

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New Orleans Field Office

3
4 Marvin E. Green,) EEOC No. 570-2011-00700X
5 101 Chanel Terrace Apt 202) Agency No. DOS-F-125-10
6 Falls Church, VA 22046)
7 Skype Voice Mail:)
8 +1-202-657-4911)
9 greenme@state.gov)
10 marvin.e.green@gmail.com)
11 Complainant)
12)
13 v.)
14)
15 Hillary Rodham Clinton,)
16 Secretary,)
17 Department of State,)
18 Agency) Date: December 12, 2011

19 MEMORANDUM APPEALING THE DISMISSAL A DENIAL OF TENURE
20 CHARGE AS UNTIMELY AND REQUESTING AN AMMENDMENT OF
21 CHARGE NUMBER 2, TO INCLUDE OBSTRUCTION.

22 I. INTRODUCTION

23 I submit this memorandum appealing dismissal and seeking relief in the
24 form of the reinstatement of:

DISMISSED

25 **Because of your age (DOB: 05/15/1953) and reprisal (opposing
discriminatory policies or practices), you were denied tenure on
April 27, 2010.**

26 II. STATEMENT OF FACTS

27 On April 27, 2010 I was denied tenure for a then unknown reason. I had
28 2 excellent performance reviews where both supervisors, directly over me in
29 my chain of command, Information Management Officer (IMO) Josh
30 Hromatka and his supervisor (and my reviewer), Management Officer (MO)
31 Ola Criss, wrote excellent reviews(case file tab "Miscellaneous
32 Correspondence" pages 110-115 of 193)--and I really expected be be a shoo in
33 for tenure.

34 My IMO had already discriminated against me because of my age by
35 requiring me to work "whenever [he] needed [me] and for as long as [he]
36 needed [me]" in order to secure his recommendation for tenure. He would
37 have been more circumspect with a younger candidate. He stated that if "you
38 can't keep up the State Dept will find somebody who can". I worked the
39 overtime, initially without expectation of payment, in order to appear as
40 productive and fast as a younger candidate to my supervisor and in order to
41 meet my supervisor's stated requirment to secure his recommendation for
42 tenure. Younger candidates for tenure, particularly those with families at
43 post, are not required to work as much overtime, are paid for more of their
44 overtime, receive better reviews, are evaluated less critically, their
45 perfomance reviews are submitted more promptly to the tenure board, other
46 post personnel are more solicitous of younger candidates welfare, and to
47 IMOs the younger candidates have many additional years to serve before

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48 they have accumulated sufficient experience to compete with their IMO's for
49 scarce promotions. The currently available tenure statistics already reflect
50 the age discrimination that is occurring—which affect both tenureing and
51 promotions in the Dept. of State (DOS). When the age of the candidates
52 failing their first tenure standing is made available the evidence will be
53 overwhelming.

54 On April 29, 2010, two days after being denied tenure because of my age,
55 I asserted the afore mentioned facts before Glenn Fetzer, Deputy Chief of
56 Mission (DCM) and the Judy Marcouiller, Regional Human Resources
57 Technician (HR). Addendum Exhibit 1 below documents and confirms the
58 meeting date. Another confirming e-mail record was solicited from Judy
59 Marcouiller by EEOC investigator Tim Liddard (and exists in my case file on
60 page 100 of 193 under the tab "Miscellaneous Correspondence"). While Judy
61 Marcouiller may have lost the handwritten notes she documented the
62 meeting with; I am sure she or Glenn Fedzer (along with other witness^{es} I
63 might call) will verify that was ^{I was} timely in asserting age discrimination.
^

**NOTICE OF DISMISSED ALLEGATIONS
DOS-F-125-10**

Pursuant to 29 C.F.R. § 1614.107(b), where the agency believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the agency shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

DISMISSED

Because of your age (DOB: 05/15/1953) and reprisal (opposing discriminatory policies or practices), you were denied tenure on April 27, 2010.

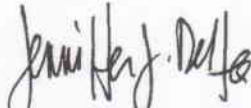
Pursuant to 29 C.F.R. § 1614.105(a)(1), a complainant must bring the alleged matter to the attention of an EEO Counselor within 45 calendar days from the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. The provisions of 29 C.F.R. § 1614.107(a)(2) state that the agency shall dismiss a claim that fails to comply with the applicable time limits contained in § 1614.105. See Wilson v. West, Secretary, Department of Veterans Affairs, EEOC No. 05970497 (June 4, 1999).

The Equal Employment Opportunity Commission (EEOC) generally requires the complainant to establish that he/she complied with the 45-day time limit. The EEOC regulations provide, however, that the agency or the EEOC may extend the 45-day limit when the complainant produces credible evidence to establish that he/she: (1) was not notified of the time limits, and was not otherwise aware of them; (2) did not know and reasonably should not have known that the discriminatory personnel action occurred; (3) was prevented by circumstances beyond his/her control from contacting the agency EEO counselor within the 45-day limit, despite due diligence; and (4) for other reasons considered sufficient by the agency or EEOC. 29 C.F.R. § 1614.105(a)(2). Based on a review of your formal complaint, it appears that you were aware of the time limits, knew that alleged discriminatory action occurred, and were not prevented by circumstances outside your control. You have failed to establish that you meet any of the four possible exceptions to the 45-day period. Thus, this allegation is dismissed.

-5-

You may not appeal dismissal of this allegation until final action is taken on the remainder of the complaint.

Sincerely,



Jennifer J. De Heer
Attorney-Advisor

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III. ARGUMENTS

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I wish to answer the question: Why didn't I provide this additional evidence of my timeliness before the charge was dismissed? My answer is two fold: first that most of my printed evidence was in my House Hold Effects (HHE) which were being held in Freetown in reprisal for not signing off on a reduced amount of the overtime. Josh Hromatka knowingly obstructed justice when he suggested to Bryan Harrison that he should hold my HHE and UAB until I paid \$301.74 for a table that I did not break. Josh's suggestion resulted in the dismissal of the charge I now ask you to reinstate for investigation. I intend a separate memorandum seeking return of my \$301.74. This may seem petty at first but the exact nature of the reprisal needs to be demonstrated clearly.

**2. Your personal items and household effects were
not timely shipped to you.**

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79 The second reason I could not respond earlier with this information is
80 that not only was my HHE held but my Unaccompanied Air Baggage (UAB)
81 was also held in Freetown, (quite unnecessarily since holding my HHE was
82 sufficient to motivate me to surrender payment for a table that was damaged
83 while I was out of the country on R&R). I needed the documents that I had
84 set aside in my UAB to answer Jennifer's timeliness questions effectively
85 while I was in transit sitting in the Motel 6 in Arcata Calif.

86 Initially I directed my UAB to Los Angeles where I picked up my rental
87 car. When I got there and the UAB had not arrived at my in-law's house I
88 asked for the UAB to be sent to Arcata where my son goes to University. I
89 had all of his medical billing in my UAB because his credit rating has been
90 ruined by some medical bills sent to collection. When my UAB failed to find
91 me in Arcata I e-mailed the shipper and found (Exhibit 2) that both my HHE
92 and UAB were both being held for payment for a table I didn't break and that
93 notification had gone to my government e-mail account that I had no access
94 to while traveling. (Exhibit 3)

95

IV. CONCLUSION

96 My conclusion or conjecture is that OCR lawyer Jennifer De Heer was
97 expecting that I would get paid my overtime, get tenured in Wellington and
98 that would be the end of it. She would have been right except my new
99 supervisor in Wellington followed almost exactly the same supervisor devised
100 locally deviant overtime procedures as Josh had created in Freetown.
101 Further, when I answered Jennifer I thought my answer was good and
102 sufficient to sustain timeliness while other witnesses with additional
103 information who were not in transit, such as Judy Marcouiller and Glenn
104 Fedzer were available to confirm my statements.

105 If further proof of my timeliness in opposing the discrimination of not
106 tenuring 4 of the 5 over 40 members of the 99th IT specialist's class is
107 required I can add Glenn Fedzer, Judy Marcouiller, Ola Criss, EEO Embassy
108 Freetown councilor Dana Van Brandt, Josh Hromatka to my witness list.

109 V. RELIEVE SOUGHT

110 1. Reinstatement for investigation of the dismissed charge of my denial
111 of tenure in April of 2010.

112 2. Amend item #2 of my complaint to include "personal effects were
113 withheld obstructing your EEO claim as a reprisal for opposing age
114 discrimination in the tenuring of IRM Specialists"

115 Dated: Dec 12, 2011

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By //s/ Marvin E Green

Marvin E. Green

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101 Chanel Terrace Apt 202
Falls Church VA 22046
Skype: +1-202-657-4911
e-mail: greenme@state.gov
p-mail: marvin.e.green@gmail.com

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CERTIFICATE OF SERVICE

127 I hereby certify that I served a copy of the foregoing MEMORANDUM OF APPEAL,
128 hand delivered on December 12, 2011, as follows:

129

130 Phyllis Sanders,

131 Rm 5425

132 301-647-4646

133 for Stacy Hauf

134 Attorney Advisor

135 Address: U.S. Department of State

136 Office of the Legal Adviser, L/EMP

137 2201 C Street, NW, Room 5425

138 Washington, DC 20520-6419

139

140 Desk: 202-647-4278

141 Fax: 202-647-6794

142

143 Email: HaufS@state.gov

144

Evidence

Exhibit 1:

From: Green, Marvin E
Sent: Friday, April 30, 2010 6:18 AM
To: Fedzer, Glenn E
Cc: Criss, Ola B; Marcouiller, Judy; Walker, Enrico C
Subject: RE: introductions

Thank you for hearing me out yesterday. I appreciate your time, knowing full well that you are doing 3 peoples job without significant TDY support.

You mentioned morale. The recent improvements in morale are responsible for allowing me to speak freely at this time. We all tried to keep the Ambassador happy, albeit with mixed results. I appreciate your open door policy and my newly rediscovered ability to be heard.

I mentioned tenure. Let me be clear. Conferring tenure is an activity conducted outside of post purview. Recommendation for tenure is within post purview. Along with my supervisors' recommendation I was assisted by and received a strong and independent recommendation from post management. Should I not be tenured—it will not be from a lack of assistance or recommendation by current post management.

OIG. I contacted OIG with a simple wage complaint. It has been 12 days without a response. The remedy sought was compensatory leave time. I did not ask for tenure since neither post nor my supervisor have the ability to confer that particular remedy. Should I not be tenured—I may only conclude that thing which I mentioned in our meeting: the OIG is more interested in defending the agency than enforcing the labor laws. Furthermore, any negative repercussions that may stem from outside of post and/or the OIG--can only be viewed as an occluded form of reprisal in defense of the agency--since the illegal transaction of work time for a recommendation has already been completed exclusively between my supervisor and myself--and is therefore moot and no longer germane to whether I receive tenure.

The complaint I submitted to the OIG had a significant flaw. There was no federal question permitting the federal courts subject matter jurisdiction. It was doomed to fail. The OIG can be assumed to have recognized the flaw immediately as it is quite basic. The OIG, by failing to respond or investigate a simple wage dispute, have forced me into the EEO process which is an unfamiliar venue where my chances of successfully securing my wages are greatly diminished and the effort and time I must commit are significantly increased.

Again, thank you for hearing me out.

Respectfully,

Marvin Green

This email is UNCLASSIFIED.

Exhibit 2:

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193

194 De : Marvin E. Green(gmail) [mailto:marvin.e.green@gmail.com]

195 Envoyé : mercredi 15 septembre 2010 4:01

196 À : manager-sierraleone@agsmovers.com

197 Cc : Harrison, Bryan

198 Objet : UAB for marvin green

199

200 I depart for New Zealand tomorrow.

201

202 When you get the order to ship my UAB, please make sure it goes to New
203 Zealand Embassy--NOT California.

204

205 American Embassy

206 Attn: GSO for Marvin Green

207 29 Fitzherbert Terrace

208 Thorndon 6011

209 Wellington New Zealand

210

211 --

212

213 Thanks,

214

215 Marvin

216

217

Exhibit 3:

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219 Harrison, Bryan HarrisonB@state.gov

220

221 9/20/10

222

223 to me

224

225

226 Sent it only to your state account the first time.

227

228 BryanRH. Harrison

229

230 GSO USEmbassy Freetown

231 232-76-515-220

232 IVG 798-5220

233

234 harrisonb@state.gov

235

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236 Exhibit 4:
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238 Exhibit 5:
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240 Exhibit 6:
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242 Exhibit 7:
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244 Exhibit 8:
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246 Exhibit 9:
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248 Exhibit 10:
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