



**In the Matter of:**

**ROBERT E. KINNETT,**

**ARB CASE NO. 2021-0055**

**COMPLAINANT,**

**ALJ CASE NO. 2021-OFC-00001**

**v.**

**DATE: September 9, 2021**

**SOTERA DEFENSE SOLUTIONS,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Robert E. Kinnett; *pro se*; Stanley, Virginia**

***For the Respondent:***

**Nancy V. Holt, Esq.; *FordHarrison LLP*; Washington, District of Columbia**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*; Thomas H. Burrell, *Administrative Appeals Judge***

**DECISION AND ORDER**

This matter arises under the affirmative action and nondiscrimination requirements of Executive Order 11246,<sup>1</sup> as amended, and its implementing regulations.<sup>2</sup> In October 2017, Robert E. Kinnett (Complainant) filed a charge with the Office of Federal Contract Compliance Programs (OFCCP), alleging Sotera Defense Solutions (Respondent) had discriminated against him based on sexual

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<sup>1</sup> The Executive order and regulations prohibit employment discrimination by government contractors based on race, color, religion, sex, or national origin. *OFCCP v. D&S Constr. of Pineville, Inc.*, ARB No. 2014-0088, ALJ No. 2010-OFC-00006, slip op. at 1 n.1 (ARB Aug. 28, 2014).

<sup>2</sup> 41 C.F.R. Chapter 60 (2020).

orientation and religion in violation of Executive Order 11246. In May 2018, OFCCP determined that there was insufficient evidence to find that Respondent had violated the law, administratively closed the case, and issued a “Notice of Right-To-Sue under Title 1 of the ADA or Title VII of the Civil Rights Act of 1964” that authorized Complainant to file suit in federal court.

On August 24, 2018, Complainant filed suit in the United States District Court for the Western District of Virginia under Title VII. Respondent moved to dismiss the case, which the district court granted on August 26, 2019. On March 23, 2021, the United States Court of Appeals for the Fourth Circuit affirmed the dismissal. On the same day, Complainant filed a request for review of the Fourth Circuit’s decision with the Office of Administrative Law Judges (OALJ). The Administrative Law Judge (ALJ) ordered Complainant to show cause why his petition for review should not be dismissed for lack of subject matter jurisdiction. Complainant responded and OFCCP and Respondent filed separate replies.

On July 12, 2021, the ALJ issued a Recommended Decision and Order Dismissing Request for Review for Lack of Jurisdiction. The ALJ explained that the OALJ is not a court of general jurisdiction and that the OFCCP has exclusive authority to bring complaints enforcing Executive Order 11246 before the OALJ.<sup>3</sup> The ALJ further held that none of the statutes or regulations cited by Complainant in his response granted the OALJ subject matter jurisdiction over his request for review. The ALJ also stated in a footnote:

On June 25, 2021, Plaintiff filed *Motion to Remand Case to Court of Origin*, requesting this tribunal remand his case to the United States Court of Appeals for the Fourth Circuit. That request is beyond the scope of this tribunal’s authority, and is DENIED. If Plaintiff intended to move to withdraw his request for review, that request would be GRANTED.

The ALJ thus dismissed Complainant’s petition for review with prejudice for lack of subject matter jurisdiction.

On July 26, 2021, Complainant filed an Exception to the Administrative Law Judge’s Recommended Decision and Order with the Administrative Review Board

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<sup>3</sup> See *Entergy Services, Inc. v. OFCCP*, ARB No. 2013-0025, ALJ No. 2013-OFC-00001, slip op. at 3 (ARB May 19, 2014) (“[41 C.F.R. § 60-30.5] expressly grants only the OFCCP the authority to file a complaint. We see no authorization in the statutes or their implementing regulations empowering any other party to file a complaint under the EO Laws.”).

(Board).<sup>4</sup> Complainant requested the Board to reverse the ALJ's decision "to allow him to remedy procedural errors in his filings with the OALJ." Referring to the ALJ's footnote, Complainant claimed that the ALJ would have granted his Motion to Remand Case to Court of Origin "if the Plaintiff intended to move to withdraw his request for review" and that he was "unaware that his request for review was procedurally blocking his motion to remand."

However, as explained by Respondent in its response to the exception, Complainant misunderstood the ALJ's footnote. The ALJ was expressing only that he would have granted a motion to withdraw the request for review, rather than the motion to remand, as the ALJ's reference in the footnote to "that request" referred to the motion to withdraw. We therefore discern no reason to disturb the ALJ's recommended decision.

Accordingly, we **AFFIRM** the ALJ's Recommended Decision and Order Dismissing Request for Review for Lack of Jurisdiction.<sup>5</sup>

**SO ORDERED.**

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<sup>4</sup> "Within 14 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions" to an ALJ's recommended decision in a case brought under Executive Order 11246 to the Board. 41 C.F.R. § 60-30.28. Other parties may respond to the exceptions within 14 days of receipt. *Id.* The Board makes a decision, which shall be the Administrative order, based on the record of the recommended decision of the ALJ. 41 C.F.R. § 60-30.29.

<sup>5</sup> After the parties submitted their briefs, Complainant submitted two additional filings to the Board. First, Complainant moves to disqualify Respondent's attorneys, claiming that they engaged in a scheme to defraud the OFCCP and provide false statements to investigators. Complainant provides no factual support for this contention. Accordingly, we deny this motion. Second, Complainant submitted a "First Set of Requests for Admission," which seemingly requests Respondent to admit or deny several contentions relating to the alleged scheme to defraud the OFCCP to enter into the record. The Board will not supplement the record before it except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. *Williams v. Lockheed Martin Energy Sys., Inc.*, ARB No. 1998-0059, ALJ No. 1995-CAA-00010, slip op. at 6-7 (ARB Jan. 31, 2001). Complainant has failed to meet this standard, and we deny the requests for admission.