

From: [M.ROBERTS-EFILEBOX](#)
To: Redacted
Cc: Redacted

Subject: [EXTERNAL] ORDER CLARIFYING THE ISSUANCE OF FINAL AGENCY DECISION (FAD)
Date: Monday, March 22, 2021 6:38:36 PM

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As per OFO's November 7, 2018 Order regarding Disputed Claims for Individual Relief:

"The current matter before the Commission relates to the Agency's issuance of final decisions on disputed claims for individual relief. To the extent that the Agency needed additional clarification on how to process disputed claims, it should have referred to the EEOC's regulations and guidance. Specifically, 29 C.F.R Sec. 1614.204 (1) (3) states: Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members...The Agency needs to wait for the AJ to issue a decision on the dispute before issuing a final decision on the disputed claims."

THEREFORE, no claimant is entitled to a FAD until the AJ issues a decision on the disputed claims. Since no decision has been issued on any of the disputed claims, NO ONE IS ENTITLED TO A FAD. NO ONE SHOULD BE REQUESTING A FAD and THE AGENCY SHOULD NOT BE ISSUING FADs.

Indeed, the very question of FADs is premature, baffling and utterly irrelevant at this point.

In the February 10, 2021 Commission's Order, in response to the "requesting a FAD" question once again, it stated that class members who do not wish to be a part of the McConnell Class Action Remedial Phase litigation can affirmatively opt out, request a FAD and resolve their case that way, but they cannot do both, *i.e.* also be a part of the McConnell Class. There are risks to asking for a FAD, namely OFO may not review the appeal should the Agency's FAD not be in the claimant's favor; however, I will not force claimants to stay in the class and go through the special masters process if they do not wish to do so.

If there are claimants who think they will get more money or have a quicker process should they request a FAD from the Agency or file in Federal District court, they can do so by simply notifying Agency counsel and the undersigned judge that they no longer wish to be a member of the McConnell Class Action Remedial Phase litigation, they withdraw their right to a hearing before the Commission and will be seeking a FAD as resolution of their case.

Claimants/class members, however CANNOT DO BOTH, meaning if one has chosen to seek a FAD and has received a FAD they have effectively OPTED OUT of the McConnell Class Action Remedial Phase litigation, one cannot, therefore, re-enter the class to seek compensation.

Frankly, it is unclear why any claimant would opt out of the class and seek a FAD. The purpose of this class action is to remedy a harm that has adversely affected over 28,000 individuals nationwide in the Postal Service. The value and strength of the lawsuit is that there are so many people who the Commission has found to have been harmed by the NRP. How is withdrawing from the class and requesting a FAD beneficial to the individual claimant (who risks getting nothing from the Agency) or to the class (whose numbers will quickly lessen)?

Simply, there are two ways this case will be resolved: either through the use of a Special Master or if a claimant **OPTS OUT OF THE CLASS** and seeks a FAD. If a claimant seeks a FAD and gets nothing, the process of appeal and hearings and evidence starts all over again for that individual complaint and if there has been a settlement in the McConnell Class Action, said Complaint runs the risk of being foreclosed for any review of their claims or compensation from any prospective settlement.

To conclude, the question of FADs is premature as no decision has been issued by the AJ resolving any of the disputed facts. Again, no one should be requesting FADs and the Agency should not be issuing FADs.

The **only exception** to this is if there are claimants who wish to OPT OUT OF THE McConnell CLASS ACTION REMEDIAL PHASE LITIGATION. Such opt out should be in writing and expressly state that claimant is aware that they are seeking a Final Agency Decision (FAD) on whether they are entitled to damages and to how much they are entitled, that the FAD may or may not be in their favor, and if so, claimant has the right to seek an appeal from OFO, said appeal may or may not be reviewed given that there is a McConnell Class Action Remedial Phase litigation. If claimant's appeal is heard by OFO, the Agency's decision can be upheld or the case can be remanded to an AJ in that claimant's geographical area to determine damages.

It is So ORDERED

Monique J. Roberts-Draper
Administrative Judge
Equal Employment Opportunity Commission
Redacted

“When you cannot measure what is important, you tend to make important what you can measure.” Prof. Harold Koh, Yale Law School

From: Jeremy Wright **Redacted**

Sent: Monday, March 22, 2021 11:49 AM

To: M.ROBERTS-EFILEBOX

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Subject: HECAPS Submission: McConnell v USPS Class Action

HECAPS Submission: McConnell v USPS Class Action

EEOC Hearing No. 520-2019-00271X

Agency Case No. 4B-140-0062-06

Administrative Judge Monique Roberts-Draper

Names of Parties: Sandra M. McConnell, et al., v. U.S. Postal Service

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Document Submitted: Claimants' Motion for Immediate Appointment of a Special Master, exhibit.

Jeremy Wright

Kator, Parks, Weiser & Harris, P.L.L.C.