



Date: January 21, 1999

Case No.: **1998-JSA-3**

In the Matter of:

DAVID P. FEDELSKI,
Complainant,

v.

**VERMONT DEPARTMENT OF
EMPLOYMENT AND TRAINING, ET AL,**
Respondent.

Representation: David P. Fedelski
Pro Se

Brooke Pearson, Esq.
For the Respondents

Before: RICHARD K. MALAMPHY
Administrative Law Judge

DECISION AND ORDER DISMISSING THE COMPLAINT

This proceeding arises under 29 U.S.C. § 49, et seq., Federal Employment Service, and implementing regulations found at 20 CFR Part 658.

A notice of determination was issued on June 9, 1998 by the Regional Administrator, Employment and Training Administration, U. S. Department of Labor in Boston, Massachusetts. This determination reported in part that

In his complaint dated January 8, 1998 David Fedelski, hereafter the complainant, alleged that on October 30-31, 1997, Richard Doyle, the Local Veteran Representative (LVER) of the Springfield Local Office (LO) of the State of Vermont Department of Employment and Training, hereafter respondent, denied

him assistance in filing an OFCCP Complaint, and instead referred him to his supervisor, the Director of Veterans Employment and Training.

He further alleged that the LVER negligently and intentionally obstructed filing a complaint, that his behavior was totally unprofessional, and a disgrace as a public servant and Veteran's Representative, and has caused (him) great emotional distress."

The undersigned held a conference call with the parties on December 3, 1998 and Mr. Fedelski reported that the state agency did provide the proper OFCCP complaint form twenty-six days after his visit on October 30, 1997. Thereafter, Mr. Fedelski filed an OFCCP complaint against an employer for alleged discrimination in hiring.

During the conference call, Mr. Pearson reported that the agency placed a letter of reprimand in Mr. Doyle's personnel file.

A state complaint officer, Chris LaDuke, made findings in early February 1998 based on Mr. Fedelski's complaint in January. The report stated in part that

Mr. Doyle agrees that Mr. Fedelski attempted to file a complaint against an employer with the Office of Federal Contract Compliance Programs. Mr. Doyle also states he was not aware of a specific complaint form, that he informed Mr. Fedelski of this fact and referred him (Mr. Fedelski) to Mr. Richard Gray, the Director for Veterans' Employment and Training. Mr. Doyle feels the referral of Mr. Fedelski to the Director for Veterans' Employment and Training for the complaint filing and resolution, was the proper procedures set forth in the Veterans' Programs Orientation Manual and according to 38 USC Sec. 4103 C-9. Mr. Doyle's statement indicated that on the morning of October 31, 1998, he offered Mr. Fedelski the opportunity to put his complaint in writing, however, Mr. Fedelski balked referring to "a form".

Conclusion:

Upon investigation into the complaint filing procedures, it is determined that a complaint can be filed with the Office of Federal Contract Compliance Programs (OFCCP) through the Local Veterans' Employment Representative (LVER) and the LVER will assist the veteran in preparing the complaint. The procedure also states that complaints will promptly be referred to the Director of Veterans' Employment and Training.

The investigation into this complaint also discovered that Title 38, U.S. Code Section 4212, as amended, and its implementing regulations are administered and enforced by the Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP). In consultation with ESA-

OFCCP in Boston on January 16, 1998, it was determined that USDOL Form CC-4 does exist, however, according to the Boston office, Federal Form CC-4 is normally supplied upon a request to their office and is not a form distributed without a request.

In conclusion to this investigation, Mr. Fedelski was correct in his expectation of having the Local Veterans' Employment Representative assist him in filing his complaint with OFCCP. A complaint form and procedures are in place to address this type of complaint.

I further conclude that Mr. Doyle was honestly unaware of the existence of USDOL Form CC-4 and the correct complaint procedure in this case. Federal Form CC-4 is not customarily retained by DET local offices and Mr. Doyle, I conclude was operating under the directions he felt were proper, in referring Mr. Fedelski to the Director of Veterans' Employment and Training.

Recommendations:

I recommend that the Director of Veterans' Employment and Training provide to all Local Veterans' Employment Representatives procedural training on the filing of complaints. This is to include any complaints relevant to veterans and not limited to the Office of Federal Contract Compliance Program.

I further recommend that the Vermont Department of Employment and Training Coordinate with the Director of Veterans' Employment and Training, to have complaint issues an agenda item on the National Veterans' Training Institute conference to be conducted in February 1998.

I believe Mr. Doyle's performance has been addressed as referenced in a letter by Mr. David Copeland, Assistant Director of Jobs and Training and sent to Mr. Fedelski, Ms. Hasbrouck (Springfield Office Manager) and Mr. Doyle on November 26, 1997. Mr. Fedelski has risen the departments awareness of an issue and other than providing appropriate training to LVERs, I do not see any other actions which would be beneficial at this time.

Mr. Copeland's November letter stated in part

Mr. Ware and I agree that Mr. Doyle was technically correct in referring you to Rick Gray, State Director Veterans' Employment and Training, for assistance in filing your complaint. We also agree that even though Mr. Doyle was technically correct, more could and should have been done to meet your expectations of a Local Veterans' Employment Representative.

Mr. Fedelski disagreed with findings made in February 1998. Therefore, a hearing with the State Chief Appeals Referee was held by telephone on March 9, 1998.

During the hearing, Mr. Fedelski indicated that he wished to have Mr. Doyle reprimanded and held accountable under the statutes. [p. 8].

Subsequently, the referee asked

Mr. Fedelski, can you cite me towards, earlier on when I asked you what it was you wanted me to do for you in essence, you said basically you wanted Mr. Doyle reprimanded and the like. What, are you aware of any sanctions that can be brought as a result of an action such as this?

Ironically, no. Ironically there are no actions to be taken against a government employee interfering with the filing of a complaint. You can take actions against contractors, and I think this is a major loophole in the system. [p. 18].

Dick Doyle testified that several days prior to October 30 he and Fedelski discussed an alleged incident of discrimination by a potential employer. On October 30, Fedelski questioned Doyle's knowledge of the Viet Nam Era Veterans' Readjustment Citizens Act. By the next day, Doyle had received and reviewed a copy of this Act. Doyle indicated that while he had worked as an employment and training specialist for 20 years he had never dealt with the filing of an OFCCP complaint.

Doyle stated that the discussion with Fedelski escalated and the Complainant was referred to Richard Gray, Doyle's supervisor.

On March 13, 1998, Mr. Sanderson, the referee, issued a decision. The decision stated, in part

It is the position of the complainant that, among other things, Mr. Doyle refused to assist him in filing the complaint in question, and was rude and discriminatory in his treatment of him as well.

... At the outset, it should be noted that what the complainant seeks by pursuing this matter is at a minimum, the reprimand of the LVER, Mr. Doyle, for what he regarded as his refusal to assist him in filing a complaint against an employer, and for comments and statements which he found to be highly objectionable.

... it is reasonable to conclude that Mr. Doyle had some things that perhaps he should not have said, while the complainant may well have said things which could very well have provoked the responses he finds so objectionable. These matters aside, however, with respect to the central issue of the complainant's complaint, which is that Mr. Doyle refused to assist him in filing his complaint, this complaint is without basis. Mr. Doyle was unfamiliar with the process

the complaint and was seeking assistance with and, after some discussion, properly referred him to the person most likely familiar with the process the complainant was pursuing. As such, his actions with respect to the central issue were entirely appropriate.

... With respect to the issue of whether or not Mr. Doyle was rude to the claimant, it is clear that what Mr. Fedelski, the complainant, seeks is a pound of Mr. Doyle's flesh. None, however, is forthcoming. If Mr. Doyle was rude to the complainant, that was a matter for the district office manager to address, and not for the formal complaint process implemented by the complainant. In fact, the complainant has conceded that he is unaware of any provision within the Code of Federal Regulations which would provide him with the relief he now seeks, which is to somehow punish Mr. Doyle. Finally, it should be noted that the notice which has been appealed by the complainant clearly addressed the complainant's complaints, and offers the Department a more than reasonable course of action to insure that such complaints are avoided in the future. This appears consistent with the complainant's desire that other veteran's complaints are properly handled in the future.

Subsequently, the complainant appealed the state decision to the U. S. Department of Labor. The Regional Administrator issued a decision on June 9, 1998, and this stated in part

Notwithstanding, having received assistance, the complainant continues to criticize the LVER for his ignorance of the procedure and the existence of the OFCCP's Standard Form CC-4. I find this criticism unwarranted. Like in the instant case, it is not uncommon for an LVER not to ever handle a complaint of discrimination against an employer. Even further, Title 38, U.S. code, Section 4212, as amended, and its implementing regulations are administered and enforced by the Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP), and Form CC-4 is issued and implemented by this office exclusively. The form is not a widely distributed item, but germane to, and available upon request from the OFCCP.

The complainant further accused the LVER of being unprofessional, negligent, and intentionally obstructing his filing of the complaint. I find no basis for such accusations. The facts support otherwise; eg., realizing his inability to personally assist the complainant because of his own lack of familiarity with the form and procedures, he referred the complainant to his superior, where assistance was provided. Consequently, the accusations of "intentional obstruction", "unprofessional" or "negligent" are unsupported.

The heated arguments between the parties were unfortunate events upon which this Regional Administrator can not rule. It definitely would have been better if this had not happened. While it is expected that a public service person will exercise restraint under adversity, the fact remains that the circumstances and other human factors sometimes impair the exercise of such restraint. This

Regional Administrator is satisfied with the recommendations made by DET Complaint Officer and the Chief Appeal Referee.

The complainant appealed this decision to the Office of Administrative Law Judges and the case was assigned to this Administrative Law Judge.

As previously stated, a conference call was held between the undersigned, Mr. Fedelski, and Counsel for the State.

It must be noted that Mr. Fedelski is not seeking money damages from the State agency, nor is he claiming that the State denied him an opportunity for employment in that department. Mr. Fedelski is grateful that he was finally able to file an OFCCP complaint.

Mr. Fedelski seeks punishment for Mr. Doyle and satisfaction that other veterans can be fully apprized of their rights under federal statutes.

The conference call was held on December 3, 1998 and the record was left open for 30 days for final comments by the parties. There has been no submission from Mr. Fedelski.

Mr. Pearson has submitted a brief which states in part

Mr. Fedelski cites no authority for the proposition that any individual or entity, federal or state, other than the Commissioner of this Department has the authority to take any corrective or disciplinary action against this state employee, and I am aware of no such authority. Of course, the Department believes that the actions which it has taken, both systems wide and individual, are reasonable and appropriate, and the Department is gratified that its belief in this regard is shared by the Regional Administrator. In the Department's judgement, there is nothing in the record which would warrant any different conclusions in these regards. In any event, whatever authority the Regional Administrator, the Office of Administrative Law Judges, or any other branch of the United States Department of Labor may have with respect to determining the appropriate action or actions to take to correct a problem system wide, the Department respectfully submits that those entities have no authority to second guess the determination made by the Commissioner as to the nature and extent of corrective or disciplinary action to be taken against a Department employee based upon that individual's conduct in the performance of his duties.

Mr. Pearson's arguments are interesting and the undersigned will not dispute their correctness.

Once again, it must be noted that the complainant is not seeking damages or employment. As a result of Mr. Fedelski's complaint the State agency had an extensive learning experience in

dealing with federally funded programs. The State now has new methods in assisting veterans and others in employment practices.

Mr. Pearson has stated that Mr. Doyle received a reprimand based on his dealings with the complainant in late October 1997.

The State agency and the Regional Administrator (USDOL) have noted that Mr. Doyle promptly referred the complainant to Mr. Gray and that the OFCCP complaint form was delivered to Mr. Fedelski in a timely manner under the circumstances.

The undersigned acknowledges that the complainant could have been better served in October 1997. However, Mr. Doyle has been reprimanded and the State agency is now better equipped to provide services.

The Administrative Law Judge concurs in the conclusion of the Regional Administrator.

The Complainant's claim for further sanctions against Mr. Doyle and the Vermont Department of Employment and Training is **DENIED**.

The complaint is **DISMISSED**.

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ccb
Newport News, Virginia

Any appeal of this decision must be made within twenty (20) days and sent to the Administrative Review Board, U. S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Administrative Review Board has the responsibility to advise and assist the Secretary in the deciding appeals under the Job Service Complaint System (20 C.F.R. §658, Subpart E).