



United States
General Accounting Office
Washington, D.C. 20548

160700

General Government Division

B-279932

June 10, 1998

The Honorable Elijah E. Cummings
Ranking Minority Member
Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

The Honorable Albert R. Wynn
House of Representatives

Subject: Equal Employment Opportunity: Administrative Judges'
Recommended Decisions and Agencies' Actions

This letter responds to your request for information on recommended decisions made to federal agencies by Equal Employment Opportunity Commission (EEOC) administrative judges on the merits of federal employees' equal employment opportunity (EEO) complaints, and agencies' actions on those decisions. Specifically, we present information on (1) the numbers of recommended decisions made by EEOC administrative judges during fiscal years 1991 through 1996, broken out by the numbers of decisions containing findings of discrimination and those containing findings of no discrimination and (2) the overall rates of agencies' acceptance, modification, or rejection of administrative judges' recommended decisions, broken out by decisions containing findings of discrimination and those containing findings of no discrimination.¹

To develop and analyze information on EEOC administrative judges' recommended decisions and agencies' actions on them, we used data reported by EEOC in its Fiscal Year 1995 Fourth Quarter Report to the Chairman and its annual Federal Sector Report on EEO Complaints Processing and Appeals for fiscal years 1991 through 1996, the latest year for which data on both the number of decisions and the number of agency

¹As you also requested, we plan to examine and report separately on EEOC rulings on employee appeals of final agency decisions, particularly those cases in which agencies rejected or modified administrative judges' recommended decisions containing findings of discrimination.

160700

actions on these decisions were available. We did not verify the data reported by EEOC. However, in one instance, we consulted with an EEOC official on an apparent anomaly in the data regarding agencies' actions on administrative judges' recommended decisions containing findings of no discrimination for fiscal year 1994. The official acknowledged the error, which we considered to be material, and gave us a corrected figure. In addition, we found inconsistencies between data in summary tables in the Federal Sector Report on EEO Complaints Processing and Appeals for fiscal years 1991, 1995, and 1996 and the data in detailed tables from which the summary tables are derived. After consulting an EEOC official, who attributed the inconsistencies to transcription errors, we used data derived from the detailed tables. We requested comments on a draft of this letter from the Chairman, EEOC. His written comments are discussed near the end of this letter. We did our work in Washington, D.C., during April 1998 in accordance with generally accepted government auditing standards.

RESULTS

EEOC's data showed that the total number of recommended decisions made by EEOC administrative judges, after increasing from 1,800 in fiscal year 1991 to 3,185 in fiscal year 1994, decreased to 3,001 in fiscal year 1995 and 2,962 in fiscal year 1996. A decreasing percentage of these recommended decisions contained findings of discrimination. This percentage, which was 14.8 percent in fiscal year 1991, decreased to 10.8 percent in fiscal year 1996. The rate at which agencies rejected administrative judges' recommended decisions containing findings of discrimination showed no clear trend, fluctuating between 38.7 and 62.7 percent during fiscal years 1991 to 1996. In contrast, agencies rarely rejected recommended decisions containing findings of no discrimination, rejecting no more than eight-tenths of 1 percent in any year examined.

Administrative Judges' Recommended Decisions to Agencies

According to the regulations governing the EEO complaint process for federal employees, an employee, after receiving the results of an agency's investigation of his or her complaint, has the option of requesting a hearing before an EEOC administrative judge prior to the agency making its final decision. Generally, an administrative judge will issue a recommended decision unless the complaint is (1) settled by the parties, (2) withdrawn by the complainant, or (3) remanded by the administrative judge to the agency for further action. Table 1 shows the total number of recommended decisions to agencies made by EEOC administrative judges, the number and percentage of decisions containing findings of discrimination, and the number and percentage of decisions containing findings of no discrimination.

Table 1: Recommended Decisions Made by EEOC Administrative Judges for Fiscal Years 1991-1996

Fiscal year	Decisions				Total number of decisions
	Finding of discrimination		Finding of no discrimination		
	Number	Percentage of total	Number	Percentage of total	
1991	266	14.8%	1,534	85.2%	1,800
1992	313	14.7	1,812	85.3	2,125
1993	390	13.0	2,618	87.0	3,008
1994	363	11.4	2,822	88.6	3,185
1995	353	11.8	2,648	88.2	3,001
1996	321	10.8	2,641	89.2	2,962

Source: EEOC.

Table 1 shows that the total number of recommended decisions made by EEOC administrative judges, after increasing between fiscal years 1991 and 1994, decreased in fiscal years 1995 and 1996.² The number of recommended decisions containing findings of discrimination increased between fiscal years 1991 and 1993, before decreasing in each succeeding fiscal year through 1996. Although the actual number of recommended decisions containing findings of discrimination was higher in fiscal year 1996 than in fiscal year 1991, the number represented a lower percentage of all recommended decisions issued that year.

Agencies' Actions on Recommended Decisions

In making its final decision on the merits of an employee's EEO complaint, an agency has the option of accepting, modifying,³ or rejecting the recommended decision made by an

²The number of hearing requests from complainants increased from 5,773 to 10,712 between fiscal years 1991 and 1994, decreased to 10,515 in fiscal year 1995, then again increased to 10,677 in fiscal year 1996. We are preparing a separate report at your request dealing with federal employee EEO complaint trends.

³EEOC officials explained that an agency modifies a recommended decision when, for example, it accepts an administrative judge's finding but rejects the remedies recommended or, in a complaint containing multiple allegations, an agency agrees with the administrative judge's findings on some but not all of the allegations.

administrative judge. Table 2 shows the total number of recommended decisions containing findings of discrimination that were acted upon by agencies during fiscal years 1991 through 1996, broken out by the number and percentage of decisions agencies accepted, modified, or rejected.⁴

Table 2: Agency Actions on EEOC Administrative Judges' Recommended Decisions Containing Findings of Discrimination for Fiscal Years 1991-1996

Fiscal year	Decisions						Total number of decisions
	Accepted		Modified		Rejected		
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	
1991	106	43.4%	14	5.7%	124	50.8%	244
1992	105	35.7	30	10.2	159	54.1	294
1993	115	36.3	23	7.3	179	56.5	317
1994	119	41.2	33	11.4	137	47.4	289
1995	107	45.0	39	16.4	92	38.7	238
1996	101	35.6	5	1.8	178	62.7	284

Note: Totals may not add to 100 percent because of rounding.

Source: EEOC.

Table 2 shows that the rate at which agencies accepted administrative judges' recommended decisions containing findings of discrimination showed no clear trend, fluctuating within a range of 35.6 to 45 percent during fiscal years 1991 to 1996. The rate at which agencies rejected administrative judges' recommended decisions containing findings of discrimination fluctuated between 38.7 and 62.7 percent. In addition, a smaller percentage of recommended decisions were modified, that is, accepted or rejected in part, by agencies. This percentage ranged from 1.8 to 16.4 percent. Further analysis would be necessary to determine the nature of these modifications.

⁴According to an EEOC official, the number of recommended decisions issued by administrative judges and the number of decisions acted upon by agencies do not reconcile because (1) the time lag between the issuance of a recommended decision and agency action on that decision can overlap a fiscal year and (2) a complaint may be settled or withdrawn after a recommended decision is issued by an administrative judge, thereby negating the need for a final agency decision.

Table 3 shows the total number of recommended decisions containing findings of no discrimination that were acted upon by agencies during fiscal years 1991 through 1996, broken out by the number and percentage of decisions agencies accepted, modified, or rejected.

Table 3: Agency Actions on EEOC Administrative Judges' Recommended Decisions Containing Findings of No Discrimination for Fiscal Years 1991-1996

Fiscal year	Decisions						Total number of decisions
	Accepted		Modified		Rejected		
	Number	Percentage of total	Number	Percentage of total	Number	Percentage of total	
1991	1,591	96.2%	61	3.7%	1	0.1%	1,653
1992	1,858	96.8	53	2.8	9	0.5	1,920
1993	2,082	95.4	93	4.3	8	0.4	2,183
1994	2,352	96.4	69*	2.8	19*	0.8	2,440*
1995	1,747	96.9	46	2.6	9	0.5	1,802
1996	2,739	97.9	56	2.0	4	0.1	2,799

Note: Totals may not add to 100 percent because of rounding.

^aThe total number of decisions and the number of modified or rejected decisions differ from the data reported by EEOC in the Federal Sector Report on EEO Complaints Processing and Appeals for fiscal year 1994. In following up on this anomaly, we spoke with an EEOC official, who said that this information had been erroneously reported by EEOC. We report the corrected data he provided.

Source: EEOC.

Table 3 shows that, in contrast to their actions on recommended decisions containing findings of discrimination, agencies accepted a high percentage of administrative judges' recommended decisions containing findings of no discrimination. This percentage ranged from 95.4 to 97.9 percent between fiscal years 1991 and 1996. The rate at which agencies rejected administrative judges' recommended decisions containing findings of no discrimination did not exceed 0.8 percent during that period. In addition, a small percentage of the recommended decisions were modified, that is, accepted or rejected in part, by agencies. This percentage ranged from 2 to 4.3 percent. Further analysis would be necessary to determine the nature of these modifications.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on a draft of this letter, EEOC acknowledged the errors we had identified in its fiscal year 1996 Federal Sector Report on EEO Complaints Processing and Appeals and provided an errata sheet to the report containing corrected figures. These corrected figures as well as corrected figures for other errors we identified in data provided by EEOC are reflected in the tables in our letter. In addition, EEOC said that it had initiated actions to improve the quality and timeliness of its processes to collect and report federal EEO complaint data. Further, EEOC offered reasons for the increase in the number of recommended decisions issued by administrative judges between fiscal years 1991 and 1994 and for the decrease in the number of recommended decisions issued in fiscal years 1995 and 1996. Reporting the reasons for these trends lay outside the scope of this letter; therefore, we made no change. EEOC's comments, without the errata sheet, are reproduced as an enclosure to this letter.

As agreed with your offices, we plan no further distribution of this letter until 14 days after its issuance, unless you publicly release its contents earlier. We will then send copies of this letter to the Chairman of the Civil Service Subcommittee and to the Chairman and Ranking Minority Members of other congressional committees with responsibilities related to the EEO complaint process for federal employees. We will also send copies to the Chairman, EEOC; the Directors of the Office of Personnel Management and the Office of Management and Budget; and other interested parties. We will make copies of this letter available to others on request.

Major contributors to this letter were Stephen E. Altman, Assistant Director; Anthony P. Lofaro, Assignment Manager; and R. Rochelle Burns, Evaluator-in-Charge. Please contact me on (202) 512-8676 if you have any questions or require additional information.



Michael Brostek
Associate Director, Federal Management
and Workforce Issues

Enclosure

ENCLOSURE

ENCLOSURE

COMMENTS FROM THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

MAY 18 1998

Office of
the Chairman

Mr. Michael Brostek
Associate Director
Federal Management and Workforce Issues
General Accounting Office

Dear Mr. Brostek:

Thank you for the opportunity to comment on your letter to Congressmen Cummings and Wynn about Equal Employment Opportunity: Administrative Judge's Recommended Decisions and Agencies' Actions. Our staff has reviewed the data and analysis presented in the letter.

EEOC's *Annual Federal Sector Report on Federal EEO Complaints and Appeals* is based upon both data generated internally and data supplied by approximately 100 Federal agencies using *EEOC Form 462, Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints*. The collection and compilation of these data from external sources is a lengthy and labor-intensive process. Hard copies of *EEOC Form 462*, a six page document divided into nine parts and requiring approximately 560 separate entries by each agency, are submitted by agencies and the data manually entered into a data base. Summary data are manually transposed from the tables to the text of the report.

We appreciate your bringing to our attention data errors contained in our 1996 Federal sector annual report. The three discrepancies have been corrected and we have included the errata sheet showing the correct figures. Recognizing these and other shortcomings in the annual process of collecting, processing, and reporting Federal EEO complaint data, EEOC had earlier initiated actions toward improving the quality and timeliness of its annual reporting process. These actions include assessing quality control measures, and interim and long term technology needs.

We also note that the draft report on page three states that the number of decisions issued by administrative judges increased from fiscal year 1991 to fiscal year 1994 and then decreased through fiscal year 1996. To help understand this pattern, it may be beneficial to explain that the number of administrative judges available to conduct hearings increased by 32% from fiscal year 1992 to fiscal year 1993 and that the number of decisions issued in fiscal year 1996 was negatively influenced by the furlough of federal workers. The process of gearing up to resume hearings following the furlough involved juggling of pre-hearing conferences and hearings dockets, and rescheduling hearings at a time that would not prejudice the parties. This resulted in lower total productivity.

ENCLOSURE

ENCLOSURE

Again, we appreciate the opportunity to comment on the draft report. Please contact me if you need additional information or would like to discuss our comments.

Sincerely,



Paul M. Igasaki
Chairman

Enclosure

(410316)

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013**

or visit:

**Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

**Orders may also be placed by calling (202) 512-6000
or by using fax number (202) 512-6061, or TDD (202) 512-2537.**

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

Bulk Rate Postage & Fees Paid GAO Permit No. G100
--

**Official Business
Penalty for Private Use \$300**

Address Correction Requested
