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Federal Aviation Administration--Appropriations Availability-- Payment of Attorney's Fees

Number: B-257061

Date: 1995-07-19

Matter of: Federal Aviation Administration--Appropriations Availability--Payment of Attorney's Fees File: B-257061 Date: July 19, 1995

The Federal Aviation Administration must use appropriations available at the time of award to pay attorney's fees resulting from a discrimination complaint. Appropriations available in a prior fiscal year, when the complaint was filed, are not available for this purpose.

DECISION

This responds to a request under 31 U.S.C. Sec. 3529 for an advance decision concerning whether the Federal Aviation Administration (FAA), Department of Transportation, can use fiscal year 1992 appropriations to pay an employee's attorney's fees that FAA awarded in fiscal year 1994. As explained below, we conclude that FAA must use fiscal year 1994 appropriations to pay the fees.

On January 21, 1992, Carol A. Rogers filed an equal employment opportunity complaint against FAA. After a hearing before an Equal Employment Opportunity Commission administrative judge, FAA issued a decision in fiscal year 1994, holding that Ms. Rogers had been discriminated against on the basis of sex and age. FAA then awarded Ms. Rogers a promotion, back pay, compensatory damages and attorney's fees.

By memorandum of March 18, 1994, FAA ordered the payment of $28,573.31 in attorney's fees to Ms. Rogers. However, the memorandum cited FAA's fiscal year 1992 appropriation as the source for the payment. The certifying official questioned the use of the 1992 appropriation and requested our guidance.

As a general rule, an agency must pay a claim from the appropriation available for the fiscal year in which the amount of the claim was determined and allowed. B-216351, July 25, 1988. The date that the claim becomes a legal liability determines the fiscal year appropriation to be used to pay the claim. 27 Comp.Gen. 237, 238 (1947). This rule is grounded in the theory that an administrative award "creates a new right" in the successful claimant, giving rise to a new government liability. 63 Comp.Gen. 308, 310 (1984). Since FAA made its administrative determination in fiscal year 1994, FAA must use its 1994 appropriations to pay the attorney's fees award.[1]

The FAA certifying official also asked whether the agency could have used its fiscal year 1992 appropriations to pay the award if it had previously reserved the funds in a contingency account to cover the possibility of a future award of attorney's fees. Unless FAA had statutory authority to extend the availability

of annual appropriations over several fiscal years by reserving budget authority in a contingency account, the funds reserved in such an account would have expired at the end of fiscal year 1992. See 58 Comp.Gen. 321 (1979). It is a fundamental principle of appropriations law that appropriated amounts are limited for obligation to a definite period and are available only for payment of expenses properly incurred during that period of availability. 31 U.S.C. Sec. 1502. Hence, unless properly obligated during their period of availability, any amounts reserved in a contingency account would not be available to support obligations arising after the expiration of their period of availability.

Accordingly, FAA must use fiscal year 1994 appropriations to pay Ms. Rogers' attorney's fees.

1. Title VII of the Civil Rights Act of 1964 authorizes the award of attorney's fees in settlement agreements involving sex discrimination. See 42 U.S.C. --- Sec. 2000e-16; 29 C.F.R. Sec. 1613.271(d).