Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fiscal Year Chargeable for Compensatory Damages Under Section 102 of the Civil Rights Act of 1991

File: B-272984

Date: September 26, 1996

DIGEST

The Federal Aviation Administration should charge compensatory damages under section 102 of the Civil Rights Act of 1991 to the appropriation of the fiscal year in which the final determination of the government's liability for compensatory damages is made. The government's obligation to pay compensatory damages arose at that point.

DECISION

Pursuant to 31 U.S.C. § 3529, a certifying officer for the Federal Aviation Administration (FAA) asks which the fiscal year FAA should charge for compensatory damages awarded under section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a(a)(1), as part of a lump sum compromise settlement of an employee discrimination claim. For reasons stated below, we conclude that FAA should pay the compensatory damages from the appropriation available in the fiscal year in which the determination to award compensatory damages was made.

Section 102 authorizes the recovery of compensatory damages from federal agencies for unlawful discrimination in violation of title VII of the Civil Rights Act of 1964. Compensatory damages are available for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses. 42 U.S.C. § 1981a(b)(3). This authorization is sufficient for the FAA to use its appropriations, otherwise available for salaries and expenses, to pay compensatory damages in settlement of title VII claims. B-257334, June 30, 1995.

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-257061, July 19, 1995. 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). Thus, for example, FAA must use its fiscal year 1996 appropriations to pay the awards of compensatory damages made in fiscal year 1996.

/s/Robert Murphy
for Comptroller General
of the United States