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Marvin Green

v.

HRC, Secretary,
U.S. Dept. of State

DOS Case: DOS F-125-10
EEOC Case: 570-2011-00700X

Exhibit _30_ of ____.

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

14 **U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**
15 **New Orleans Field Office**

16
17 Marvin E. Green,) EEOC No. 570-2011-00700X
18 101 Chanel Terrace Apt 202) Agency No. DOS-F-125-10
19 Falls Church, VA 22046)
20 Skype Voice Mail:)
21 +1-202-657-4911)
22 greenme@state.gov)
23 marvin.e.green@gmail.com)
24 Complainant) AJ: Kevin C. Rung
25)
26 v.)
27)
28 Hillary Rodham Clinton,)
29 Secretary,)
30 Department of State,)
31 Agency) Date: January 2, 2012

32 MEMORANDUM APPEALING THE DISMISSAL OF DENIAL OF TENURE
33 CHARGE AS UNTIMELY AND REQUESTING AN AMMENDMENT OF
34 CHARGE NUMBER 2 TO INCLUDE OBSTRUCTION

35 –Revision of document:
36 [http://www.stgassociation.org/Legal/EEOCcomplaint/NOhearing/00600_570-2011-](http://www.stgassociation.org/Legal/EEOCcomplaint/NOhearing/00600_570-2011-00700X_DOS-F-125-10_Appeal_hand_delivered_to_stacy_oms_12_12_11.pdf)
37 [00700X_DOS-F-125-10_Appeal_hand_delivered_to_stacy_oms_12_12_11.pdf](http://www.stgassociation.org/Legal/EEOCcomplaint/NOhearing/00600_570-2011-00700X_DOS-F-125-10_Appeal_hand_delivered_to_stacy_oms_12_12_11.pdf)

38 I. INTRODUCTION

39 I submit this memorandum appealing dismissal and seeking relief in the
40 form of the reinstatement of:

DISMISSED

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

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II. STATEMENT OF FACTS

43

On April 27, 2010 I was denied tenure for a then unknown reason. I had

44

2 excellent performance reviews where both supervisors, directly over me in

45

my chain of command, Information Management Officer (IMO) Josh

46

Hromatka and his supervisor and my reviewer, Management Officer (MO)

47

Ola Criss, wrote excellen reviews(case file tab “Miscellaneous

48

Corrispondence” pages 110-115 of 193)--and I really expected be be a shoo in

49

for tenure.

50

My IMO had already discriminated against me because of my age by

51

requiring me to work “whenever [he] needed [me] and for as long as [he]

52

needed [me] in order to secure his recommendation for tenure—without

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payment. He would have been more circumspect with a younger candidate.

54

He stated that if “you can’t keep up the State Dept will find somebody who

55

can”. I worked the overtime, initially without expectation of payment, in order

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to appear as productive and fast as a younger candidate and in order to meet

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my supervisor’s stated requirment to secure his recommendation for tenure.

58

Younger candidates for tenure, particularly those with families at post, are

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not required to work as much overtime, are paid for more of their overtime,

60 receive better reviews, are evaluated less critically, their performance reviews
61 are submitted more promptly to the tenure board, other post personnel are
62 more solicitous of younger candidates younger candidates welfare, and to
63 IMO the younger candidates have many additional years to serve before
64 they have accumulated sufficient experience and can compete with their
65 evaluators for scarce promotions—and the tenure statistics will reflect the
66 multiple acts of age discrimination that are occurring, affecting tenureing
67 and promotions in the Dept. of State (DOS), when the age of the candidates
68 failing their first tenure standing is taken into account.

69 On April 29, 2010, two days after being denied tenure because of my age,
70 I asserted the afore mentioned facts before Glenn Fetzer, Deputy Chief of
71 Mission (DCM) and the Judy Marcouiller, Regional Human Resources
72 Technician (HR). Addendum Exhibit 1 below documents and confirms the
73 meeting date. Another confirming e-mail record was solicited from Judy
74 Marcouiller by EEOC investigator Tim Liddard and exists in my case file on
75 page 100 of 193 under the tab “Miscellaneous Correspondence”. While Judy
76 Marcouiller may have lost the handwritten notes she documented the
77 meeting with, I am sure she or Glenn will verify that I timely asserted age
78 discrimination.

79 I claim (2), (3) and (4) below.

80 On April 19 2010, prior to the act of discrimination of failing to tenure
81 the 4 oldest members of the 99th class of 10 by the tenure board—I was

82 unknowingly subjected to a reprisal for opposing the discrimination of my
83 supervisor, Josh Hromatka, who required me, to work extra hours
84 substantially without pay in order to obtain his recommendation for tenure.

85 The reprisal (Exhibit 4) occurred when on April 19, 2010 I forwarded a
86 copy of my complaint to the Office of the Inspector General. Former
87 Ambassador Pamela Bridgewater, and OIG inspector and friend of Freetown
88 Ambassador June Perry, had access to the OIG hotline mailbox and
89 forwarded my complaint to Enrico Walker, my Career Development Officer
90 (CDO). Pamela Bridgewater then deleted my e-mail and complaint from the
91 OIG hotline e-mail box. Enrico Walker then inappropriately shared my
92 complaint with the Tenure Board who then denied me tenure. My current
93 CDO, William Potter has stated that I “threatened to sue my IMO” which is
94 factual to the extent that this complaint file fits that discription and contains
95 my original complaint along with the updates necessary to include the May 1
96 Tenure Board results.

**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.

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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99

III. ARGUMENTS

100 I wish to answer the question: Why didn't I provide this additional
101 evidence of my timeliness before the charge was dismissed? My answer is
102 two fold: first that most of my printed evidence was in my House Hold
103 Effects (HHE) which were being held in Freetown in reprisal for not signing
104 off on a reduced amount of the overtime. Josh Hromatka knowingly
105 obstructed justice when he suggested to Bryan Harrison that he should hold
106 my HHE and UAB until I paid \$301.74 for a table that I did not break. Josh's
107 suggestion resulted in the dismissal of the charge I now ask you to reinstate
108 for investigation. I intend a separate memorandum demonstrating
109 obstruction and seeking return of my table money.

110

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

111 The second reason I could not respond earlier with this information is
112 that not only was my HHE held but my Unaccompanied Air Baggage (UAB)
113 was also held in Freetown, quite unnecessarily (since holding my HHE was
114 sufficient), and I needed the documents that I had set aside in my UAB in
115 when I was sitting in the Motel 6 in Arcata Calif trying to answer these
116 questions related to timeliness from Jennifer.

117 Initially I directed my UAB to Los Angeles where I picked up my rental
118 car. When I got there and the UAB had not arrived at my in-law's house I
119 asked for the UAB to be sent to Arcata where my son goes to University. I
120 had all of his medical billing in my UAB because his credit rating has been
121 ruined by some medical bills sent to collection. When it failed to find me in
122 Arcata I e-mailed the shipper and found (Exhibit 2) that both my HHE and
123 UAB were both being held for payment for a table I didn't break and that
124 notification had gone to my government e-mail account that I had no access
125 to. (Exhibit 3)

126 IV. CONCLUSION

127 My conclusion or conjecture is that OCR lawyer Jennifer De Heer was
128 expecting that I would get paid my overtime, get tenured in Wellington and
129 that would be the end of it. She would have been right except my new
130 supervisor in Wellington followed almost exactly the same overtime

131 procedures as Josh had in Freetown. Further, when I answered her I
132 thought my answer was good and sufficient while other witnesses not in
133 transit, such as Judy Marcouiller and Ola Criss were available to confirm my
134 statements.

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

139 V. RELIEVE SOUGHT

140 1..Reinstatement for investigation of the dismissed charge of my denial
141 of tenure in April of 2010.

142 2. Ammend item #2 of my complaint to include "personal effects were
143 withheld obstructing your EEO claim as a reprisal for opposing age
144 discrimination in the tenuring of IRM Specialists"

145 Dated: Dec 12, 2011

146 By //s// *Marvin E Green*

147 Marvin E. Green

148

149

150

151

152

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MARVIN E GREEN
101 Chanel Terrace Apt 202
Falls Church VA 22046
Skype: +1-202-657-4911
e-mail: greenme@state.gov

EEOC No. 570-2011-00700X DOS-F-125-0 GREEN vs. HRC/Dept of State.
Age Discrimination

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155

p-mail: marvin.e.green@gmail.com

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CERTIFICATE OF SERVICE

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

159

160 Stacy Hauf

161 Attorney Advisor

162 Address: U.S. Department of State

163 Office of the Legal Adviser, L/EMP

164 2201 C Street, NW, Room 5425

165 Washington, DC 20520-6419

166

167 Desk: 202-647-4278

168 Fax: 202-647-6794

169

170 Email: HaufS@state.gov

171

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.

219 **Exhibit 2:**

220

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

222 Envoyé : mercredi 15 septembre 2010 4:01

223 À : manager-sierraleone@agsmovers.com

224 Cc : Harrison, Bryan

225 Objet : UAB for marvin green

226

227 I depart for New Zealand tomorrow.

228

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

231

232 American Embassy

233 Attn: GSO for Marvin Green

234 29 Fitzherbert Terrace

235 Thorndon 6011

236 Wellington New Zealand

237

238 --

239

240 Thanks,

241

242 Marvin

243

244 **Exhibit 3:**

245

246 Harrison, Bryan HarrisonB@state.gov

247

248 9/20/10

249

250 to me

251

252

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

254

255 BryanRH. Harrison

256

257 GSO USEmbassy Freetown

258 232-76-515-220

259 IVG 798-5220

260

261 harrisonb@state.gov

262

EEOC No. 570-2011-00700X DOS-F-125-0 GREEN vs. HRC/Dept of State.
Age Discrimination

263 Exhibit 4:
264
265 Exhibit 5:
266
267 Exhibit 6:
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269 Exhibit 7:
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271 Exhibit 8:
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273 Exhibit 9:
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275 Exhibit 10:
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