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Ms. Christine A. Hansen
725 East 14th Street
Davenport, Iowa 52803

Under the provisions of 5 C.F.R., Section 713.604 of the U. S. Civil Service Commission (CSC) regulations I am accepting your class complaint filed on September 19, 1977, against the Federal Bureau of Investigation (FBI) on behalf of yourself and other females who have ever made application with the FBI for the position of Special Agent.

In making the decision to accept your complaint, taken into account were the recommendations of the Equal Employment Opportunity (EEO) Complaints Examiner which were received January 16, 1978; recent Department policy requiring consistency in prosecuting and defending EEO cases; the district court decision in the case of Barrett v. U. S. Civil Service Commission, 10 EPD paragraph 10,586 (D.C. Cir. 1975), which required the development of class action regulations for federal employees; and applicable case law.

The growing trend has been to apply Title VII in the Federal sector consistently with that in the private sector and state and local governments. For example, the Attorney General in an August 31, 1977 memorandum, stated that "whenever possible, the Department will take the same position interpreting Title VII in defense of Federal employee cases as it has taken and will take in private or state and local government employee cases," 2 CCH 1977 Employment Practices Guide paragraph 5046.

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Since the Justice Department has a major role to play in assuring that this consistency is observed, it is particularly appropriate in making decisions involving administrative EEO complaints that the Department take into account all of the pertinent case law decided in the private and state and local sectors.

Under CSC regulations, the formal EEO complaint together with any subsequent submissions must set forth specifically, and in detail, under Section 713.603(b): 1) a description of the agency personnel management policy or practice giving rise to the complaint and 2) a description of the resulting matter which adversely affected the agent.

In order for the class complaint to be accepted under Part 713.604(b), 1) it must be timely filed; 2) it cannot consist of allegations that were contained in a previous complaint filed on behalf of the same class which is pending in the agency or has been resolved or decided by the agency; 3) it must be within the purview of the 5 Code of Federal Regulations (C.F.R.), Part 713, Subpart F; 4) the agent must have consulted an EEO Counselor within 90 days of the matter giving rise to the allegation of individual discrimination; 5) it must be specific and detailed; 6) it must be submitted in writing and signed by the agent and 7) it must meet the following prerequisites: a) the class is so numerous that a consolidated complaint of the class members would be impractical; b) the complaint raises common questions of fact; c) the claims of the agent are typical of the claims of the class and d) the agent or his/her representative will fairly and adequately protect the interests of the class.

On July 15, 1977, you first contacted an EEO counselor and made known your complaint. You alleged in your complaint that the practice of discrimination against women in the FBI was continuing and you provided details of an alleged discriminatory action taken against you personally which you became aware of on June 29, 1977. Thus the record shows that you contacted the counselor in a timely manner.

Your written complaint filed September 19, 1977, does not consist of allegations contained in a previous complaint filed on behalf of the same class and is within the purview of 5 C.F.R., Part 713, Subpart F, in that you have described the personnel policies and practices under the control of the FBI which gave rise to the complaint, e.g., allegedly discriminatory practices affecting the hiring, assignment, transfer, promotion and training of female Special Agents.

Your complaint is sufficiently specific and detailed in describing the work environment under which you allege the discrimination has taken place. The specific incidents outlined in your complaint are allegations of class discrimination and not necessarily events demanding specific remedies. While some of these incidents occurred prior to the 135 day limit for claims specified in the CSC regulations, Section 713.614(c), and thus are time-barred in terms of specific relief, they provide evidence for determining whether an on-going pattern of discrimination exists.

As noted above, four additional prerequisites for the maintenance of a class complaint are numerosity, commonality, typicality, and adequacy of representation. In this complaint, the record reveals that there are 70 female Special Agents with the FBI, although the file does not reflect the number of female Special Agents who have left the FBI. Nonetheless, I find the number of potential class members to be sufficiently large to make consolidation impractical. The allegations raise a common question of sex discrimination and your claim of sex discrimination is typical of the claims of this asserted class. The record shows that your representation is adequate and does not present any reason to believe that your interest as an agent is in conflict with the interests of the class members or that you will not adequately represent the class.

You have alleged three areas of discrimination against women: a) applicant recruitment, b) training and (c) work situations. For purposes of determining whether to accept or reject your complaint, these allegations are discussed separately.

(a) Applicant Recruitment

You allege that the recruitment procedures of the FBI are used to favor male applicants over female applicants for Special Agent positions and have not been validated. Although the record reflects that you were appointed as a Special Agent effective November 10, 1972, I find that you are able to serve as an agent for the class of applicants. This is consistent with the finding of the Court of Appeals for the District of Columbia Circuit in Gray v. Greyhound Lines, East, 13 FEP paragraph 1401 (D.C. Cir. 1976), that an incumbent can represent a class of applicants under Title VII. You state in your complaint with regard to injuries suffered that the FBI's "discriminatory practices which have excluded women as special agents adversely affect incumbent female agents in that the low number of female agents ... in itself fosters a climate in which discrimination against women flourishes." In Gray v. Greyhound the court recognized that as a result of a company's discriminatory hiring practices which limited the number of successful minority applicants, a minority employee could suffer injury in his treatment at work and on his psychological well-being as one of the few minority employees.

(b) Training

You allege that both the physical testing and firearms testing components of the training program for newly appointed Special Agents at the FBI Academy at Quantico, Virginia, require a higher standard of women and have never been correctly validated. You also state that the training program has three basic parts and that failure in any one will result in firing. In that this training program is set up as a condition of continuing employment, I find that the basis for certification is similar to that used to certify you as the agent under the applicant recruitment aspects of this class complaint. Therefore, I find that you are able to serve as an agent for the class of those who were forced to resign because of failure to pass physical and/or firearms testing requirements.

(c) Work Situations

In this regard, you allege that women are assigned and transferred to the various FBI offices, given assignments within a given office, and denied promotional opportunities on the basis of sex. The record shows that you were assigned to the Phoenix Office in December 1976, and have continued in that assignment (although on detail to Headquarters) through the present time. Because this assignment has been continuing and because the agency's decision not to assign you to another position has been continuing, I find that the allegations in this regard can be considered timely and I accept the allegation regarding work situations as a class complaint.

In summary, the class is defined to include: 1) all female applicants for employment as FBI Special Agents, including those now or ever employed by the FBI in other capacities; 2) all women forced to resign from Special Agent training school at the FBI Academy, including those now or ever employed by the FBI in other capacities; 3) all current female FBI Special Agents and 4) all women who have been, but are not now FBI Special Agents. You are accepted as agent for a class complaint regarding FBI policies and practices in the hiring, training, assignment, transfer, promotion and usage of female Special Agents.

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If you have any questions concerning processing of this complaint, I suggest that you contact Mr. Don S. Tokunaga, EEO Officer for the Federal Bureau of Investigation or Mr. J. Dennis Scrivens, Chief, EEO Office, U.S. Department of Justice. Mr. Tokunaga can be reached by telephone on (202) 324-4128 and Mr. Scrivens on (202) 739-3143.

Sincerely,

/s/ Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration