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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-200080 (VEG)

September 24, 1980

Mr. Leroy D. Clark
General Counsel
Equal Employment Opportunity Commission
Washington, D.C. 20506 *AGC 00440*

Dear Mr. Clark:

This refers to your letter of August 22, 1980, in which you ask whether we have ~~any~~ ^{EEEOCs} objections to the Equal Employment Opportunity Commission's proposed regulations which would allow agencies to award back-pay to applicants for employment who are aggrieved by handicap discrimination. We have no objection to the proposed regulations for the following reasons.

The Rehabilitation Act of 1973 was amended by Public Law 95-602, November 6, 1978, 92 Stat. 2955, 2982 adding, inter alia, a new section 505 to the Act, 29 U.S.C. § 794a. Section 505(a)(1) provides:

"(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964, [42 U.S.C. 2000e-16], including the application of sections 706(f) through 706(k), [42 U.S.C. 2000 e-5(f) through (k)], shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommo-



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dation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy."

A literal reading of the amendment might lead to a conclusion that the panoply of rights and remedies afforded victims of handicap discrimination can only be provided for in a court of competent jurisdiction. As the Senate report on the above quoted provision explains, however:

"Subsection (a)(1) of section 505 applies the remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1974 with respect to any complaint under section 501 (Employment of Handicapped Individuals) to any employee or applicant for employment aggrieved by the final disposition of a complaint or by the failure to take final action on a complaint.

* * * * *

"The Committee believes now as it did in 1973 that the Federal Government must be "an equal opportunity employer." The amendment to section 501 will aid in attaining that goal by providing for individuals aggrieved on the basis of their handicap the same rights, procedures, and remedies provided individuals aggrieved on the basis of race, creed, color, or national origin." S. Rep. No. 95-820, 18-19 (1978).

Similarly, Senator Cranston, in explaining the amendment stated:

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"Making title VII remedies, procedures, and rights applicable to complaints filed under section 501 would make available "back pay" - up to 2 years - as a remedy for prevailing handicapped individuals. The award of back pay would, of course, be subject to the same limitations and qualifications as provided in title VII. In addition, application of title VII would make specific the right to bring a private right of action with respect to section 501, subject, of course, to the provision for exhaustion of administrative remedies and other rules and procedures set forth in title VII. (Underscoring supplied.)

123 Cong. Rec. S 15591 (daily ed. Sept. 20, 1978)

Since, therefore, Congress has directly linked the rights and remedies of the victims of handicap discrimination with those rights and remedies provided other protected groups in the Civil Rights Act of 1964, and since the latter act provides "* * * a crucial administrative role [for] each agency * * *", 1 / we do not believe Congress intended to force victims of handicap discrimination into the courts when an agency is prepared to grant appropriate relief.

In decision B-193144, September 15, 1980, we held with respect to whether attorneys fees may be administratively provided for under section 505 of the Rehabilitation Act, 29 U.S.C. § 794a, that:

"The statutory authorization for promulgating the implementing regulations under the Rehabilitation Act is the same as the statutory authorization for promulgating implementing regulations under

1 / Brown v. General Services Administration, 425 U.S. 820, 833 (1976)

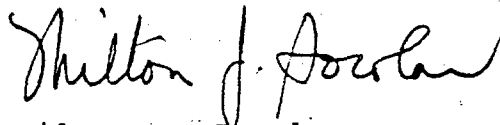
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title VII. We have already indicated that we will not object to title VII regulations which authorize administrative payment of attorneys fees. Similarly, if the EEOC chooses to authorize administrative payment of attorneys fees for cases under the Rehabilitation Act of 1973, we would not object to such regulations."

Accordingly, we agree with you that Congress did not intend to provide victims of handicap discrimination any lesser degree of procedural rights than those accorded to other protected groups under title VII of the Civil Rights Act.

In view of the above, we have no objection to EEOC's proposed regulation to allow agencies to make awards of backpay to employees and applicants for employment who have been aggrieved by handicap discrimination.

Sincerely yours,



Milton J. Socolar
General Counsel