

UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

January 24, 1984

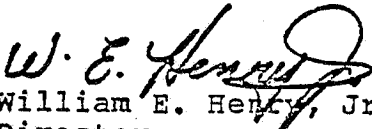
Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
817 14th Street, N.W.  
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your January 17 letter regarding a recent decision by the Equal Employment Opportunity Commission in case 01820528 (Turner and Dunn v. USPS).

This case is currently under review by our legal department. It is not our intent to modify the current policy on converting severely handicapped casual employees into the regular work force.

Sincerely,

  
William E. Henry, Jr.

Director  
Office of Grievance and  
Arbitration  
Labor Relations Department

cc: Mr. Gildea



# American Postal Workers Union. AFL-CIO

6A

817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS  
Executive Vice President

January 17, 1984

James Gildea,  
Assistant Postmaster General  
Labor Relations Department  
United States Postal Service  
475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260

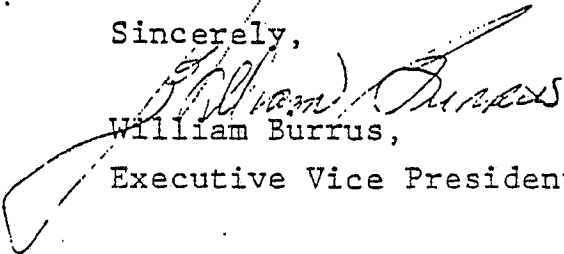
Dear Mr. Gildea:

A recent decision by the Equal Employment Opportunity Commission in case no. 01820528 (Turner and Dunn v. USPS) found that the Postal Service "discriminated against the appellants when it failed to convert appellants to probationary part-time flexible clerks upon completion of the first three (3) LSM lessons."

This finding is contrary to current Postal Service policy and practice and may impact other employees in similar circumstances.

The union wishes to determine if it is your intent to modify current policy to conform to this decision.

Sincerely,

  
William Burrus,  
Executive Vice President

WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President

WILLIAM BURRUS  
Executive Vice President  
DOUGLAS HOLBROOK  
Secretary-Treasurer  
JOHN A. MORGAN  
Director, Clerk Division

RICHARD I. WEVÖDAU  
Director, Maintenance Division  
LEON S. HAWKINS  
Director, M.S. Division  
MIKE BENNER  
Director, SDM Division

JOHN P. RICHARDS  
Industrial Relations Director  
KEN LEINER  
Director, Mail Handler Division

REGIONAL COORDINATORS  
RAYDELL R. MOORE  
Western Region  
JAMES P. WILLIAMS  
Central Region

PHILIP C. FLEMING, JR.  
Eastern Region  
NEAL VACCARO  
North-eastern Region  
ARCHIE SALISBURY  
Southern Region



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20505

Shirley E. Turner,	)	
	)	
and	)	
	)	
Thomas Dunn,	)	
	)	
Appellants	)	
	)	
v.	)	Appeal No. 01820528
	)	
United States Postal Service	)	
	)	
Agency.	)	

---

DECISION

INTRODUCTION

On January 20, 1982, Shirley E. Turner and Thomas Dunn (hereinafter referred to as appellants) initiated appeals from final agency decisions of the United States Postal Service dated December 30, 1981. The appeals were initiated under Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq. The appeals were timely filed and accepted in accordance with the provisions of EEOC Order 960, as amended.

BACKGROUND

On March 20, 1980, appellants were hired as Letter Sorting Machine (LSM) trainees through the agency's program for the severely handicapped. Appellants were two of several deaf individuals hired from a separately established register of applicants for employment. The register was not compiled through the usual process of ranking applicants according to performance on a competitive examination.

Applicants hired from the competitively established register were initially hired as casual employees (\$4.76 per hour) and required to complete the first three (3) lessons within eighteen (18) hours. Upon successful completion of the first three (3) lessons, the

competitively appointed trainees were converted to part-time flexible employees at a rate of \$8.10 per hour.

Upon hiring, appellants were informed that the casual appointment was in lieu of the competitive process leading to appointment. Appellants were informed that they: (1) must successfully complete the first three (3) lessons in keying the LSM within eighteen (18) hours of training in order to remain as trainees; (2) would be paid at a rate of \$4.76 per hour; (3) would be given eighty-nine (89) days to demonstrate proficiency.

After eighteen (18) hours of training, one deaf employee was terminated for failure to successfully complete the first three (3) lessons. Appellants successfully completed the lessons and continued employment at the rate of \$4.76 per hour. Appellants and the competitively appointed trainees were assigned the same duties during the period immediately following completion of the first three (3) lessons.

Appellant's initiated the complaints in this matter after the agency refused to convert them to part-time flexible clerks upon successful completion of the first three lessons. On June 14, 1980, the appellants were converted to part-time flexible probationary employees after successful pursuit of a grievance. Appellant's contended that the agency's refusal to convert was based on their handicap.

The agency found that the failure to convert was not unlawful employment discrimination because (1) appellants were hired from a separately established register; (2) appellants were advised of the conditions of their employment; and (3) its actions were in conformity with its regulations.

#### ANALYSIS AND FINDINGS

The sole issue before this Commission is whether the agency's failure to convert appellant's to part-time flexible employees after successful completion of the first three (3) lessons within eighteen (18) hours of entry on duty violated the Rehabilitation Act of 1973, as amended.

The basic facts of this appeal are not in dispute. The agency found that it treated the appellant's differently because of their handicap (deafness). It justified the treatment on the grounds that appellants were appointed from a separate and non-competitively established register. The 89-day casual appointment served to by-pass normal

competitive screening. Once appellants were appointed they and all appointees were held to the same performance expectations.

The Commission's regulations on the employment of handicapped individuals prohibit discrimination against qualified handicapped persons. See 29 C.F.R. § 1613.701 et seq. In addition, the regulations set forth the intent of the Federal government to become a model employer of handicapped individuals. 29 C.F.R. § 1613.703. The former Civil Service Commission and the Office of Personnel Management authorized a federal selective placement effort so that the Federal government could attain its goal.

Briefly, excepted service appointments of handicapped individuals were authorized; handicapped appointees could be converted from temporary trial appointments to regular appointments if abilities to perform the duties of the positions were demonstrated within twelve (12) months immediately preceding the recommendations for conversion. Alternatively, an agency may accept a certification from either the Veterans Administration or a State vocational rehabilitation agency familiar with the duties of the position that the individual is likely to succeed in the performance of the duties. See FPM Chapter 306-11 (4-2c).

Here the agency elected the 89-day casual appointment in lieu of the competitive screening process prior to appointment. The agency defended the use of the 89-day appointment on the grounds that it gave the agency the opportunity to assess the individual's affinity for the type of work and capability to perform in the position prior to career probationary appointment.

The agency's justification of its failure to convert appellants to part-time flexible clerks fails when compared with actual treatment. Appellants were, in effect, given a trial appointment of eighteen (18) hours. Failure to successfully complete the first three (3) lessons within that period resulted in termination for both competitively and specially appointed employees. If successful, employees in both groups progressed to the next level of performance. However, the handicapped employees were compensated at a substantially lower rate of pay. Thus, the issue before this Commission is whether the disparate treatment in terms of pay and other benefits is justified.

The agency's response addresses the issue of the appellants' appointment. It does not address the issue of compensating appellants at a lower rate than competitively appointed employees nor does it address the denial of other benefits such as seniority.

Ordinarily, the Commission would defer to an agency's evaluation of the appropriate standard to use in determining whether an employee is "qualified" to perform the duties of a position. Qualifications however, are not at issue in this particular matter. Appellants have demonstrated proficiency on the job and have performed in a manner similar to competitively appointed employees. The application of identical performance standards during the training period and appellants' successful completion over-come any inference that might be drawn in favor of the agency.

The Commission is concerned with the reasonableness of the clear discrimination based on handicap. Section 501 of the Rehabilitation Act prohibits discrimination on the basis of handicap "when unrelated to the individual's qualification's or any other substantial governmental justification." Shirey v. Devine, 670 F.2d 1188, 27 FEP Cases 1148, 1162 (D.C. Cir. 1982). Appellants' qualifications are established. The agency has failed to identify any "substantial governmental justification" for denying appellants pay equal that of non-handicapped employees and appointment to probationary part-time flexible clerks at the time of successful completion of the first three (3) lessons.

#### CONCLUSION

The Commission finds that the agency unlawfully discriminated against the appellants when it failed to convert appellants to probationary part-time flexible clerks upon completion of the first three (3) LSM lessons. The agency is directed to retroactively establish appellants' conversion date to part-time flexible clerks in the same manner as that established for non-handicapped employees successfully completing the first three (3) LSM lessons within eighteen (18) hours. The agency shall award appellants appropriate backpay, seniority, and other benefits.

#### NOTICE OF RIGHT TO FILE A CIVIL ACTION

Pursuant to 29 C.F.R. § 1613.282, the appellant is hereby notified that this decision is final and that s/he has the right to file a civil action on the Rehabilitation Act claim in the appropriate U.S. District Court within thirty (30) days of the date of receipt of this decision.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC Regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency report should be forwarded to: Compliance Officer, Office of Review and Appeals, EEOC, 2401 E Street, N.W., Washington, D.C. 20507. A copy of the report should be sent to the appellant.

NOTICE OF RIGHT TO REQUEST REOPENING

The appellant and the agency are hereby notified that the Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued;
2. The previous decision involves an erroneous interpretation of law or regulations or misapplication of established policy; or
3. The previous decision is of precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

This notice is in accord with 29 C.F.R. § 1613.235. As provided therein, agency requests to reopen must be filed within thirty (30) days from the date of receipt of this decision.

FOR THE COMMISSION:

Date 12/19/83

*Irene McCall*  
 Executive Secretary  
 to the Commission



# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

**Moe Biller, President**  
(202) 842-4246

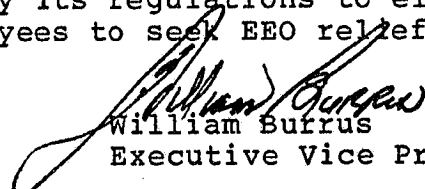
March 25, 1987

Dear Mr. Fritsch:

By copy of my correspondence of January 17, 1984 I inquired as to the Postal Services intent to adjust its regulations consistent with the findings in EEO decision Turner and Dunn v USPS No. 01820528. William Henry of your staff responded on January 24, 1984 advising that "it is not our intent to modify current policy on converting severely handicapped casual employees into the regular work force."

The EEO Commission has reaffirmed the Turner decision in the Postal Service's efforts to reopen and reconsider and on January 12, 1987 ordered implementation of the Turner decision.

This is once again to inquire as to the intent of the Postal Service to modify its regulations to eliminate the need for affected employees to seek EEO relief from current policy.

  
William Burrus  
Executive Vice President

Thomas J. Fritsch  
Assistant Postmaster General  
Labor Relations Department  
U.S. Postal Service  
475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260

WB:mc

- National Executive Board**
- Moe Biller, President
- William Burrus  
Executive Vice President
- Douglas C. Holbrook  
Secretary-Treasurer
- Thomas A. Neill  
Industrial Relations Director
- Kenneth D. Wilson  
Director, Clerk Division
- James J. Wevodau  
Director, Maintenance Division
- Donald A. Ross  
Director, MVS Division
- George N. McKeithen  
Director, SDM Division
- Norman L. Steward  
Director, Mail Handler Division
- Regional Coordinators**
- Raydell R. Moore  
Western Region
- James P. Williams  
Central Region
- Phillip C. Flemming, Jr.  
Eastern Region
- Romualdo "Willie" Sanchez  
Northeastern Region
- Archie Salisbury  
Southern Region