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July 21, 2017

FILE

VIA HAND DELIVERY

Paul Igasaki
Chair, Administrative Review Board
200 Constitution Ave, N.W.
Room S-5220
Washington D.C. 20210

Re: OFCCP v. Google, Inc. **17-059**
ARB Case No. _____
ALJ Case No. 2017-OFC-00004

Dear Chairman Igasaki,

We are in receipt of Plaintiff OFCCP's Motion for Clarification ("Motion"), submitted to your office yesterday in the above referenced case.

While Google is amenable to working out a mutually agreeable schedule with the Office of the Solicitor to file exceptions and responses to exceptions with the Administrative Review Board ("Board"), we believe that the Motion is procedurally improper, as OFCCP filed the Motion with your offices, and not with Judge Berlin in the OALJ. An ALJ "retains jurisdiction to dispose of appropriate motions, such as a motion to award attorney's fees and expenses, a motion to correct the transcript, or a motion for reconsideration." 29 C.F.R. § 18.90(c); *see also Matias et al v. IAP Worldwide Servs. et al.*, Case Nos. 2014-LDA-00716, 2014-LDA-00717, 2014-LDA00719, 2014-LDA-00732 (12/1/2015). As the list cited above is not exhaustive, it stands to reason that the list would certainly include a motion for clarification, such as the one at issue here.

In accordance with the above procedural rule, in other similar situations, to clarify an order issued by an ALJ, a party would file a motion for clarification with the ALJ who issued the order, and the Board could review an order on the motion for clarification on appeal. *See, e.g., Ellis v. Service Employees Int'l, Inc.*, BRB No. 10-10330 (8/26/2010) ("Employer appeals the Decision and Order and Order Granting in Part and Denying in Part Motion for Clarification/Reconsideration (2008-LDA-400)"); *Sidebottom v. Army and Air Force Exchange Serv.*, BRB 01-0725 (6/10/2002); *OFCCP v. The*



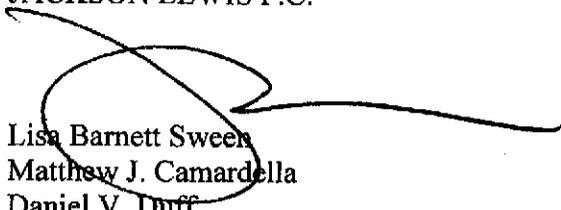
Prudential Insurance Co., 80-OFCCP-19 (July 17, 1980) (OFCCP filed motion for clarification with ALJ prior to filing exceptions with the Administrative Review Board).

Moreover, we do not believe the Board is in a position to clarify a decision made by an ALJ. The purpose of a motion for clarification is to provide clarity to an allegedly ambiguous aspect of an order. *United States v. Philip Morris USA, Inc.*, 793 F. Supp. 2d 164, 168 (D.D.C. 2011) (“[t]he general purpose of a motion for clarification is to explain or clarify something ambiguous or vague.”). OFCCP is asking the Board to provide clarity on an order it did not issue, about a case where it knows nothing of the context or particular factual situation. To request that the Board, which has no knowledge of the facts and circumstances of the case other than OFCCP’s Motion, clarify Judge Berlin’s order makes little sense. Therefore OFCCP’s Motion is procedurally improper because it is directed to, and filed with, the Board.

Notwithstanding Google’s position regarding the appropriate venue for OFCCP’s Motion for Clarification, Google has offered to meet and confer with counsel for OFCCP to establish a briefing schedule. Google remains willing to work with OFCCP to set a briefing schedule that is convenient to both parties.

Respectfully submitted,

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