



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office**

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SANDRA M. McCONNELL, et al.)	EEOC Nos.: 520-2010-00280X
a/k/a Velva B.)	520-2019-00271X
)	Agency No.: 4B-140-0062-06
Class Agent,)	
)	
v.)	
)	Administrative Judge
LOUIS DEJOY,)	Monique J. Roberts-Draper
Postmaster General,)	
United States Postal Service)	Date: July 21, 2023
)	
Agency.)	

**ORDER OF DISMISSAL OF 283 INDIVIDUAL CLAIMS
& ORDER DENYING TIMELINESS DEFENSE FOR 859 CLAIMS**

PLEASE TAKE NOTICE THAT 283 individual claims listed herein are hereby **DISMISSED** (see Attachment D) as the Agency has established that these individuals do not meet the definition of class member as defined by EEOC Administrative Judge Erin Stilp’s Order of June 4, 2015, *Order Granting Class Agent’s Motion to De-Subsume Individuals Not Subjected to the NRP*. Class Counsel’s argument that any inquiry into whether a claimant meets the basic definition of a *McConnell* Class member is premature and an “impermissible” merits-based analysis is misplaced. Judge Stilp spent a considerable amount of time creating the parameters of the *McConnell* Class and defining which individuals made up that class. A porous definition of the *McConnell* Class helps no one and indeed creates a morass which keeps the parties relitigating the same issue in different forms.

BACKGROUND & PROCEDURAL HISTORY

On May 30, 2008, Judge Stilp issued a *Recommendation Granting Class Certification and Order Denying the Agency’s Motion to Dismiss*. In it she defined the *McConnell* class as “all permanent rehabilitation employees and limited duty employees at the Agency who have been subjected to the NRP [referring to the National Reassessment Process] from May 5, 2006 to the present, allegedly in violation of the Rehabilitation Act of 1973.” The Office of Federal Operations (OFO) upheld this definition in a decision dated January 14, 2010. *See McConnell, et al., v. United States Postal Service*, EEOC Appeal No. 0720080054 (January 14, 2010).

During the liability stage (or “Phase I” beginning in or around 2007), the parties engaged in extensive discovery lasting several years focusing intently, *inter alia*, on identifying employees who would be members of the *McConnell* Class action. However, Judge Stilp issued an Order dated May 31, 2012, closing the *McConnell* Class on July 1, 2011. Judge Stilp used that date because the Postal Service established that it had notified its districts nationwide of its decision to end the NRP in or around July 1, 2011. Although Class counsel argued that the NRP continued “in substance”, it accepted this date.

In an Order dated February 17, 2015, Judge Stilp granted in-part the Agency’s motion to sub-divide the *McConnell* class into sub-classes. Specifically, those individuals who were “never assessed” under the NRP were divided into a subclass. This subclass was later removed from the *McConnell* Class as it was determined that, although their names appeared on NRP workbooks, they did not have an NRP meeting, nor did they receive an NRP determination.¹ On June 4, 2015, Judge Stilp’s issued another Order which reiterated the definition of the *McConnell* class and clarified it to state that, “...the employee must: 1) be either a limited duty or rehabilitation employee between May 5, 2006 and July 1, 2011, and 2) have either been placed on the NRP worksheet **AND** had medical documentation requested (or in some other way been notified that the NRP was going to be applied such as a notification of an NRP meeting), **OR** 3) had an NRP activity file created (wherein medical documentation, and possibly a medical diagnosis, may have been revealed).” *Emphasis added.*

Judge Stilp ordered the Agency to mail a notice to all of the approximately 3,300 employees who were not subjected to the NRP advising them that they have been found **not to meet** the *McConnell* class definition and that any of “their previously-filed EEO complaints” that were apart of the *McConnell* case is “hereby de-subsumed and shall proceed as individual EEOC complaints.” The Order gave these individuals “45-days from receipt of the notice to initiate a disability discrimination complaint regarding events during the time period May 5, 2006 to July 1, 2011.”² The Office of Federal Operations’ (OFO) March 9, 2018 Order, however, reversed Judge’s Stilp’s 45-day requirement and stated that “the Agency’s notice shall not include language...[that individuals] will be given 45 days...to initiate a new individual complaint.” Therefore, limited duty or permanent rehabilitation employees who were never assessed by the NRP are not *McConnell* Class members. They would have had to file their own *individual* claim of disability discrimination whereby their alleged harm occurred sometime between May 2006 and July 2011.

With reliance on the Sub-class Report, the Agency has demonstrated that these 283 claimants were never assessed under the NRP. As established above, **assessment** under the NRP or being subjected to the NRP is more than just being a limited duty employee or a permanent rehabilitation employee at the Postal Service from May 2006 to July 2011; it requires a basic showing that the Postal Service applied NRP processes to the employee which led to harm. A merit-based analysis that Class counsel alludes to would be an inquiry into the extent of the harm, the depth of the damage claimant suffered. No such inquiry is being made here. Indeed,

¹ In Judge Stilp’s June 4, 2015, *Report of Findings and Recommendation*, the *McConnell* Class included 133,582 members with approximately 3,732 class members identified to be “never assessed.”

² *Order Granting Class Agent’s Motion to De-subsume Individuals Not Subjected to the NRP*, dated June 4, 2015, pg. 1.

both parties at separate times during the life of this case have argued that employees not subject to the NRP are not true members of the *McConnell* class.

THEREFORE, Agency's argument for dismissal of these claims due to untimeliness is misplaced and not considered herein. However, its argument that these claims should be dismissed because these 283 claimants fail to meet the definition of *McConnell* Class member is persuasive and thus, they are hereby **DISMISSED** before the Commission.

PLEASE TAKE FURTHER NOTICE THAT the Agency's request that the 859 alleged untimely claims be dismissed as untimely is **DENIED**. The Agency's argument of untimeliness is misplaced as it has admitted that it did not send any notification to claimants to file a claim for damages because they were not listed in the "class list" adopted by the parties during the Phase I Liability stage. Agency's reasoning is flawed. EEOC Regulations at 29 C.F.R. §1614.204(1)(3), require the Agency to notify class members to file claims of relief within 30 days of receipt.³ When discrimination is found in the final order and a class member believes he or she is entitled to individual relief, the class member must file a written claim with the head of the agency or its EEO Director within 30 days of receipt of the notification by the agency of its final order.

The Office of Federal Operations (OFO) issued a decision finding discrimination on behalf of the defined class on September 25, 2017, requiring the Agency to notify class members to file claims of relief within 30 days of receipt. OFO also required the Agency to post a notice in postal facilities and online. The Agency admits that they did not mail any notification to these claimants, however they did post throughout their facilities. Class Counsel has indicated that there are some claimants in this group who have filed timely damages claims, but does not indicate how claimants became aware they had to file a claim (presumably they may have heard about the case through the various postings). Whether these claimants were on a "claimant list" during the Liability Phase is not dispositive as to the *timeliness* of their claims. The clock regarding timeliness begins to toll once the Agency sends its notification. If the Agency never sends its notification employees will not know the timeframe in which they are to file.

THEREFORE, the Agency's request that these 859 claims be dismissed due to untimeliness is **DENIED**. These claims are not untimely, and the Agency is unable to show otherwise; they may have other procedural defects that prevent them from filing a claim and being a part of Phase II, but timeliness is not one of those defects. Indeed, because these 859 claims were not identified during the Phase I Liability stage, where the definition for *McConnell* Class member was first articulated, determining whether they are actually class members is necessary, *i.e.* were they assessed by the NRP, were they harmed during the stated time period; did they, in fact, file a timely claim once they were notified and how were they notified. That is the inquiry that is needed, not whether they were identified

³Pursuant to 29 C.F.R. §1614.204(1)(3), when discrimination is found in the final order and a class member believes he or she is entitled to individual relief, the class member must file a written claim with the head of the agency or its EEO Director within 30 days of receipt of the notification by the agency of its final order.

and placed on a list or included in the sub-class report during Phase I. Moreover, this is not a merit-based inquiry as Class Counsel is wont to argue. It is simply an attempt to ensure that they meet the basic definition of a *McConnell* Class member.

THEREFORE, IT IS ORDERED that to the extent Class Counsel represents any of the 859 claimants, they are to confirm through documentary evidence that these claimants do in fact meet the definition of *McConnell* Class member and how and when they were notified as to the filing of their claim for damages. Such information is due **by August 4, 2023**. If the information has already been provided to the Commission, Counsel is instructed to identify when it was provided and in what filing.

It is SO ORDERED.

Date: July 21, 2023

A handwritten signature in cursive script that reads "Monique J. Roberts-Draper".

Monique J. Roberts-Draper
Administrative Judge

CERTIFICATE OF SERVICE

For timeliness purposes, it will be presumed that this ORDER was received immediately upon electronic transmission. I certify this ORDER was sent to the following parties on July 21, 2023.

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