

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE
CITY CRESCENT BUILDING
10 South Howard Street
Baltimore, Maryland 21201

WALTER FLOURNOY, ET AL)
)
Class Agent) EEOC NO. 120-A2-1267X
) AGENCY NO. NCN-92-GSFC-F064
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V.)
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)
SEAN O'KEEFE, ADMINISTRATOR)
NATIONAL AERONAUTICS AND)
SPACE ADMINISTRATION)
)
Agency)
)
_____)

NOTICE OF SETTLEMENT

FROM: THE HONORABLE LINDA A. KINCAID
ADMINISTRATIVE JUDGE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE

TO: ALL AFRICAN AMERICAN PERSONS EMPLOYED BY NASA
GODDARD AS GS- I 13 OR GS-14 NON-MANAGERIAL, NON-
SUPERVISORY SCIENTISTS OR ENGINEERS AT ANY TIME
FROM APRIL 19,1991 TO FEBRUARY 25, 2002, WHO WERE
ELIGIBLE FOR AND DID NOT RECEIVE PROMOTIONS TO
THE GS- 14 OR GS- 15 GRADES

Pursuant to 29 C.F.R. § I 614.204(g)(4), this is to inform you that a resolution, in the form of a Settlement Agreement (the "Agreement" or "Settlement"), has been reached by the Class and NASA Goddard Space Flight Center, in an administrative class action alleging race discrimination in promotions. If finally approved by the U.S. Equal Employment Opportunity Commission (EEOC or Commission), this will be a complete Settlement of the class claim and will provide various kinds of relief, including monetary relief, for those eligible members of the Class.

Before a decision is reached on whether to finally approve the Settlement, you must be informed of the general terms of the proposed Agreement and of your right to comment on the Settlement, if you so desire. If the Settlement is finally approved and becomes effective after a hearing (the Fairness Hearing or Hearing) regarding the fairness of the Settlement, this judgment will be final and binding on all members of the Class.

This Notice is only a summary of the relief being given under the terms of the Settlement. The entire Settlement Agreement is provided to you as an enclosure or attachment, and may further be downloaded from Class Counsel's website, www.katorparks.com.

A decision as to whether to give Final Approval to this Settlement Agreement will be reached after the Fairness Hearing. **The Fairness Hearing will be held at 2:00 p.m. on July 8, 2002, in the fourth floor conference room at the U.S. Equal Employment Opportunity Commission, 10 South Howard Street, Baltimore, MD.**

You are not required to appear at the Hearing. If you are a Class Member and do not appear, you will be represented by attorneys for the Class at no cost to you. If you wish, you may appear and comment favorably or otherwise on, or file a petition to vacate, the Settlement. You may also hire an attorney of your own choice, if you wish, at your own expense. If you plan to comment on or want to file a petition to vacate the Settlement Agreement, you must file a written notice of appearance identifying yourself and any attorney you may retain and state specifically your comment, or in the event that you wish to file a petition to vacate, file the petition, by June 7th, 2002. This statement and/or petition must be mailed to the EEOC and Class Counsel at both of the following addresses: Linda A. Kincaid, EEOC Administrative Judge, 10 South Howard Street, Suite 3000, Baltimore, MD 21201; and Maia Caplan, Esq., Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 20036. It must be postmarked on or before June 7th, 2002 to be considered. You need not appear at the Hearing for your comments or petition to be considered by the presiding Administrative Judge. However, you may appear **only** if you first file the notice and statement described above to advise the presiding Administrative Judge of your intention to appear. In other words, if you do not file your petition to vacate or a statement of your comments and the identity of any attorney that you wish to represent you by June 7th, 2002, your petition or comments will not be considered and you will not be given the opportunity to offer your petition or comments during the Hearing. Additionally, only those who timely file a petition to vacate the Settlement will be permitted to file an appeal in the event that the Settlement is approved by the presiding Administrative Judge notwithstanding their objection.

SUMMARY OF AGREEMENT

1. In April, 1993, Class Agent Walter Flournoy filed an administrative class action complaint against NASA Goddard alleging that it discriminated against African American non-managerial scientists and engineers at the GS-13 and GS-14 levels by failing to award them promotions to the GS-14 and GS-15 levels under the Manpower Utilization Review Council (MURC). NASA Goddard has denied all allegations and does not admit to any wrongdoing.

Following seven years of litigation, and over a year of intensive mediation, counsel for NASA Goddard and Class Counsel advised the presiding Administrative Judge that they had agreed in principle that the case should be settled without uncertainty, delay, and expense of continued litigation.

2. You are a member of the Class affected by the Settlement Agreement (the "Class") if you are an African American who, at any time between April 19, 1991 and February 25, 2002, was employed by NASA Goddard as a non-managerial, non-supervisory scientist or engineer in the GS-13 or GS-14 level, and was eligible for and did not receive a promotion to the GS-14 or GS-15 level, respectively.

Even if you come within these definitions, however, you will not be able to recover any money under the Agreement for any claim(s) as to which you knowingly executed a valid release or as to which there has previously been a

final judicial or administrative determination in a separate proceeding against NASA Goddard.

3. The Agreement settles claims of race discrimination against NASA Goddard, which were made or could have been made, by members of the Class based on their employment with NASA Goddard during the relevant time period. If you have such a claim, the Settlement Agreement provides your only means of redressing it. Otherwise, such claims are barred. Moreover, the Class Agent and all Class Members who accept a monetary award under the Agreement will be barred from asserting any race discrimination in employment claim against NASA Goddard for actions or omissions relating to their employment as scientists or engineers at the GS-13 and GS-14 levels through February 25, 2002.

4. Under the Settlement, NASA Goddard will pay Three Million Seven Hundred Fifteen Thousand Two hundred and seventy-eight dollars (\$3,715,278.00) into the Settlement Fund (Fund). The Settlement Fund shall be administered by Class Counsel under the presiding Administrative Judge's supervision. The Fund will be divided into three portions. The first portion or Claims Fund shall consist of \$2,286,459.00 in the aggregate, together with interest and income earned on this amount. The Claims Fund shall be used to pay the Class Agent and Class Members to resolve their Class Claims and to maintain reserves for taxes. The second portion, or Contribution Fund, consists of \$500,000 and shall be used to compensate the Class Agent and other Mediation Representatives for their special

contributions in prosecuting this action and negotiating the Settlement. The third portion will be used to pay counsel for the Class Agent and the Class for their attorneys' fees, experts' fees and other expenses, through the Fairness Hearing.

5. If you are a Class Member and wish to partake in the monetary Settlement, you do not have to file a claim or contact Class Counsel, the presiding Administrative Judge or NASA Goddard. The Claims Fund will be distributed to all Class Members according to a formula devised by Class Counsel and approved by the presiding Administrative Judge. The formula (Exhibit 5 to the Settlement Agreement) includes points for factors including time-in-grade, length of time at NASA Goddard, and level of performance evaluations during the pertinent liability period.

The final proposed awards will be submitted under seal to the presiding Administrative Judge for approval. The awards will then be made based on analyses made by Class Counsel after reviewing NASA Goddard's personnel data and applying the formula. All personnel data will be protected as confidential information. Class Member awards will reflect their total assigned points in proportion to total points of all Class Members combined. At this time, it is not possible to predict how much money a particular claimant will receive, if any. All Class Members receiving monetary awards will be required to sign releases, in language agreed to by Class Counsel and NASA Goddard, of all race discrimination in employment-related claims concerning their employment as scientists or engineers at the GS-13 and GS-14 levels through February 25, 2002,

and of claims against the Settlement Fund. Class Counsel and/or the Claims Administrator will be required to withhold from each award and deposit with the government all employment and income taxes.

6. Under the Settlement, NASA Goddard will also award a minimum of promotion awards to Class Members. The awards will be of three types. None of the provisions provide for displacing any employee from a job or changing promotional opportunities for non-Class Members.

First, NASA will award 12 promotion awards to retired and retirement eligible Class Members who elect to retire pursuant to a formula devised by Class Counsel and approved by the presiding Administrative Judge. It is anticipated that the formula will be based on factors such as time at NASA Goddard, time-in-grade, and contribution to prosecution and/or mediation of the case. If you are a retired or retirement eligible Class Member, you do not have to file a claim to participate; you will automatically be evaluated under the formula and receive notification if you are qualified to receive an award or awards. You will be provided with an opportunity to verify the accuracy of the data used by Class Counsel to determine your qualification. If you qualify for an award(s) and are retirement eligible (not retired), you will then be provided an opportunity to determine if you wish to retire and accept the promotion, or whether you wish to remain as a current employee and forego the promotion award. Promotions received under this process are retroactive to five years. Award recipients will be entitled to retroactive annuity payments, less their employee share, and enhance

prospective annuity payments. Any back pay associated with such promotion will be allocated to the Class Claims Fund, and distributed to the entirety of the Class pursuant to the monetary distribution formula referenced in paragraph 5. As with monetary awards, the final proposed promotion awards will be submitted under seal to the presiding Administrative Judge for approval. At this time, it is not possible to predict which retired or retirement eligible Class Members will receive a promotion award(s) of this type.

Second, NASA Goddard will allocate at least ten promotions to Class Members who are current employees. Those current employees who are immediately ready for promotion will receive their promotions within five months of final approval by the presiding Administrative Judge and implementation of this Agreement. Those current employees who, with additional training or assignments would be ready for promotion within one year, will receive said promotion(s) within one year of final approval. NASA Goddard will determine who is to receive such awards pursuant to a merit-review process of all Class Members in grade for greater than one year, which review shall be headed by the Director of Applied Engineering and Technology (AETD). In recognition of his special contribution to the case, however, the Class Agent may elect to receive a promotion under this provision without being reviewed provided he does not elect to retire and avail himself of the promotion awards process for retired and retirement eligible Class Members. Following completion of the Class Member review, NASA Goddard will proceed with a promotion review encompassing non-Class Member non-managerial, non-supervisory scientists and engineers with eight or more years in

grade and promote those deemed eligible. Both Class Member and non-Class Member promotional data will be provided to Class Counsel for statistical review and analysis. Promotions accorded under this process will be prospective.

Third, a minimum of 10 Class Members will be identified for guaranteed participation in NASA Goddard's two-year Accelerated Leadership Program. If the program is successfully completed, such Class Members will receive a FPL of GS-14.

7. Class Members wishing to verify their own personnel data supplied by NASA Goddard and relied on by Class Counsel to calculate eligibility for monetary and promotions awards may write to "Administrator for the NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888 and request their individual data upon Final Approval of the Settlement. Class Members shall have sixty (60) days from Final Approval of the Settlement to challenge the accuracy of the data. Class Members wishing to challenge the accuracy of the data used to calculate awards must do so in writing to the above address within sixty (60) days of Final Approval of the Settlement, or their objection to the data will not be considered. In addition, on or about the thirty-fifth (35th) day following Final Approval of the Settlement, Class Counsel will announce and post a representative at NASA Goddard so that Class Members may verify their information in person if they so choose.

8. At its own expense, and apart from the Settlement Fund and promotions awards, NASA Goddard has agreed that during the twelve months following implementation of the Agreement it will work with an independent expert (subject also to Class Counsel's review) to analyze and make revisions to its performance management system including its processes for granting or effectuating: (1) accretion and career ladder promotions; (2) performance appraisals; (3) training; and (4) performance awards. Additionally, NASA Goddard will (5) work with an Independent Mediation Expert to evaluate and redesign its alternative dispute resolution process for handling informal equal employment opportunity complaints; (6) provide additional diversity training to its management and supervisory staff, and (7) clarify that managers who receive an unsatisfactory score on the equal employment opportunity component of their performance evaluation may not be promoted for the following twelve months.

These various prospective internal revisions in employment practices that NASA Goddard has agreed to implement are intended to enhance opportunities for employment and advancement of all NASA Goddard scientists and engineers, without regard to race, and to provide a workplace that promotes fairness for all employees. NASA Goddard's compliance with its commitments will be monitored by the presiding Administrative Judge through reports to be supplied to Class Counsel by NASA Goddard, and periodic meetings held between Goddard and Class Counsel. Class Counsel thereafter will file periodic summaries of such reports with the presiding Administrative Judge.

9. NASA Goddard's payment into the Settlement Fund will also cover costs, fees and expenses incurred by the Class in the litigation from its inception through Final Approval of the Agreement by the presiding Administrative Judge. NASA Goddard will also cover the administration and distribution of the Settlement Fund, the costs of the Independent Experts, and the monitoring of its compliance with the Settlement Agreement over its three-year term. Thus, if you are a Class Member and receive an award from the Fund, you will not owe individually any fees or expenses to the lawyers who have represented you as part of the Class.

HEARING

If you wish to comment on the Settlement, or submit a petition to vacate, and do not file it with the presiding Administrative Judge by June 7th, 2002, the Administrative Judge will not consider it in determining the fairness of the Settlement. Any person or representative who will appear at the Hearing on July 8th, 2002, must identify him/herself in writing, along with a statement of the comment or the petition to vacate, to the presiding Administrative Judge and to Class Counsel no later than the last day for filing written objections, June 7th, 2002, at the following addresses: Linda A. Kincaid, EEOC Administrative Judge, 10 South Howard Street, Suite 3000, Baltimore, MD 21201; and Maia Caplan, Esq., Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 20036.

If the presiding Administrative Judge grants final approval to the Settlement notwithstanding objections or a petition to vacate, you will not be permitted to appeal the final approval determination unless you have filed an objection or petition to vacate. If

you do not wish to object to or comment on the terms of the Settlement, it is not necessary to attend the Fairness Hearing or do anything else.

Class Members may obtain a written response to their written questions about the Settlement from Class Counsel by addressing your inquiries to Maia Caplan, Kator Parks & Weiser, PLLC, 1020 19th Street, NW, Suite 350, Washington, DC 200036. Additionally, Class Members with procedural questions about the Settlement may phone the Claims Administrator at (866) 385-5767.

The judgment of the Administrative Judge will be final as to the fairness and adequacy of this Settlement. The judgment will determine the rights of Class Members and any other affected persons or entities with respect to the matters covered by the Agreement, and you will be bound by the judgment whether favorable or not.

May 2, 2002
Date

Linda A. Kincaid
Linda A. Kincaid
EEOC Administrative Judge