

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
MEMPHIS DISTRICT OFFICE
FEDERAL SECTOR HEARINGS UNIT
1407 UNION AVENUE, SUITE 900
MEMPHIS, TN 38104
TELE. (901) 544-0073 OR 544-0119
FAX. (901) 544-0111**

Rebecca Bulls,
Complainant,

vs.

Gale Norton, Secretary,
Department of the Interior,
Fish and Wildlife Service,
Agency.

EEOC Case No: 110-2006-00026X

Agency Case No: FWS-05-0025

Zia C. Schostal
Administrative Judge

Date May 30, 2008

ORDER ENTERING JUDGMENT

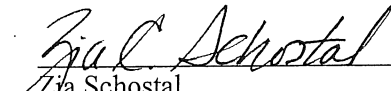
For the reasons set forth in the enclosed Decision dated May 30, 2008, entering judgment in the above-captioned matter is hereby entered. A Notice To The Parties explaining their appeal rights is attached.

This office is also enclosing a copy of the hearing record and the investigative file.

The Agency is required to send a copy of its Final Order to the Undersigned at the above address.

It is so ORDERED.

For the Commission:



Zia Schostal
Administrative Judge
Telephone: (901) 544-0119
Facsimile: (901) 544-0111

STATEMENT OF FINDINGS AND CONCLUSIONS
IN THE
DISCRIMINATION COMPLAINT
OF: Rebecca Bulls v. Gale A. Norton, Secretary, Department of the Interior,
United States fish and Wildlife Service

EEOC No. 110-2006-00026X
AGENCY No. FWS-05-0025

COMPLAINANT:	Rebecca Bulls 4488 Hyndsver Road Martin, TN 38237
COMPLAINANT'S REPRESENTATIVE:	Andrea Doneff, Esq. Buckley & Klein, LLP Atlantic Center Plaza 1100 West Peachtree St, Suite 1100 Atlanta, GA 30309
AGENCY:	Department of Interior U.S. Fish and Wildlife Service
AGENCY'S REPRESENTATIVE:	Horace G. Clark, Esq. Department of the Interior Office of the Solicitor Russell Federal Building, Suite 340 75 Spring Street, SW Atlanta, GA 30303
COMPLAINT:	Sex Discrimination (Female)
ADMINISTRATIVE JUDGE:	Zia C. Schostal Administrative Judge Equal Employment Opportunity Commission 1407 Union Avenue, Suite 621 Memphis, TN 38104
DATE OF HEARING:	October 16-19, 2007
PLACE OF HEARING:	Memphis, TN
DATE DECISION ISSUED:	May 30, 2008

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Rebecca Bulls,
Complainant,
vs.

Dirk Kempthorne, Secretary,
Department of the Interior,
United States Fish and Wildlife Service,
Agency.

EEOC No. 110-2006-0026X

Agency No. FWS-05-0025

Zia C. Schostal
Administrative Judge

Notice of Hearing

I. INTRODUCTION.

Rebecca Bulls, the Complainant, filed the present complaint pursuant to 29 CFR §1614.106, alleging that because of her sex (female), the U.S. Fish and Wildlife Service, an Agency housed within the Department of the Interior, did not hire her as a Law Enforcement Officer in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

The following witnesses appeared at the hearing and gave testimony under oath:

For the Complainant:

Rebecca Bulls
Gavin Gensmer
Curtis Stone
John Taylor
Rick Huffines
Thomas Bell
Kary Allen
Frank Aly

For the Agency:

Jon Andrew
Celeste Reagan
Richard Ingram
Randy Cook

II. PROCEDURAL HISTORY

The following is a chronology of the events leading to the hearing: The alleged discriminatory act occurred on or about March 7, 2005, the date on which the Complainant was informed that another applicant had been selected. On March 22, 2005, the Complainant sought precomplaint counseling. Counseling was concluded on April 25, 2005. On May 9, 2005, the Complainant filed a formal complaint of discrimination, alleging discrimination based on sex (female). The complaint was accepted for processing by the Agency on May 23, 2005, and subsequently was investigated. On October 28, 2005, the Complainant requested an evidentiary hearing before the Equal Employment Opportunity Commission. Pursuant to this request, the Agency transmitted the complaint file which was received at the Memphis District Office on November 3, 2005.

III. ISSUE(S) CONSIDERED.

Was the Complainant discriminated against on the basis of her sex when she was not selected for the position of Refuge Law Enforcement Officer (Park Ranger/LE) GS-0025-05/07, under Vacancy Announcement R4NWR-2004-0191 and R4NWR-2004-0203?

IV. FINDINGS OF FACT

The Complainant (female), a Refuge Law Enforcement Officer (Park Ranger/LE), GS-0025-09, had been employed by the Agency at its Big Muddy National Fish and Wildlife Refuge in Missouri since March 2003 (IR Exh. 7).

On or about September 13, 2004, the Agency posted a vacancy announcement (R4NWR-2004-0191) for a Park Ranger (LE/Refuge), GS-0025, to be filled at the GS-05 or 07 pay grade with promotional potential to a GS-09 in Dyersburg, Tennessee. The application period opened on September 13, 2004 and closed on September 13, 2004, by the terms of the Announcement and was open to all current career or career-conditional Federal employees and former Federal employees (with reinstatement eligibility) as well as applicants eligible for appointment under special non-competitive appointing authorities. Applicants were directed to apply on line by providing the required information. (IR Exh. 13, pp. 1-12.) On or about September 16, 2004, the Agency posted a vacancy announcement for the same position. The closing date was September 30, 2004. The Complainant and the Selectee (male) applied pursuant to the vacancy announcements posted by the Agency.

Jimmie R. "Randy" Cook, the Refuge Manager of the West Tennessee Refuge, was the selecting official for the disputed position. He selected the occupational questions (KSAs) to be used

in the application process based on his assessment of his perceived specific needs at the refuge-field station level. In addition to the questions specifically relating to law enforcement, he included questions pertaining to experience and academic background in wildlife biology management, natural resource issues, resource management activities and experience in the area of public use. (IR Exh. 9, p. 3.) Approximately 30 applicants were referred on several different certification lists. Only two of the referred applicants were female. In addition to filing her application, the Complainant sent the Selecting Official two e-mails, dated September 15, 2006 and November 19, 2006, indicating her interest in the vacancy (C Exhs 24 and 40). At hearing, the Selecting Official denied receiving the e-mails (HT Vol III, pp. 142-143).

At hearing, Cook averred that he was seeking someone who could articulate to the public the refuge goals and objectives with an understanding of natural resources and who could perform law enforcement duties while educating the public to the role that law enforcement plays in overall natural resource management (HT Vol. III, pp.109-110). He stated that the most important part of the Law Enforcement position was public contact and the ability to present the purpose of the refuge system from both a biological and law enforcement perspective (HT Vol. III, pp 138-139). He indicated that he looked at the resumes of all the applicants looking for a degree in natural resources, preferably a degree in wildlife and fisheries, wildlife biology, or parks and recreation (HT Vol. III, pp. 39-41 and 158-159) and that he read the Complainant's application and resume (HT Vol. III, p 170). However, she did not have a degree in resource management or a related area.

The Selecting Official testified that, his first choice for the position from among the applicants was Celeste Reagan (female), whose major in college was park administration and recreation (HT Vol. III, pp. 125 and 7). After the vacancy announcement had closed, the Selecting Official received a call from John Schroer who was Reagan's supervisor. Schroer recommended Reagan to the Selecting Official who was holding the vacancy until the Agency determined whether it would have to excess Refuge Law Enforcement Officers at Fort Campbell. In December 2006, the Agency's contract at Ft. Campbell was renewed. Between January and March 2007, the Selecting Official called Reagan and asked her if she were still interested in the job in Tennessee. When Reagan responded that she had just accepted a transfer to Cape May, New Jersey, he continued with the selection process. His next choice was Curtis Stone (male).

Cook stated that he selected Curtis Stone because, in his opinion, Stone's "academic biological-resource background and resource experience were valuable assets which would enhance the selectee's ability to perform all aspects of the refuge law enforcement position." (IR Exh 9, p. 5.) He specified that:

The individual selected for this position has a Bachelor or (sic) Science Degree from Tennessee Technological University in Wildlife and Fisheries Management providing an academic background in fish and wildlife biology-resource management; worked as a Biological Science Technician with the National Park Service, worked deer check stations with the Tennessee Wildlife Resources

Agency, held numerous positions in the private sector requiring cooperation-interaction with other employees as well as the public, has experience giving presentations to school groups, had a desire to work in the area of refuge law enforcement, has status as a disabled veteran, and was listed on a VRA certificate. (IR Exh 9, p. 5.)

Comparison of the applications of the Complainant and the Selectee to each other at the time of certification and to the reasons given by the Selecting Official yield the following:

- (1.) Education: At the time of the certification of eligibles, the Selectee did not have the requisite education and experience to qualify for the position. He falsified his application by stating that he had a BS degree in biology or related field when, in fact, he did not. (IR Exh 16, pp. 4 and 5.) He later obtained his BS in Wildlife and Fisheries Science. The Complainant had a BS in Physical Geography and an MS in Geography.
- (2.) Experience: "Worked as a Biological Science Technician with the National Park Service and worked deer check stations with the Tennessee Wildlife Resources Agency." This experience is not noted anywhere on the Selectee's application (IR Exh 16). The Complainant detailed her eleven years of fish and wildlife law enforcement experience at the Ozark National Scenic Riverways National Park and the Big Muddy National Fish and Wildlife Refuge, including interactions with other federal, state and local government agencies. Further, the Complainant noted experience in resource management, including assisting the biological technicians, wildlife observation, assessment of wildlife habitat and water quality monitoring. (IR Exh 15.)
- (3.) Experience: "Held numerous positions in the private sector requiring cooperation-interaction with other employees as well as the public." The Selectee's application indicates that he "handled customer service issues at Honda Motorcycles and Sears; talked to potential buyers about product features, specifications, and prices." (IR Exh 16, p. 6.) While in the military, he was a supervisor in charge of teaching new trainees safety rules and mechanic techniques (IR Exh 16, p. 6). The Complaint has supervised seasonal law enforcement rangers and visitor use assistants, volunteers, and campground hosts. She has conducted investigations obtaining assistance from local authorities when necessary. She was involved in developing SOPs for handling seized evidence and trained others in these methods. She has collaborated in multiple officer investigations and established a preventative law enforcement program by educating other employees on the rules and regulations applicable to the refuge. The Complainant also mentioned several other areas in which she has worked with other agencies and the public in the performance of her duties (e.g. detailed to security for the Olympics). (IR Exh. 15. pp. 8-12.)

- (4.) Experience: "Has experience giving presentations to school groups." The Selectee spoke to junior high students at Celina K-8 about the Navy and answered questions on military affairs (IR Exh 16, p. 6). The Complainant conducted weekly evening programs in astronomy and helped with school field trips, off-site educational programs and community events. She has had experience educating, interpreting and informing visitors about the park's historical, cultural and natural features and has been a graduate teaching assistant supervisor. She also presented professional quality planetarium shows to school groups and the public about astronomy at the Pink Palace Museum in Memphis. (IR Exh 15, pp. 12-14.)
- (5.) "Had a desire to work in the area of refuge law enforcement." The Selectee demonstrated a desire to work in refuge law enforcement by filling out an application. His chosen field of study, Wildlife and Fisheries Management, does not show a particular interest in law enforcement. In contrast, the Complainant had in excess of ten years of park and refuge law enforcement experience to demonstrate her commitment to refuge law enforcement.
- (6.) "Has status as a disabled veteran, and was listed on a VRA certificate." (IR, Exh 9, p. 5.)

Because the Selectee lacked law enforcement certification, he was unable to perform any law enforcement activities until approximately one year after he had been hired (HT Vol III, pp. 174-175). The Complainant was employed as the sole law enforcement officer at the Big Muddy National fish and wildlife refuge which consisted of eight areas located along 350 miles of floodplain of the Missouri River between Kansas City and St. Louis (HT pp. 93-94). Similarly, had she been selected for the law enforcement position at issue, she would have been the sole law enforcement officer at Western Tennessee which consisted of five areas totaling 60,000 acres in the western one-third of Tennessee (HT pp. 143-147). The Complainant would have been able to function effectively as a Law Enforcement Officer immediately.

V. DISCUSSION OF THE EVIDENCE AND LAW

To prevail in a disparate treatment claim, a complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in *McDonnell-Douglas Corporation v. Green*, 411 U.S. 792 (1973). He/she must generally establish a *prima facie* case by demonstrating that he/she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. See *Furnco Construction Company v. Waters*, 438 U.S. 567, 576 (1978). However, the *prima facie* inquiry may be dispensed with when an agency articulates legitimate and non-discriminatory reasons for its conduct. See *U. S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 713-17 (1983); *Holley v. Department of Veterans Affairs*, EEOC Request No. 05950842 (November 13, 1997). To ultimately prevail, a complainant must prove, by a preponderance of the evidence, that an agency's explanation is a pretext for discrimination. See *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

The Agency has stated that it selected the male candidate for the law enforcement position because it was felt that his college major was more appropriate to the needs of the refuge law enforcement position than was the education and experience of the Complainant. The testimony of the Selecting Official was that although the Agency had mandated a full time law enforcement position, he wanted someone who would function in other capacities as well. To add credibility to his assertion that he did not discriminate against the Complainant because of her sex, he added that he would have offered the position to another female candidate, but she indicated that she would not accept the position as she had just accepted a re-assignment in another region. The Agency met its burden of articulating a legitimate nondiscriminatory reason for the selection, thus shifting the burden of proof to the Complainant to show that the articulated reasons were a pretext for a discriminatory motivation.

Traditionally, in non-selection cases, pretext may be demonstrated upon a finding that a complainant's qualifications are "plainly superior," as compared to those of the selected applicant. *See Bauer v. Bailer*, 647 F.2d 1037, 1048 (10th Cir. 1981). Moreover, in *Garcia v. Department of Homeland Security*, EEOC Appeal No. 01A32050 (January 7, 2005), the Commission found that pretext was demonstrated by a showing that a complainant's qualifications were "demonstrably superior" to those of the selected applicant. More recently, the Supreme Court addressed the question of comparative qualifications as evidence of pretext in a non-selection case, and held that the differences in qualifications must be "significant." *See Ash v. Tyson Foods, Inc.*, 546 U.S. 454 (2006).

In considering the Court's decision in *Ash*, the Commission has taken note that the Court cited to the following standards with approval as to when it is appropriate to infer evidence of pretext from comparative qualifications: *Cooper v. Southern Company*, 390 F.3d 695, 732 (2004) (disparities in qualifications were "of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff"); *Raad v. Fairbanks North Star Borough School District*, 323 F.3d 1185, 1194 (C.A.9 2003) (a showing that qualifications are "clearly superior"); and, *Aka v. Washington Hospital Center*, 156 F.3d 1284, 1294 (C.A.D.C. 1998) (*en banc*) ("reasonable employer would have found the [complainant] to be significantly better qualified for the job," along with other evidence). *See McDonald v. Social Security Administration*, EEOC Appeal No. 0120053703 (March 1, 2007).

The standard to meet the burden of showing that a complainant is significantly better qualified than a selectee is a stringent one because of the view that it is not the trier of fact's function to substitute its judgment for that of selecting officials who are familiar with the present and future needs of their facility, and who are in a better position to judge the respective merits of each candidate, unless other facts suggest that proscribed considerations of bias entered into the decision-making process. *See Shapiro v. Social Security Administration*, EEOC Request No. 05960403 (December 6, 1996) (citing *Bauer v. Bailer*, 647 F. 2d 1037, 1048 (10th Cir. 1981)). The Supreme Court has held that in the absence of evidence of a discriminatory motivation, an employer generally "has discretion to choose among equally qualified candidates...." *See Texas*

Department of Community Affairs v. Burdine, 450 U.S. 248, 259 (1981). Moreover, an employer, absent a discriminatory animus, has the option to choose from among applicants who have different, but equally desirable, qualifications. See *Canhan v. Oberlin College*, 666 F.2d 1057, 1061 (6th Cir. 1981). However, on those rare occasions when a complainant is able to meet the standard, the burden of showing pretext for illegal discrimination has been met.

In the present case, the male Selectee did not meet the minimum qualifications for the position. The Selecting Official testified that it was not his job to vet the candidates to determine whether or not they were minimally qualified and that if an applicant were on the certificate, he assumed that (s)he was at least minimally qualified. Even if the Selectee had met the minimum qualifications for the position, his credentials were minimal. The Vacancy Announcement was for a Law Enforcement Officer for fish and wildlife refuges. The Selectee had no law enforcement training or experience while the Complainant had 11 years of law enforcement experience in the area of fish and wildlife. It took one year to get the Selectee trained and functioning in the area of law enforcement while the Complainant could have functioned immediately and had been given extensive training beyond basic law enforcement training (IR Exh 15). Until the Selectee had completed training, the law enforcement needs of the Western Tennessee Refuges were met by training an assistant refuge manager, by taking time from the zone officer, who served the Tennessee and Kentucky refuges, and by detailing officers from other refuges (HT pp. 43-44). Further, the Complainant was already employed by the Agency, and this was given no consideration. By the standards given by the Selecting Official, a comparison between the two candidates has shown that the Complainant's qualifications were demonstratively superior to those of the Selectee in each of the areas which the Selecting Official cited¹. The rational decision to have made when Reagan indicated that she was unavailable would have been to adjust the degree requirement to ascertain if another candidate could fulfill the needs of the refuges through experience. The fact that the Selecting Official did not and that there were no female law enforcement officers in Region IV at the time supports a conclusion that the failure to select the Complainant was grounded in sex discrimination. The Complainant has met the burden of showing that the Agency's articulated, legitimate nondiscriminatory reason was a pretext for sex discrimination. Further, the Complainant has met the burden of showing by a preponderance of the evidence that sex discrimination was a basis for the decision to hire the Selectee rather than the Complainant.

VI. CONCLUSIONS OF LAW

On the basis of the foregoing Findings of Fact and Discussion, the evidence shows that the Complainant, Rebecca Bulls, was discriminated against on the basis of her sex (female) in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

¹ Although the Complainant was not a VRA veteran, the Selecting Official testified that his first choice was Celeste Reagan who was not a VRA veteran.

VII. REMEDIES

The remedies in this particular case are not as clear-cut as they are in most cases of discriminatory non-selection. The Complainant argues that a position as a Law Enforcement Officer at the Western Tennessee Refuge with back pay, compensatory damages and moving expenses is the appropriate remedy to put the Complainant in the position she would have been in had the discrimination not occurred. In turn, the Agency argues that back pay is not appropriate as the Complainant was applying for a position at a lower pay grade and voluntarily quit her job.

The Complainant was unlawfully denied the position as a Law Enforcement Officer at the Western Tennessee Refuge. Therefore, reinstatement to the position she would have been afforded is an appropriate remedy. Reinstatement is to reflect no break in the Complainant's service. Further, she is qualified as A GS-09 Law Enforcement Officer, and reinstatement at that level is appropriate as remedy for the discrimination. The Agency must reinstate the Complainant to a position which is covered by the same retirement system which she was subject to in her position as a Law Enforcement Officer at a Wildlife Refuge.

Pursuant to 29 CFR §1614.501(b)-(c), back pay computation governed by 5 CFR §550.805. The right to back pay arises

[w]hen an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action, the employee shall be entitled to back pay under section 5590 of title 5, United States Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. 29 CFR §804.

The failure of the Agency to select the Complainant for the GS-07 Law Enforcement position did not result in any of the situations necessary to invoke the entitlement to back pay, as the Complainant was employed by the Agency as a GS-09 Law Enforcement Officer and continued to earn her salary until she requested leave without pay in the fall of 2005. The Complainant's last day of work at the Big Muddy Refuge was October 30, 2005, and she was on leave without pay, at her own request, until mid-May 2006 (HT Vol III, pp. 249-250). In May 2006, the Complainant resigned from her position at Big Muddy as she already had relocated to Tennessee (HT Vol III, pp. 254-255). After her resignation, the Complainant filed a claim of constructive discharge, which was rejected by the MSPB based on a finding that there was no constructive discharge, and therefore, the Board had no jurisdiction. The constructive discharge is not before this tribunal as it occurred in a different region. The actions, leave without pay and subsequent resignation, which caused the Complainant to suffer the loss of pay and benefits were initiated by the Complainant, not the Agency. While the Agency's failure to award the Western Tennessee Refuge position to her did result in a difficult choice for the Complainant, she

request leave without pay. Therefore, the Complainant has not established her claim for back pay damages. See: Gilbert, *Compensatory Damages and Other Remedies in Federal Sector Employment Discrimination Cases*, 3rd (2007) pp. 34-37 and Hadley, *A Guide to Federal Sector Equal Employment Law and Practice* (2006) Chapter XX, III – A.

However, the Complainant did establish a claim for compensatory damages. She credibly testified that this was the last in a series of non-selections which had shaken her faith in the Agency's intentions towards her as a female law enforcement officer. She stated that particularly after the mediation in this case, she began to doubt her career choices and that she suffered from insomnia and constant worry. Her conversations with family members were consumed with her situation. She stated that she considered mental health treatment but decided that would not be wise considering her choice of profession. (HT Vol III, pp. 222-233.) Mr. Aly, the Complainant's self-described boy friend, credibly testified that the Complainant underwent dramatic changes during this period. The Complainant became consumed by the non-selection, and she was easily agitated and restless. She suffered from sleeplessness, and she could not focus on other matters as her conversation reverted back to the way that the Agency had treated her. (HT Vol III, pp. 262-269.) Thus, the evidence shows that the Complainant did suffer mental distress and a lower sense of worth and well being. This state began shortly after her non-selection in March 2005 and continued to the date of the hearing. Given the length of time and the severity of the damage to the Complainant's enjoyment of the daily activities of life, an award of \$65,000.00 is appropriate.

In addition, the Complainant established a claim for moving expenses which she incurred and which the Agency would have paid if she had been selected for the position. The Complainant has presented a statement of reconstructed relocation expenses rather than actual expenses. Her reconstructed requests total \$35,323.11 (C Exh. 79). However, the Complainant has not submitted any of the underlying documents (closing documents on sale of home, hotel receipts, receipts for transportation of household goods, etc.) necessary to support her claim for reimbursement. Her claim for a tax allowance cannot be considered without these documents and the tax documents which would show how much she would have paid in taxes as a result of the relocation. Further, she has not shown the need for 56 hours of administrative leave. The allowable expenses are a claim for mileage from Columbia, Missouri to Martin, Tennessee (\$49.00) and \$500 in miscellaneous expense allowance which need not be itemized or documented. The Agency shall award the Complainant \$549.00 in relocation expenses.

The Complainant shall be awarded reasonable attorney fees and costs. The Complainant's attorney shall submit a detailed statement of fees and costs in accordance with 29 CFR §1614.501(e).

VIII. NOTICE

This is a decision by an Equal Employment Opportunity Commission Administrative Judge issued pursuant to C.F.R. §1614.109(b), 109(g) or 109(i). EEOC regulations require the Agency to take final action on the complaint by issuing a final order within 40 calendar days of receipt of the hearing file and this decision. The Agency's final order shall notify the complainant whether or not the Agency will fully implement this decision, and shall contain notice of the complainant's right to appeal to the Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for such appeal or lawsuit. With the exception detailed in the next paragraph, complainant may not file an appeal to the Commission directly from this decision. Rather, complainant may appeal to the Commission within 30 calendar days of receipt of the Agency's final order concerning its implementation of this decision. If the final order does not fully implement this decision, the Agency must also simultaneously file an appeal to the Commission in accordance with 29 C.F.R. §1614.403, and append a copy of the appeal to the final order. A copy of EEOC Form 573 must be attached to the final order.

The Complainant may only appeal directly from this decision in the event that the Agency has not issued its final order within 40 calendar days of its receipt of the hearing file. In this event, the complainant should append a copy of the Administrative Judge's decision to the appeal. The complainant should furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission, and should certify to the Commission the date and method by which such service was made on the opposing party.

All appeals to the Commission must be filed by mail, personal delivery or facsimile to the following address:

Director
Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 19848, Washington, D.C. 20036
Fax No. (202)663-7022

Facsimile transmissions over 10 pages will not be accepted.

For further guidance regarding appeals, the parties may consult 29 C.F.R. §1614.401 et seq. and Chapter 10 of the Commission's Management Directive-110. These documents are available on the EEOC's website at <http://www.eeoc.gov>.


COMPLIANCE WITH AN AGENCY FINAL ACTION

Pursuant to 29 C.F.R. §1614.504, an Agency's final action that has not been the subject of an appeal to the Commission or civil action is binding on the Agency. If the complainant believes that the Agency has failed to comply with the terms of its final action, the complainant shall

Bulls v. Department of Interior
EEOC Case No.: 110-2006-00026X

notify the Agency's EEO Director, in writing, of the alleged noncompliance within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. The Agency shall resolve the matter and respond to the complainant in writing. If the complainant is not satisfied with the Agency's attempt to resolve the matter, the complainant may appeal to the Commission for a determination of whether the Agency has complied with the terms of its final action. The complainant may file such an appeal within 30 calendar days of receipt of the Agency's determination or, in the event that the Agency fails to respond, at least 35 calendar days after complainant has served the Agency with the allegations of noncompliance. A copy of the appeal must be served on the Agency, and the Agency may submit a response to the Commission within 30 calendar days of receiving the notice of appeal.

Issued: May 30, 2008

By 
Zia C. Schostal
Administrative Judge
Memphis District Office

Bulls v. Department of Interior
EEOC Case No.: 110-2006-00026X

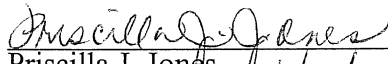
CERTIFICATE OF SERVICE

The attached Decision and Order were sent by certified mail to the following persons as indicated below:

Andrea Doneff, Esq.
Buckley & Klein, LLP
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1180 West Peachtree Street
Atlanta, GA 30309

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Priscilla J. Jones
Legal Technician 6/12/2008