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January 25, 2008

VIA Facsimile: 571-227-1921

Raymond A. Desmone
Manager
Formal Complaints Division
Office of Civil Rights & Liberties
Office of the Special Counselor
U.S. Dept. Homeland Security
601 South 12th Street, TSA-6
Arlington, VA 22202

Re: [REDACTED] v. Michael Chertoff, Sec.
Dept. of Homeland Sec.
Case No. [REDACTED]

Dear Mr. Desmone:

In your letter of October 31, 2007, regarding the acceptance of Ms. [REDACTED] formal EEO complaint, you rejected the portion of her claim identified by you as Claim B, involving sexual harassment that had occurred during February and March 2007.

Subsequent investigation has determined that your rejection of the portion of Ms. [REDACTED]'s claim identified by you as Claim B, in your letter of October 31, 2007, was incorrect, because adequate evidence justifying suspension of the 45-day deadline was known to your agency. According to Ms. [REDACTED], these incident were reported by her to several TSA supervisors at the Fairbanks International Airport during March 2007, which was well within the 45 day deadline. Pursuant to Ms. [REDACTED] report to her supervisors, an investigation was initiated by TSA into her allegations of sexual harassment, which was apparently conducted during April and May 2007.

One ground for suspension of the 45 day deadline is that Ms. [REDACTED] report to her supervisor of the sexual harassment was sufficient compliance with the reporting requirement. In Landmesser v. Secretary of Housing and Urban Development, 05920835, 3668/A11 (1993), the EEOC set aside the 45-day time limit for contacting a counselor where the complainant had

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brought the sexual harassment to the attention of her immediate supervisor. The Commission determined that it was sufficient that the complainant had brought the matter to an official "whom appellant thought to be an appropriate recipient of the information." Thus, Ms. [REDACTED]'s report of the incidents of sexual harassment against her to her supervisors should be sufficient notice to an official whom Ms. [REDACTED] believed "to be an appropriate recipient of the information."

An additional ground for suspension of the 45 day deadline for reporting is provided by the failure of Ms. [REDACTED] supervisors--to whom she had reported the sexual harassment incidents--to advise her of the need to contact an EEO Counselor within 45 days. See Garcia v. Secretary of Treasury, 01932967, 3789/D4 (1993). In Garcia, the EEOC held that where the complainant had reported the harassment to the Internal Affairs office and the agency Inspector General, that it was significant that neither office advised her of the time limitation for contacting a counselor. See also Mathershed v. Postmaster General, 01954603 (1996); Edwards v. Postmaster General, 01A30150 (2003).

Finally, an additional ground for suspension of the deadline is that Ms. [REDACTED] was understandably confused as to the nature of the investigation being conducted by TSA and did not understand until she consulted with an attorney that the investigation that was conducted was not related to an EEO complaint that had been initiated by her initial report to her supervisor.

It is my understanding that neither of the supervisors to which Ms. [REDACTED] had reported the sexual harassment, [REDACTED], and [REDACTED], informed Ms. [REDACTED] of the 45-day deadline for contacting an EEO Counselor concerning the sexual harassment and hostile environment that she experienced.

We would appreciate it if you would reconsider your decision to dismiss this claim. The evidence clearly shows that the Agency had adequate notice of Ms. [REDACTED]'s February and March 2007 claims within the 45-day deadline.

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Please let me know if you have any questions.

Sincerely,

THE LAW OFFICE OF ROBERT A. SPARKS


Robert A. Sparks

cc: Client