, we did not give EEOC a list of the specific charges included in our sample or the charges we determined to be not fully investigated. If we had done so, EEOC would have been able to identify the sources of comments made to us concerning the processing of these charges. We discussed each charge we determined to be not fully investigated with the EOS who processed the charge.

On April 23, 1987, we provided a draft copy of this report to EEOC for review and comment. On May 26, 1987, an EEOC official advised us that the agency had no comments on the report.

We conducted this review in accordance with generally accepted government auditing standards.

Charges Closed Without Completing Full Investigations

Contrary to EEOC's policy of fully investigating discrimination charges, we found that 29 percent of the charges closed by the Birmingham district office in September 1985 were closed without completing a full investigation. None of these charges were decided in favor of the charging party. The rate of deficient investigations was about three times higher than the rate allowed by EEOC's quality assurance standards.

The investigations of these charges were deficient because they lacked (1) comparative evidence of how the respondent treated the charging party compared with employees similarly situated and (2) corroborative evidence to verify either the charging party's allegations or the respondent's position statement¹ responding to the charge.

Of the 29 percent of the charges not fully investigated,

- 79 percent lacked comparative evidence documenting the respondent's treatment of the charging party compared with employees similarly situated,
- 29 percent lacked comparative evidence based on interviews with witnesses the charging party had identified as similarly situated employees who were treated differently for the same offense,
- 83 percent lacked corroborative evidence documenting the respondent's statement relative to the charge, and
- 43 percent lacked corroborative evidence based on interviews with witnesses (identified by the charging party) who could verify the allegations of discrimination.

Eighty-eight percent of the charges we classified as not fully investigated had two or more of the above-mentioned deficiencies, and about 10 percent were deficient in all four areas.

Comparative Evidence Not Obtained

Although comparative evidence is an essential part of investigating most employment discrimination charges, it was lacking in 79 percent of the charges we determined to be not fully investigated. As mentioned earlier, disparate treatment is the most common kind of employment discrimination charge. During September 1985, about 85 percent of the charges closed by the Birmingham district office were charges of disparate treatment under title VII of the Civil Rights Act of 1964. According

¹A position statement is the respondent's reply to an EEOC request for information that gives the respondent's explanation for the employment action the charging party alleges was discriminatory.

to EEOC's compliance manual, the disparate treatment theory holds that discrimination occurs when an employer excludes similarly situated individuals from an employment opportunity on the basis of race, color, religion, sex, or national origin. For example, the employer more frequently imposes penalties, such as firing, on black employees doing the same or similar jobs as other employees. Therefore, the gathering and analysis of evidence comparing the treatment of similarly situated individuals is necessary to determine whether the charging party's allegations are true.

The compliance manual describes how an EOS should seek comparative evidence to prove a case of disparate treatment. For example, in a discharge case (the most common issue in charges closed by the Birmingham district office during September 1985), the EOS should (1) identify individuals who have been accused of the same or similar kind of misconduct (such as theft or poor attendance) as the charging party and (2) determine whether these individuals received the same treatment (discharge) as the charging party. The manual also describes several methods of obtaining information on the treatment of similarly situated employees. To determine whether people of different race, sex, or national origin were treated differently, the EOS can, for example, obtain employment records from the respondent concerning employees who committed the same offense as the charging party. The compliance manual identifies a variety of employment records that should be obtained, depending on the details of the charge. These include copies of the respondent's (1) employment policies and practices, (2) payroll records, (3) lists of discharged or disciplined employees, (4) personnel files, and (5) reports on the racial composition of the workforce.

Another method is to interview witnesses that the charging party identifies as similarly situated employees who received different treatment for the same offense. According to the compliance manual, an important part of all investigations is to obtain testimony from witnesses (identified by the charging party) who can provide facts supporting the charge of discrimination. EEOC's director of the Office of Program Operations said, however, that it was not necessary to interview all witnesses for every charge. According to him, the EOS and the EOS's supervisor have discretion to decide which witnesses are relevant to the charge and should therefore be interviewed, but, normally, the EOS should explain in the file why a witness was not interviewed. Regardless of the method used to obtain comparative evidence, the compliance manual states that ". . . the EOS should compare as many similarly situated individuals with the charging party as possible."

Notwithstanding the manual's emphasis on the use of comparative evidence, 79 percent of the charges we determined to be not fully investigated, as mentioned earlier, lacked documents concerning the respondent's treatment of the charging party compared with employees similarly situated. Generally, the EOSS had requested these documents from the respondent, but did no follow-up when the requested documents were not provided.

Further, in 29 percent of the charges that we determined were not fully investigated, the EOSS did not interview any of the witnesses identified by the charging party as similarly situated employees who were treated differently. Most of these charges (80 percent) also lacked comparative documentary evidence. Consequently, charges were closed without the critical evidence necessary to verify whether the charging party was treated in a way different from similarly situated employees.

In one case, in July 1984, an employee filed a charge alleging that he was discharged because of his race. Not until September 1985 did the EOS, during a telephone conversation, request a position statement from the employer. He contended that the employee was discharged because of excessive tardiness, not race; the employer did not, however, provide any documents, such as time and attendance records and lists of discharged employees, that would enable the EOS to determine whether other similarly situated employees had been discharged for tardiness. Although the file did not show whether these documents were requested by the EOS, the compliance manual's guidance on similar discharge cases indicates that these kinds of documents should be requested from the employer. The charge was closed as a no cause determination on September 30, 1985, even though the file included evidence that the employee was the only one discharged for tardiness. During an interview with us, the EOS acknowledged that the charge had been closed without gathering and analyzing comparative evidence, but could not recall why.

In a second case, an employee contended that he was discharged because of his race. The employer said that the employee was discharged for poor performance. The employee identified two witnesses with similar performance who had not been discharged. The EOS did not interview either witness; the employer did not provide any information in his position statement on the treatment of similarly situated employees, even though it had been requested by the EOS. The charge was closed as a no cause determination on September 30, 1985, based solely on the employer's unverified position statement. The EOS told us that the

charge was closed without additional investigative work because of pressure from his supervisor to close it before the end of the fiscal year.

In a third case, an employee contended that he was denied a promotion because of his race. The employer disagreed, indicating that other similarly situated employees of the same race had been promoted. However, the employer did not provide any documentation to substantiate this contention, even though the EOS had requested written promotion policies, vacancy lists, lists of employees selected, and performance evaluations of similarly situated employees. The charge was closed, without any comparative evidence, as a no cause determination on September 30, 1985. The EOS told us the charge was closed without such evidence because she was familiar with the employer's policies from other charges that she had processed. However, the file did not document whether there were other charges against the employer, even though this information was required in the EOS's memorandum recommending how the charge should be decided.

Corroborative Evidence Not Obtained

In addition to discussing the importance of obtaining and analyzing comparative evidence, the compliance manual provides that the EOS "... should exhaust all investigative avenues in seeking corroborative evidence of each version of the facts." The manual notes that the EOS will frequently receive conflicting or contradictory evidence from the respondent and charging party. Generally, the charging party is asked to identify witnesses who (1) can substantiate the charging party's version of the facts or (2) represent similarly situated employees who, the charging party contends, have been treated differently. The respondent is normally requested to provide documentary evidence that supports the legitimacy of its actions.

Although the compliance manual provides specific guidance on how to resolve conflicting evidence, 83 percent of the charges that we determined were not fully investigated did not include documents supporting the respondent's position statement. Although the EOSs generally requested corroborative documentary evidence from the respondent, they did no follow-up when it was not provided.

In 43 percent of the charges not fully investigated, the EOS did not interview any of the witnesses the charging parties had identified as individuals who could support the allegations of discrimination. In about 83 percent of these charges, corroborative documentary evidence was also

lacking. None of the files for these charges documented why the witnesses were not interviewed, which, according to the EEOC director of the Office of Program Operations, should normally be done.

In one case, a charge filed in August 1984 alleged that the employee was discharged because of sex discrimination. In September 1984, the employer submitted a position statement that said the employee was discharged for poor performance, but did not include any documents to support the reason for discharge. On September 30, 1985, the charge was closed as a no cause determination solely on the basis of the employer's position statement, which had been in the file for a year; there was no evidence that the EOS attempted to obtain corroborative evidence for the employer's explanation. The EOS told us that he was directed to close out this charge, using only the employer's position statement, because of the pressure to close cases before the end of the year.

In another case, an employee contended that he was discharged because of his race. The employer said that the employee was discharged for unauthorized absences and poor performance. The charge was closed on September 30, 1985, as a no cause determination, based on the employer's position statement; there was no corroborative evidence documenting the employer's explanation. The EOS who processed this charge told us that no corroborative evidence was obtained because of time pressure to close the charge.

In a third case, filed in July 1984, the employee contended that he was discharged because of his race and age, as well as in retaliation for complaints he had made against the employer. The employer, in a position statement, contended that the employee was discharged as part of a staff reduction necessitated by a decline in the financial condition of the company. The EOS did not obtain any documentary evidence to corroborate the employer's contention. The charge was closed on September 30, 1985, as a no cause determination. The EOS told us his supervisor directed him to close out the charge using the employer's position statement.

Pressure Exerted to Close Charges to Meet Production Goals

To meet headquarters' mandated production goals, over half of Birmingham's EOSS said that, during September 1985, the compliance manager or their supervisor instructed them to close charges with less than a full investigation. Five of the six EOS supervisors in the district office acknowledged that they were told to implement the instructions to close charges. Even after the instructions were later rescinded by the compliance manager, about 60 percent of the EOSS said they perceived or were still told by their supervisors that some adverse action would be taken against them (the EOSS) if they did not comply. Further, the EOSS had been given similar instructions in the past, generally at the end of a quarter or fiscal year, according to over half of the EOSS and four of the six supervisors.

Both the director and the compliance manager of the Birmingham district office said that they cannot achieve EEOC production goals while completing more time-consuming full investigations. As a result, they said they no longer thoroughly investigate charges.

EOSSs Instructed to Close Charges With Less Than Full Investigations

In a September 10, 1985, meeting, according to over half of the 40 EOSS, the district office's compliance manager instructed them to close charges with less than full investigations. The compliance manager acknowledged that, during this meeting, he instructed the EOSS to close charges with "minimally sufficient evidence" in order to meet headquarters' mandated production goals. He described minimally sufficient evidence as being as little as the charging party's statement and the respondent's position statement, if the facts could be determined from these documents.

However, the concept of minimally sufficient evidence, as defined by the compliance manager, is neither discussed in EEOC's compliance manual nor consistent with EEOC's definition of a full investigation. As discussed earlier, EEOC considers a full investigation one in which enough evidence is obtained to support or refute the charging party's statement or the respondent's position statement. Such a statement by itself, without any other evidence, does not constitute a full investigation as defined by EEOC.

The compliance manager's instructions were implemented through the unit supervisors who, according to the EOSS, gave the following instructions for closing cases:

- Use whatever information is in the file, “write creatively,” and close the charge based on the respondent’s position statement.
- Telephone the respondent and complete a position statement over the phone and then close the charge.
- Close charges with less information than normal and review the allegation from a “narrow perspective.”

Of the five unit supervisors who acknowledged that they were instructed by the compliance manager to close charges, one said that “it was obvious from the instructions that management was pushing for numbers.” Another supervisor said, “The director needed to have his numbers”; a third said, “The office had to make its production quotas.”

The compliance manager said that using minimally sufficient evidence to close charges grew out of instructions he received from the district director in a September 10, 1985, meeting; in that meeting, the district director told him that the Birmingham district office was behind in meeting its production goals and that he (the compliance manager) needed to meet with the staff and “get the charges moving.” The district director and the compliance manager said that “get the charges moving” was a motivational statement meant to get EOSS to work harder. The compliance manager said that, on September 10, he also met with the staff, giving a “pep talk,” telling them that (1) the Birmingham office was behind in meeting its production goals and (2) charges could be closed with just the charging party’s statement and the respondent’s position statement.

The district director and compliance manager disagree as to the intent of the oral instructions given by the director concerning charge closures in September 1985. The director said that the intent was to motivate EOSS to finish charges as soon as possible. He denied instructing the compliance manager to tell EOSS to close charges with minimally sufficient evidence.

The compliance manager agreed that the director did not tell him to close cases that should not be closed; however, the compliance manager emphasized that the inference to be drawn from the director’s instructions was clearly to close charges because the office was behind in its production goals. The compliance manager said that he told EOSS to use minimally sufficient evidence because he felt that they were holding on to charges that should be processed as no cause or administrative closures. Acting on instructions from the district director, on September 13,

the compliance manager rescinded his instruction to close charges with minimally sufficient evidence.

EOSS Perceived Management Reprisal

Even after the compliance manager rescinded his instructions to close charges with minimally sufficient evidence, 60 percent of the EOSS said that, according to their perceptions or what they were told by their supervisors, some adverse action would be taken against them if they did not close charges by September 30. Many of these EOSS were concerned that their performance appraisals would be lowered and, consequently, their chances of receiving monetary awards would be diminished.

According to 33 percent of the EOSS, they perceived or were told that their appraisals would be lowered if they did not close charges by the end of September 1985. EOSS are rated on a scale of 1.0 to 5.0, with 5.0 the highest score attainable. Our analysis showed that EOS appraisals dropped from an average of 4.4 in 1984 to an average of 3.7 in 1985; although 22 EOSS received outstanding appraisals in 1984, none of the EOSS were given an outstanding appraisal in 1985. Moreover, none of the EOSS received cash awards in 1985; cash awards to EOSS totaled \$4,391 in 1984. The district director told us he did not give any cash awards to EOSS in 1985 because he did not believe that any of them were deserving.

According to the district director and the compliance manager, lower appraisals in fiscal year 1985 were a response to the EEOC Chairman's concern that appraisals were too high in the Birmingham district office (third highest in 23 district offices in 1984), and had nothing to do with closing charges by the end of September. Because many performance factors in combination produce an EOS's appraisal score, we could not determine whether the decline in appraisals was related to September charge closures. However, in recognition of the district's "outstanding" performance in fiscal year 1985, the district director received a \$6,000 Senior Executive Service bonus. The compliance manager, who is a general schedule employee, received an outstanding achievement award and a \$2,820 merit pay bonus.

Charges Closed as Usual

In past years, over half of the EOSS and four of the six supervisors said, they had been given similar instructions to close charges to meet production goals. These instructions were generally given by supervisors at the end of a quarter or fiscal year. What made September 1985 different,

according to one EOS, was that the order was delivered by the compliance manager with specific instructions to close charges with minimally sufficient evidence. Other EOS comments included these:

- “This has happened before at the end of the fiscal year when management needs cases to meet quotas.”
- “There is always pressure to close files at the end of the fiscal year.”
- “There is always a push to close as many charges as possible at the end of the fiscal year and at the end of the quarter.”

According to 75 percent of the EOSS, they did not process September 1985 charge closures in a way different from that in any other month; that is, they did not do more investigative work to close charges in other months than they did for those closed in September. For example, one EOS said that in February and March 1985, certain charges were closed with only employers’ position statements. Another EOS said that, at the end of fiscal year 1984, his supervisor told all EOSS in the unit to close charges with only position statements.

Managers Believed Production Goals Unrealistic

The district director and the compliance manager said that EEOC has not conducted full investigations, as described in the compliance manual, since 1978, when headquarters established production goals. They told us (1) production goals were unrealistic when measured against pre-1978 requirements for thorough investigations, where EOSS went on-site, held face-to-face conferences and normally followed each step in the compliance manual; (2) the district can only meet its production goals by conducting investigations that are not as thorough as pre-1978 investigations; and (3) current investigations are considered to be merely processing paperwork. However, the district director and the compliance manager contend that all charges closed during September 1985 were properly investigated. To support this contention, they cited a June 1985 quality control review in which EEOC headquarters staff found the district’s charge-processing activities to be “outstanding.”

We could not assess the reliability of EEOC’s review because (1) the resulting report did not include information on the review’s methodology and (2) EEOC staff who did the review could not recall the specific sampling technique used to select charges that were reviewed and whether the sample was statistically valid. However, if the report’s conclusion that Birmingham’s charge processing was outstanding is accurate, our findings would indicate that the quality of charge processing declined substantially between June and September 1985.

Chapter 3
Pressure Exerted to Close Charges to Meet
Production Goals

The director of EEOC's Office of Program Operations disagreed that production goals are unrealistic because, in his view, most field offices meet them without diminishing the quality of investigations. He said that quality control is sufficient because charges go through three layers of review in the field offices—supervisor, compliance manager, and district director. Other control mechanisms to assure quality in charge processing include headquarters officials'

- annual field office reviews,
- periodic visits to field offices, and
- in-depth review of charges which are potentially worthy of legal action.

Conclusions and Recommendations

EEOC district offices, such as Birmingham, have the responsibility of ensuring that charges of employment discrimination are thoroughly investigated. However, our review showed that a large number of charges were closed, in September 1985, by the Birmingham district office without being fully investigated to meet EEOC-established production goals. This is of particular concern because (1) the EOSS and their supervisors said that charge processing in September was no different from processing throughout the year and (2) district office top management maintained that they no longer investigate charges as thoroughly as they once did and as prescribed by the compliance manual, but process paperwork. This raises serious questions about the extent to which EEOC's investigations policy is being implemented by the district office.

Recommendations

In view of the deficiencies we noted in the investigations done in September 1985 by the Birmingham district office, we recommend that the Chairman of EEOC direct the Birmingham district office to implement the Commission's policy to fully investigate all discrimination charges. Because EEOC has not reviewed Birmingham's charge-processing activities since June 1985, we recommend that the Chairman direct the Office of Program Operations to (1) review the quality of investigations conducted by the Birmingham district office and (2) recommend, where necessary, actions to correct deficiencies in the district office's charge-investigation process.



Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

United States
General Accounting Office
Washington, D.C. 20548

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use \$300

Address Correction Requested
