

Government Grows Disabled Worker Ranks, Struggles to Curb Disability Discrimination

By Mathew B. Tully

The federal government is getting better at hiring individuals with disabilities, but based upon my experiences with clients, I believe there is definitely room for improvement when it comes to how it treats such employees.

The Office of Personnel recently released a report showing that the ranks of disabled individuals employed by the Executive Branch rose over the year by 9 percent to 204,189 in fiscal year 2011. This growth was driven in part by President Barack Obama's Executive Order 13548, which was issued in July 2010 and set the goal of hiring 100,000 people with disabilities over five years.

Just as the federal government has gotten better at hiring individuals with disabilities, it appears to have also improved in reducing discrimination against them in some regards. For example, between the 2006 and 2011 fiscal years, there were significant decreases in disability discrimination complaints (mental and physical cases combined) over issues such as: assignment of duties (down 20 percent to 377 complaints); pay including overtime (down 18 percent to 254 complaints); medical examinations (down 35 percent to 67); and, reassignment denials (down 40 percent to 98 complaints), according to a Tully Rinckey PLLC analysis of data in the Equal Employment Opportunity Commission's Annual Reports on the Federal Work Force.

Unfortunately, not all issues of alleged discrimination followed this downward trend. For example, mental and physical disability discrimination complaints over evaluations and appraisals rose by 37 percent during the five-year period to 313 complaints. Complaints over harassment were up 8 percent at 1,737 and reasonable accommodations complaints rose 10 percent to 1,217.

Posing a threat to the government's hiring goals, complaints over appointments and hiring also rose over the five-year period by 32 percent to 263 complaints in fiscal year 2010. For the federal government to achieve its goal of ensuring that the representation of disabled individuals in the federal workforce accurately reflects that of the general population, it is crucial that disabled individuals assert their rights under the Rehabilitation Act, which is the public sector's version of the Americans with Disabilities Act.

The EEOC case of *Sipriano v. Napolitano* (2011) highlights the discriminatory culture in some federal offices that disabled workers must overcome. This case involved a Department of Homeland Security clerk who was working part-time for the agency while attending school. The clerk suffered from a birth defect in his right ear and a hearing impairment that made it hard for him to understand multiple speakers or people not facing him. He was also sensitive

to loud noises.

One day, the clerk was suffering from a bad migraine caused by loud noises in his work environment and as a side effect from a recent surgery. He was unable to locate his supervisors, but a person in charge gave him permission to extend his 15-minute break by 10 minutes. Shortly after the clerk put his head down, his supervisor passed by him, claimed he caught the clerk sleeping on the job, and subsequently fired him. The clerk filed an Equal Employment Opportunity complaint claiming his termination was based on disability discrimination. The agency dismissed this complaint, but on appeal the EEOC partially reversed this decision.

While upholding the agency's dismissals of claims based upon the creation of a hostile work environment and the failure to provide reasonable accommodations, the commission found that the termination was motivated by unlawful discrimination based upon the fact that the agency failed to articulate a legitimate non-discriminatory reason for the termination during the EEOC investigation. He was awarded back pay plus interest and benefits from the time he was terminated up to when his temporary appointment was supposed to expire, and the case was remanded back to the agency for further investigation on the damages issues.

Federal employees who believe they have been subjected to disability discrimination should immediately contact a federal employment law attorney. They have 45 days after an adverse action occurred or a request for reasonable accommodations was denied to contact an EEO counselor.

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