

117971
DECISION



21344
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-79796

DATE: March 30, 1982

MATTER OF: Gilbert Resendez and Eva Rivas - Attorney Fees -
Discrimination Complaint

- DIGEST:**
1. Two employees claim attorney fees incident to discrimination complaints which were settled in 1979. Claims for attorney fees under Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(k) and 2000e-16, are denied since implementing regulations, effective April 11, 1980, do not apply to discrimination complaints settled before the effective date.
 2. Two employees claim attorney fees incident to discrimination complaints. Claims for attorney fees under Back Pay Act, 5 U.S.C. § 5596, as amended by Civil Service Reform Act of 1978, are denied since complaints were pending on effective date of Reform Act. Savings provision in section 902(b) of Reform Act precludes application of the amendment to administrative proceedings pending on effective date of Reform Act, January 11, 1979.

ISSUE

The issue in this decision is the entitlement of two employees to attorney fees incident to their discrimination complaints. We hold that the claims may not be paid under regulations issued by the Equal Employment Opportunity Commission implementing the Civil Rights Act of 1964, as amended, since those regulations apply only to pending and future complaints. In addition, we hold that the claims may not be paid under the authority of the Back Pay Act, as amended, in view of the savings provision in section 902(b) of the Civil Service Reform Act of 1978.

BACKGROUND

This decision is in response to appeals filed by two employees, Mr. Gilbert M. Resendez and Ms. Eva Rivas, from

determinations by our Claims Group concerning their claims for attorney fees. Both employees are represented by an attorney, Mr. Shelby W. Hollin.

Mr. Resendez, an employee of the Department of the Air Force, filed a discrimination complaint against the Air Force in 1976, and that complaint was rejected by the agency in 1977. Upon appeal, the Merit Systems Protection Board (MSPB) remanded the complaint to the Air Force in September 1979, for further investigation. Mr. Resendez claimed attorney fees in the amount of \$660 from the MSPB, but that request was denied by the MSPB in view of the savings provision in section 902(b) of the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, October 13, 1978.

Ms. Rivas, also an employee of the Department of the Air Force, filed a discrimination complaint against the Air Force in 1978, and in August 1979, the Air Force agreed with her allegations and took remedial action. However, the Air Force denied Ms. Rivas' claim for attorney fees in the amount of \$2,400.

On behalf of both employees, Mr. Hollin argues that authority for payment of attorney fees exists under the Back Pay Act, as amended, 5 U.S.C. § 5596, and the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(k).

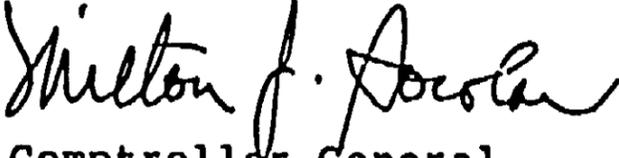
DISCUSSION

With regard to payment of attorney fees under Title VII of the Civil Rights Act, we had previously held that Federal agencies had no authority to pay such fees administratively in the absence of specific legislation or appropriate regulations. See Martha B. Poteat, B-196019, April 23, 1980, and decisions cited therein. However, on April 9, 1980, the Equal Employment Opportunity Commission (EEOC) issued interim revised regulations authorizing the payment of attorney fees by Federal agencies incident to the settlement of discrimination complaints. 45 Fed. Reg. 24130 (published in 29 C.F.R. § 1613.271 (1981)). According to the EEOC's

supplementary information accompanying the revised regulations, these regulations apply only to pending and future complaints as of their effective date, April 11, 1980. The new authority, therefore, would not apply to the claims of Mr. Resendez and Ms. Rivas. Poteat, supra.

With regard to payment of attorney fees under the Back Pay Act, the Civil Service Reform Act of 1978 amended the Back Pay Act to provide for the payment of reasonable attorney fees to employees found to have been affected by unjustified or unwarranted personnel actions. See 5 U.S.C. § 5596(b)(1)(A)(ii) (Supp. III 1979), and the implementing regulations published at 46 Fed. Reg. 58271, December 1, 1981. However, attorney fees are not payable in administrative proceedings pending on the effective date of the Reform Act (January 11, 1979) in view of the savings provision in section 902(b) of the Civil Service Reform Act of 1978, and section 550.806(h) of the implementing regulations, 46 Fed. Reg. 58277. See also Leslie H. Graham, Jr., B-197737, January 8, 1982, and cases cited therein.

Accordingly, since these two claims for attorney fees are not within the coverage of the regulations implementing the Civil Rights Act, as amended, or the Back Pay Act as amended, the claims must be denied.

for 
Comptroller General
of the United States