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Payment of Compensatory Damages Under Section 102 of the Civil Rights Act of 1991

Number: B-257334

Date: 1995-06-30

Matter of: Payment of Compensatory Damages Under Section 102 of the Civil Rights Act of 1991 File: B-257334 Date: June 30, 1995

The Food Safety and Inspection Service should pay from its own appropriations compensatory damages under section 102 of the Civil Rights Act of 1991, 42 U.S.C. Sec. 1981a. A certifying officer when asked to certify a lump sum award of compensatory damages should ensure that payment of all items covered in the lump sum is statutorily permissible, that the amount of the payment does not exceed statutory limits and that correct administrative procedures were followed.

DECISION

A certifying officer for the Department of Agriculture has requested an advance decision under 31 U.S.C. Sec. 3529 (1988) regarding payment from the Food Safety and Inspection Service's appropriations of compensatory damages pursuant to an agreement reached by the agency in settlement of an employee discrimination claim.

The certifying officer recognizes that payment of compensatory damages is now allowed under section 102 of the Civil Rights Act of 1991, 42 U.S.C. Sec. 1981a, but notes that there are no regulations which specifically authorize payment of compensatory damages. [1] She asks two questions, one related to the source of payment of the compensatory damages and the other related to a certifying officer's verification responsibilities: (1) Does an administrative award of compensatory damages constitute a "necessary expense" of agency appropriated funds, or is there a special fund, like that from which tort claims are paid, for the payment of these claims? (2) May a certifying officer certify payment if the settlement does not denote an amount as being for compensatory damages? The agreement presented to this certifying officer stated only that the agency had agreed to pay a lump sum to the employee. It did not characterize the amount as being in payment of compensatory damages, although the agency official who signed the agreement advised the certifying officer that it was for compensatory damages. The certifying officials asks if she may rely on this assertion.

As explained below, the settlement payment at issue here is properly payable from the Food Safety and Inspection Service's appropriations. The certifying officer should not question the propriety of the agency's decision to agree to pay compensatory damages, but, when asked to certify a lump-sum settlement, should request an itemization of the lump-sum to ensure that payment of all items covered in the lump sum is statutorily permissible.

Necessary Expense

Where an appropriation is made for a particular object, it confers authority, by implication, to incur expenses which are necessary or incident to the proper execution of that object. 71 Comp.Gen. 527 (1992). The settlement payment of a discrimination claim which appropriate Food Safety and Inspection Service officials have determined proper is incident to the general operations of the agency. Consequently, the payment, as the certifying officer suggests, would constitute a necessary expense of the agency's appropriation.

The fact that the Code of Federal Regulations does not currently address such payments does not affect the legality of the payment or the availability of the appropriation. Under 31 U.S.C. Sec. 1301(a), an expense is proper if it is authorized by statute. 65 Comp.Gen. 800 (1986). Section 1981a specifically authorizes the recovery of compensatory damages from federal agencies for unlawful discrimination in violation of title VII of the Civil Rights Act of 1964. 42 U.S.C. Sec. 1981a(a)(1). This authorization is sufficient for the Food Safety and Inspection Service to use its appropriations, otherwise available for salaries and expenses, to pay compensatory damages in settlement of title VII claims.

The "special" fund to which the certifying officer refers is the Judgment Fund. The Judgment Fund is a permanent, indefinite appropriation from which is paid most judgments entered against the United States and compromise settlements made by the Attorney General. 31 U.S.C. Sec. 1304. As a general matter, the Judgment Fund is not available for the payment of administrative awards. 64 Comp.Gen. 349 (1985). Consequently, it is not available to pay the settlement at issue here. The Judgment Fund is available for payment of section 1981a compensatory damages, just as with tort claims, only when the damages are awarded by judgment of a court of competent jurisdiction or pursuant to a compromise settlement negotiated by the Attorney General.

Certification

Certification involves an element of verification, the extent of which depends on the circumstances. Included in the certifying officer's burden of verification is questioning items on the face of vouchers or supporting documents which simply do not look right. B-194727, Oct. 30, 1979. Further, certifying officers should not certify payment vouchers that are unsupported by documentation indicating that procedural safeguards regarding payment have been observed. B-179916, Mar. 11, 1974.

Compensatory damages are available under section 1981a "for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses". With respect to the lump-sum payments at issue here, the certifying officer should request a break down of the elements that comprise the lump sum to ensure that the elements for which compensation is being made are statutorily permissible. However, the amount of compensatory damages paid to a claimant under section 1981a is a matter primarily for administrative determination. Our Office would ordinarily have no reason to object to any such payment provided the amount does not exceed statutory limits, the elements of any lump sum are statutorily permissible, and the correct administrative procedures are followed. Without implementing regulations circumscribing the agency's discretion in agreeing to compensatory damages, a certifying officer may rely on the approval of the agency official

responsible for assuring that an award of damages is permissible under section 1981a, provided that the correct administrative procedures are followed, that the award is within the statutory limits and that the certifying officer has no personal knowledge of any impropriety in the award. A certifying officer is not entitled to scrutinize the agency's exercise of discretion afforded it by law. See 28 Comp.Gen. 571 (1949); 28 Comp Gen. 413 (1949).

1. While the Equal Employment Opportunity Commission has published enforcement guidance which sets forth the Commission's position on how compensatory damages should be assessed, EEOC Decision No. 915.002, "Enforcement Guidance: Compensatory and Punitive Damages Available under Sec. 102 of the Civil Rights Act of 1991" (July 7, 1992), the guidance does not have the force of regulation.