

**UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE**

THOMAS E. SCHILDGEN,)	
Class Agent,)	EEOC No. 570-2021-00316X
)	EEOC Appeal No. 2021004597
v.)	
)	Agency No. 2020-CONF-070
U.S. DEPARTMENT OF DEFENSE,)	
Agency.)	DATE: January 28, 2025
_____)	

**CLASS AGENT’S MOTION FOR SANCTIONS DUE TO AGENCY
NON-COMPLIANCE WITH EEOC ORDERS**

On September 26, 2024, the Commission ordered the Agency to send notice to class members within 15 days of the order and to register the case with the appropriate EEOC field office. Three months have passed, and the Agency has taken no action whatsoever—despite Class Counsel’s consistent requests to move the case forward. The Agency’s months of inaction warrant an order to the Agency to show cause why sanctions, including default judgment, should not be entered.

I. FACTS AND BACKGROUND

Class Agent Thomas Schildgen initiated a class complaint of discrimination on June 1, 2020. The complaint alleges that the Agency engaged in age and disability discrimination when it deemed unfit for duty all employees who were 65 years of age or older on Agency overseas bases in the Middle East.

On July 6, 2021, the presiding Administrative Judge certified the class. The Agency appealed the class certification decision to the Office of Federal Operations. On February 15, 2023, OFO issued a decision affirming the Administrative Judge’s decision and certifying the class complaint. *Schildgen a/k/a Leonard D. v. Dep’t of Defense*, EEOC No. 2021004597 (2023). The Agency filed a Request for Reconsideration with OFO. On September 26, 2024, OFO denied the Agency’s request. *Schildgen a/k/a Leonard D. v. Dep’t of Defense*, EEOC No. 2024003121 (2024).

In its September 26, 2024 decision, the Commission ordered the Agency to complete two tasks:

The Agency is ORDERED to perform the following:

1. Notify class members of the accepted class claim within fifteen (15) calendar days of the date this decision is issued, in accordance with 29 C.F.R. § 1614.204(e).
2. Forward a copy of the class complaint file and a copy of the notice to the Hearings Unit of EEOC's Washington Field Office within thirty (30) calendar days of the date of this decision is issued. The Agency must request that an Administrative Judge be appointed to hear the certified class claim, including any discovery that may be warranted, in accordance with 29 C.F.R. § 1614.204(f).

Schildgen a/k/a Leonard D. v. Dep't of Defense, EEOC No. 2024003121 (2024).

Shortly thereafter, Class Agent followed up with the Agency to move the case forward. Counsel for the parties had a call on October 17, 2024, to discuss the contents of the notice to Class Members and the status of the case. Since that time, however, the Agency has cancelled calls with Class Counsel and, at this point, has failed to even acknowledge Class Counsel's emails. Nor has Class Counsel received anything substantive from the Agency—not even an explanation for the delay, let alone a list of potential class members.

Seeking a resolution, on November 8, 2024, Class Agent wrote to the Administrative Judge regarding the status of the case and the Agency's failure to comply. *See* Ex. A. On November 12, 2024, the Administrative Judge directed the Agency to submit the class complaint file to the Washington Field Office. *See* Ex. B.

Today—over 17 weeks since the Commission issued its orders, and over 10 weeks since the Administrative Judge's email directive—the Agency has neither (1) notified the class; nor (2) properly forwarded the class complaint file to the Washington Field Office and requested that an Administrative Judge be appointed to hear the certified class claim. And thus, the case has been completely stalled.

II. THE AGENCY'S FAILURE TO COMPLY WITH EEOC ORDERS WARRANTS SANCTIONS.

The Agency was given specific orders from OFO in September 2024 and from the Administrative Judge in November 2024. Yet the Agency has failed to comply with both of those orders. As a result, Class Members have never been informed of the certified class of which they are members and there is no foreseeable path forward for the Class to pursue their claims. This case is already more than four years old. This continued delay may be prejudicing the Class Members' ability to obtain relief for the harm they have suffered.

The Commission's guidance and published authorities indicate that sanctions (including default judgment against the Agency) are warranted. The Commission's regulations mandate the following sanctions against a party for failing to comply with Commission orders:

When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge... **the administrative judge shall**, in appropriate circumstances:

- (i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;
- (ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
- (iii) Exclude other evidence offered by the party failing to produce the requested information or witness;
- (iv) Issue a decision fully or partially in favor of the opposing party; or
- (v) Take such other actions as appropriate.

29 C.F.R. § 1614.109(f)(3) (emphasis added).

As the Commission has emphasized, “[n]o party has the opportunity to pick and choose which order by an Administrative Judge it deems worthy of compliance.” *Waller v. Dep’t of Transp.*, EEOC No. 0720030069 (2007).

Applying these rules, the Commission entered a default judgment sanction due to an agency's failure to comply with EEOC orders to implement a class certification decision in *Smith, et al. v. U.S. Postal Service*, EEOC Nos. 0120081661, 0120081674, 0120081677, 0120081917 (2012). In *Smith*, the agency had failed to take actions ordered by the EEOC, “including the identification of potential class members.” In *Smith*, “the class agents moved for sanctions against the Agency for its failure to implement the ... class certification decision.” The Administrative Judge granted the motion for sanctions, and “default judgment was entered in favor of the class.” In other words, because the Agency failed to comply with EEOC orders to implement the class certification decision, default judgment was entered on the merits of the class complaint in favor of the class. The Administrative Judge's default judgment was “fully implemented” by the Agency's final action in the case, and was not overturned by OFO

As in *Smith*, the Agency here has failed to take actions ordered by the EEOC: it has failed to implement both the Commission's class certification decision and the Administrative Judge's

subsequent order. The Agency has not offered any explanation for its non-compliance or any proposal for how it will comply with these orders. The Commission should consider appropriate sanctions against the Agency for its non-compliance with EEOC orders, including default judgment.¹

III. CONCLUSION

For the reasons stated above, the Commission should issue to the Agency an Order to Show Cause regarding sanctions for the Agency's failure to comply with EEOC orders. If the Agency fails to demonstrate good cause for its failure to comply with EEOC orders, the Commission should enter default judgment against the Agency on the merits of the class complaint. A proposed order is attached.

Respectfully submitted,

/s/ Jeremy D. Wright

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¹ The Commission does not need to find that the Agency acted in bad faith to impose sanctions; rather, non-compliance alone is sufficient. *See Reading v. Dep't of Veterans Aff.*, EEOC No. 07A40125 (2006) ("The Commission notes that the Regulations do not require that the Agency exhibited 'bad faith' as a prerequisite to the imposition of sanctions"); *King v. Dep't of Transp.*, EEOC No. 07A40003 (2005) ("a showing that the noncomplying party acted in bad faith is not required"); *Jeremy S. v. Dep't of Veterans Aff.*, EEOC No. 0120142917 (2017) ("Our prior cases on default judgment find that the standard is not one of bad faith or misconduct").

/s/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing CLASS AGENT'S MOTION FOR SANCTIONS DUE TO AGENCY NON-COMPLIANCE WITH EEOC ORDERS was filed and served by electronic mail on this the 28th of January, 2025 upon:

Hon. Sharon Alexander
Supervisory Administrative Judge
U.S. Equal Employment Opportunity Commission
Washington Field Office
131 M Street, N.E.
Washington, D.C. 20507
Sharon.Alexander@eeoc.gov

Hon. Courtney J. Mickman
Administrative Judge
U.S. Equal Employment Opportunity Commission
Washington Field Office
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/s/ Jeremy D. Wright
Jeremy D. Wright

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THOMAS E. SCHILDGEN,)	
Class Agent,)	EEOC No. 570-2021-00316X
)	EEOC Appeal No. 2021004597
v.)	
)	Agency No. 2020-CONF-070
U.S. DEPARTMENT OF DEFENSE,)	
Agency.)	Date: _____
_____)	

ORDER TO SHOW CAUSE

Class Agent filed a Motion for Sanctions related to the Agency’s failure to comply with the Commission’s orders to implement the class certification decision. The Agency is hereby ORDERED to submit a written submission with supporting evidence demonstrating good cause for the Agency’s actions related to the Commission’s September 26, 2024 orders to:

1. Notify class members of the accepted class claim within fifteen (15) calendar days of the date this decision is issued, in accordance with 29 C.F.R. § 1614.204(e).
2. Forward a copy of the class complaint file and a copy of the notice to the Hearings Unit of EEOC’s Washington Field Office within thirty (30) calendar days of the date of this decision is issued. The Agency must request that an Administrative Judge be appointed to hear the certified class claim, including any discovery that may be warranted, in accordance with 20 C.F.R. § 1614.204(f).

The Agency’s written submission and evidence shall be submitted within fifteen (15) calendar days of the date of this Order.

Class Agent may submit a response to the Agency’s written submission within fifteen (15) calendar days of the date on which the Agency files its submission. No reply submissions shall be filed by either party.

Failure by the Agency to comply with this Order or failure by the Agency to demonstrate good cause for the Agency’s actions in this regard will result in appropriate sanctions against the Agency, up to and including default judgment.

It is so ORDERED.

For the Commission:

Administrative Judge

LAW OFFICES
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November 8, 2024

VIA E-MAIL ONLY

The Honorable Courtney J. Mickman
Administrative Judge
U.S. Equal Employment Opportunity Commission
Washington Field Office
131 M Street, N.E.
Washington, D.C. 20507

**Re: *Thomas Schildgen, et al. v. U.S. Dep't of Defense*
EEOC Case No. 570-2021-00316X; Agency Case No. 2020-CONF-070
Notice on Status of Class Action**

Dear Judge Mickman:

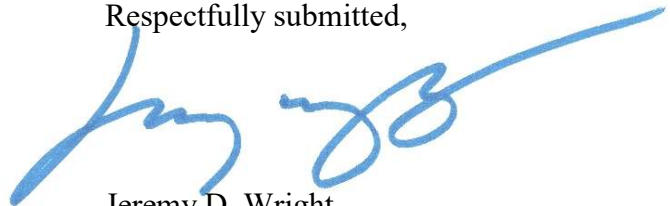
On September 26, 2024, the EEOC Office of Federal Operations affirmed your decision certifying the class complaint in this matter (following an appeal and a Request for Reconsideration filed by the Agency). *See Leonard D. v. Dep't of Defense*, EEOC No. 2021004597 (Feb. 15, 2023), *req. for recons. den'd*, EEOC No. 2024003121 (Sept. 26, 2024).

In its final decision, OFO directed that this case be remanded to the Washington Field Office, and ordered that the Agency was required to “[n]otify class members of the accepted class claim within fifteen (15) calendar days of the date this decision is issued, in accordance with 29 C.F.R. § 1614.204(e).” The Agency’s deadline to issue a notice to class members therefore passed on October 11, 2024. The Agency has not yet issued a notice to class members.

Class Counsel has been in contact with Agency counsel about preparing and delivering the notice to class members. It is our hope that the Agency will issue the notice to class members by, at the latest, November 22, 2024. We will continue to provide you with information about the status of the class notice.

Please let us know if you need additional information about this or any other matter.

Respectfully submitted,



Jeremy D. Wright

From: [COURTNEY MICKMAN](#)
To: [Jeremy Wright](#); [Michael Kator](#); [David Weiser](#); [Joseph M. Sellers \(JSellers@cohenmilstein.com\)](#); [atiwari@cohenmilstein.com](#); [WELLS, MICHAEL CIV USAF AF/JAC Labor Law Field Support Center](#)
Subject: RE: Schildgen, et. al., v. DoD, EEOC No. 570-2021-00316X
Date: Tuesday, November 12, 2024 12:00:54 PM

Good afternoon:

Thank you for providing this update. I have alerted Supervisory Administrative Judge Sharon Alexander to expect the Agency to upload the case for docketing as a merits class case. While I cannot be certain, I expect it is likely that the case will be assigned to me once docketed. To that end, please send me a copy of the OFO decision. Thank you.

Courtney J. Mickman (she/her/hers)
Administrative Judge
U.S. Equal Employment Opportunity Commission
Washington Field Office
131 M Street, N.E., Washington, D.C. 20507
Telephone: 202-921-2776
Email: Courtney.Mickman@eeoc.gov

From: Jeremy Wright <jwright@katorparks.com>
Sent: Friday, November 8, 2024 5:08 PM
To: COURTNEY MICKMAN <COURTNEY.MICKMAN@EEOC.GOV>
Cc: Michael Kator <mkator@katorparks.com>; David Weiser <dweiser@katorparks.com>; Joseph M. Sellers (JSellers@cohenmilstein.com) <JSellers@cohenmilstein.com>; atiwari@cohenmilstein.com; [WELLS, MICHAEL CIV USAF AF/JAC Labor Law Field Support Center <michael.wells.21@us.af.mil>](mailto:michael.wells.21@us.af.mil); Jeremy Wright <jwright@katorparks.com>
Subject: Schildgen, et. al., v. DoD, EEOC No. 570-2021-00316X

You don't often get email from jwright@katorparks.com. [Learn why this is important](#)

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Re: *Thomas Schildgen, et al. v. U.S. Dep't of Defense*
EEOC Case No. 570-2021-00316X; Agency Case No. 2020-CONF-070

Judge Mickman,

Please see the attached letter regarding the status of this case. As the EEOC docket for this matter was closed during the appeal, we are unable to upload this submission using the EEOC Portal. Agency counsel is copied on this email submission.

Respectfully submitted,

Exhibit B

Jeremy Wright
Kator, Parks, Weiser & Wright, PLLC