

103^D CONGRESS
1ST SESSION

H. R. 1032

IN THE SENATE OF THE UNITED STATES

APRIL 28 (legislative day, APRIL 19), 1993

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Veter-
5 ans Affairs Employment Discrimination Act”.

1 **SEC. 2. DEPARTMENT OF VETERANS AFFAIRS EMPLOY-**
 2 **MENT DISCRIMINATION RESOLUTION PROCE-**
 3 **DURES.**

4 (a) IN GENERAL.—Title 38, United States Code, is
 5 amended by inserting after chapter 7 the following new
 6 chapter:

7 **“CHAPTER 8—EMPLOYMENT**
 8 **DISCRIMINATION**

“Sec.

“801. Scope of chapter.

“802. Office of Employment Discrimination Complaints Resolution.

“803. Informal complaint resolution.

“804. Investigation of complaints.

“805. Final agency decision; hearings.

“806. Review of final agency decisions.

“807. Unlawful employment discrimination defined.

9 **“§ 801. Scope of chapter**

10 “(a) The procedures established in this chapter shall
 11 be implemented in a manner consistent with procedures
 12 applicable under regulations prescribed by the Equal Em-
 13 ployment Opportunity Commission.

14 “(b) In the case of an employee of the Department
 15 who alleges that the employee has been subjected to un-
 16 lawful employment discrimination (as defined in section
 17 807 of this title), the allegation shall be considered under
 18 the procedures applicable to the Merit Systems Protection
 19 Board under title 5 (rather than under the procedures set
 20 forth in this chapter) if the action (or failure to act) of
 21 which the employee complains is an employment action or

1 practice that is otherwise appealable to the Merit Systems
2 Protection Board.

3 “(c) Nothing in this chapter supersedes—

4 “(1) the rights and remedies available to em-
5 ployees under title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.), including the rights
7 and remedies provided in section 1977A of the Re-
8 vised Statutes (42 U.S.C. 1981a); or

9 “(2) any right or obligation of an employee to
10 elect (in lieu of procedures under this chapter) to
11 raise an allegation of unlawful employment discrimi-
12 nation under grievance procedures established under
13 a collective bargaining agreement.

14 **“§ 802. Office of Employment Discrimination Com-
15 plaints Resolution**

16 “(a)(1) There is in the Department an Office of Em-
17 ployment Discrimination Complaints Resolution (herein-
18 after in this chapter referred to as the ‘Office’), which
19 shall be headed by a Director. The Director shall report
20 only to the Secretary and Deputy Secretary.

21 “(2) Subject to the direction of the Secretary, the Di-
22 rector shall have sole responsibility within the Department
23 for administering the procedures under this chapter for
24 resolving complaints of unlawful employment discrimina-
25 tion arising within the Department.

1 “(3) In addition to the functions of the Director
2 under paragraph (2), the Director shall perform such
3 other functions as the Secretary may prescribe consistent
4 with the functions of the Director under paragraph (2).

5 “(b) The Secretary shall employ within the Office ad-
6 ministrative law judges appointed in accordance with sec-
7 tion 3105 of title 5 for the purposes of this chapter and
8 such other personnel as the Office may require. In ap-
9 pointing administrative law judges, the Secretary should
10 consider the composition of the persons appointed, taken
11 as a group, in terms of race, sex, and veterans status,
12 compared with the composition of the total Department
13 workforce in terms of race, sex, and veterans status.

14 “(c) The Secretary shall ensure that the Director is
15 furnished sufficient resources to enable the Director to
16 carry out the functions of the Office under this chapter
17 in a timely manner.

18 “(d) The Secretary shall include in the documents
19 submitted to Congress by the Secretary in support of the
20 President’s budget for each fiscal year—

21 “(1) detailed information on the budget for the
22 Office;

23 “(2) the Secretary’s opinion as to whether the
24 resources (including the number of employees) pro-
25 posed in the budget for that fiscal year are adequate

1 to enable the Secretary to comply with statutory and
2 regulatory deadlines for the administration of the
3 procedures under this chapter and other provisions
4 of law relating to the resolution of complaints of un-
5 lawful employment discrimination involving the De-
6 partment; and

7 “(3) a report on the activities of the Office dur-
8 ing the preceding fiscal year, including (A) a state-
9 ment of the number and nature of complaints of un-
10 lawful employment discrimination received and the
11 number and nature of complaints resolved, and the
12 results of any appellate review, during the year, (B)
13 a description of the timeliness of the resolution of
14 complaints during the year, and (C) a statement of
15 significant decisions and trends affecting the work of
16 the Office.

17 “(e)(1) The Director shall prescribe—

18 “(A) standards of timeliness for the expeditious
19 resolution of complaints of unlawful employment dis-
20 crimination under this chapter;

21 “(B) the qualifications and training require-
22 ments for employees of the Office;

23 “(C) requirements for record-keeping pertaining
24 to counseling and investigations by employees of the
25 Office; and

1 “(D) standards for the conduct of investigations
2 under section 804 of this title.

3 “(2) Regulations under paragraph (1) shall be con-
4 sistent with regulations prescribed by the Equal Employ-
5 ment Opportunity Commission, except that, in the interest
6 of the expeditious resolution of complaints, the Director
7 may prescribe shorter time periods with respect to any
8 deadline or administrative period that is applicable only
9 to the time within which the Government may (or is re-
10 quired to) act.

11 **“§ 803. Informal complaint resolution**

12 “Employees of the Office shall counsel employees of
13 the Department, and applicants for employment with the
14 Department, who allege that they have been subject to un-
15 lawful employment discrimination by an officer or em-
16 ployee of the Department. The Office shall seek to resolve
17 such complaints in an expeditious and impartial manner
18 through informal investigation and conciliation using pro-
19 cedures prescribed by the Director.

20 **“§ 804. Investigation of complaints**

21 “(a) If a complaint of unlawful employment discrimi-
22 nation is filed with the Department and the complaint is
23 not resolved through the informal resolution process under
24 section 803 of this title, the Director shall assign the com-

1 plaint to an administrative law judge, who shall determine
2 whether the complaint shall be accepted for investigation.

3 “(b)(1) The administrative law judge assigned to a
4 complaint shall make such determination in accordance
5 with regulations of the Equal Employment Opportunity
6 Commission, except that if the administrative law judge
7 determines that the complaint is without merit, the admin-
8 istrative law judge may determine that the complaint is
9 not to be accepted for investigation.

10 “(2) A decision that a complaint is not to be accepted
11 for investigation is a final agency decision of the matter.

12 “(c)(1) If the administrative law judge determines
13 that the complaint is to be accepted, the Director shall
14 promptly provide for an investigation of the complaint,
15 which shall be carried out by employees of the Office (or
16 by contract personnel acquired by the Director). The em-
17 ployee (or contractor) conducting the investigation shall
18 submit to the Director a complete written report of the
19 results of the investigation.

20 “(2) If a portion of a complaint is accepted for inves-
21 tigation and a portion is not accepted, the individual filing
22 the complaint or the Department may request the admin-
23 istrative law judge to direct the suspension of the inves-
24 tigation of the portion of the complaint accepted for inves-

1 tigation pending the results of any review of the decision
2 not to accept the other portion.

3 “(3) The Director shall furnish a copy of the inves-
4 tigative report (including a copy of the investigative file)
5 to the administrative law judge, the individual who filed
6 the complaint, and the Secretary. The administrative law
7 judge may direct that an additional investigation be made
8 if the administrative law judge determines that an addi-
9 tional investigation is warranted.

10 **“§ 805. Final agency decision; hearings**

11 “(a) The final agency decision on a complaint of un-
12 lawful employment discrimination, in a case not resolved
13 through informal procedures under section 803 of this
14 title, shall be made by an administrative law judge.

15 “(b) The individual filing the complaint may request
16 a hearing on the matter. Any such request shall be made
17 in such time and manner as may be prescribed by the Di-
18 rector. The administrative law judge shall grant a request
19 for a hearing unless, after giving appropriate notice and
20 allowing an opportunity to respond to such notice, the ad-
21 ministrative law judge determines that there is no genuine
22 dispute as to a material fact.

23 “(c) If the administrative law judge grants a request
24 of the individual filing the complaint for a hearing, the
25 administrative law judge—

1 “(1) may conduct the hearing on the matter; or

2 “(2) may refer the matter for a hearing by a

3 hearing examiner.

4 “(d) In any hearing under this section, the adminis-

5 trative law judge or hearing examiner presiding at the

6 hearing shall have the authorities set forth in section

7 556(c) of title 5.

8 **“§ 806. Review of final agency decisions**

9 “(a) If the final agency decision in a case complaining

10 of unlawful employment discrimination by an officer or

11 employee of the Department is adverse to the individual

12 filing the complaint, the individual may appeal the deci-

13 sion to the Equal Employment Opportunity Commission

14 or may institute an action on the case in the appropriate

15 United States district court, as provided by law.

16 “(b) If the final agency decision in such a case is

17 adverse to the Department, the Secretary may appeal the

18 decision to the Equal Employment Opportunity Commis-

19 sion. Any such appeal shall be made within 30 days after

20 the date of the receipt by the Secretary of the decision.

21 The Equal Employment Opportunity Commission may act

22 on such an appeal in the same manner as in the case of

23 an appeal by an individual against a final agency decision.

1 **“§ 807. Unlawful employment discrimination defined**

2 “For purposes of this chapter, the term ‘unlawful em-
3 ployment discrimination’ means any action, or failure to
4 act, that is a violation of any of the following:

5 “(1) Title VII of the Civil Rights Act of 1964
6 (42 U.S.C. 2000e et seq.).

7 “(2) The Age Discrimination in Employment
8 Act of 1967 (29 U.S.C. 621 et seq.).

9 “(3) Section 6 of the Fair Labor Standards Act
10 of 1938 (29 U.S.C. 206).

11 “(4) Section 501 of the Rehabilitation Act of
12 1973 (29 U.S.C. 791).”.

13 (b) CLERICAL AMENDMENT.—The tables of chapters
14 at the beginning of title 38, United States Code, and at
15 the beginning of part I of such title, are amended by in-
16 serting after the item relating to chapter 7 the following
17 new item:

“8. Employment Discrimination 801”.

18 **SEC. 3. TRANSITION.**

19 Chapter 8 of title 38, United States Code, as added
20 by section 2, shall apply with respect to complaints of un-
21 lawful employment discrimination that are filed after the
22 end of the six-month period beginning on the date of the
23 enactment of this Act. Any complaint filed before the end
24 of such period shall be resolved in accordance with the

1 procedures in effect on the date of the enactment of this
2 Act.

3 **SEC. 4. WHISTLEBLOWER PROTECTION FOR TITLE 38 EM-**
4 **PLOYEES.**

5 (a) IN GENERAL.—(1) Chapter 74 of title 38, United
6 States Code, is amended by inserting at the end of sub-
7 chapter V the following new section:

8 **“§ 7465. Disclosures of violations of law, gross mis-**
9 **management, and certain other matters:**
10 **protection of employees**

11 “(a) The provision of section 2302(b)(8) of title 5
12 shall apply with respect to an employee, or applicant for
13 employment, in a position covered by this chapter in the
14 same manner as if that position were a ‘covered position’
15 within the meaning of section 2302(a)(2)(B) of title 5.

16 “(b) Subsection (a) shall apply for purposes of apply-
17 ing the provisions of subchapters II and III of chapter
18 12 of title 5 which relate to any authority to conduct inves-
19 tigations, or to seek or administer any corrective action,
20 disciplinary action, or other remedy in connection with a
21 prohibited personnel practice described in section
22 2302(b)(8) of such title.”.

23 (2) The table of sections at the beginning of such
24 chapter is amended by inserting after the item relating
25 to section 7464 the following new item:

“7465. Disclosures of violations of law, gross mismanagement, and certain other matters: protection of employees.”.

1 (b) EFFECTIVE DATE.—(1) Subject to paragraph
2 (2), section 7465 of title 38, United States Code, as added
3 by subsection (a), shall apply with respect to personnel
4 actions occurring before, on, or after the date of the enact-
5 ment of this Act, but subject to any deadline for commenc-
6 ing any action for relief.

7 (2) Such section shall not affect any administrative
8 proceeding pending on the date of the enactment of this
9 Act, and order shall be issued in any such proceeding, and
10 appeals shall be taken therefrom, as if such section had
11 not been enacted.

Passed the House of Representatives April 27, 1993.

Attest: DONNALD K. ANDERSON,
Clerk.