

U.S. Department of Labor

Office of Federal Contract Compliance Programs
Southeast Regional Office
61 Forsyth Street, S.W., Suite 7B75
Atlanta, Georgia 30303



CERTIFIED MAIL, RETURN RECEIPT REQUESTED

November 20, 2017

Logan M. Isaac
509 Valley Drive
Durham, North Carolina 27704

Re: Logan Isaac v. Duke University
OFCCP Complaint # I00201831

Dear Mr. Isaac:

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) received your comments regarding the Notice of the Results of Investigation ("NORI") issued on July 6, 2017. Please note that your emailed comments were not received within the 30 day time frame that will allow for a reconsideration of your complaint. However, we thoroughly reviewed your emailed comments to consider if you had provided good cause to reopen the investigation. In reviewing comments received October 25, 2017, I saw no new evidence that would cause me to reopen the investigation and I concur with OFCCP's Raleigh Area Office investigation that there is insufficient evidence to show that Duke University discriminated against you based on your veteran or disability status.

1. **Complainant's Comment:** FCCM § 2M00.b (p.103) - Multiple respondents were not interviewed but no note in the case file indicates reasons why.

OFCCP's Response:

- One of the employees you named was interviewed on March 24, 2017. This interview was not supplied to you as they are a non-management employee.
 - Others named by you were not pertinent to the allegation of discrimination based on your status as a disabled Veteran. OFCCP's investigation found out that the allegation that involved the witness was time barred and no further investigation or interviews were warranted.
 - Others were not interviewed as OFCCP was able to address the issue of the flyer removal by conducting the interview with the professor who admitted to making the request to have the flyer(s) removed in order to avoid conflict.
2. **Complainant's Comment:** FCCM § 2M00.e (p.104) and § 6G03.d-f (p.216) - Case file suggests that university retained counsel was present for multiple interviews, but their name and title does not appear on the documentation of the interview and there is no

indication that the Compliance Officer informed interviewees that in those cases they spoke for the University.

OFCCP's Response: If an interviewee is a manager and acting in that capacity, whereas they are representing the contractor, they are allowed to have legal counsel in the interview. OFCCP interview forms reflect the names of the interviewer and the interviewee, if signed by the interviewee. The legal representation present is not required to sign the interview form or to be identified as present.

Having legal representation or not does not change the decision that there is insufficient evidence to show Duke University discriminated against you based on your veteran or disability status.

3. **Complainant's Comment:** There are multiple instances recorded in interview notes in which the representative "speaks for, influences, or corrects" the interviewee.

OFCCP's Response: While you do not provide any definitive statements where your comments can be reviewed and assessed, OFCCP thoroughly reviewed the case file and finds no information that changes the decision that there is insufficient evidence that Duke University discriminated against you based on your veteran or disability status.

4. **Complainant's Comment:** At the time of Robins' interview, she was not a management employee and was *prohibited* by the FCCM from having representation present.

OFCCP's Response: First, non-management employees can have representation of their choice present. OFCCP allowed management representation because Ms. Kori Robins held the title of Coordinator of Student Records/Registrar at the time of her interview and during the period of your allegations. Based on the your comments in the 52 page document submitted to OFCCP and Duke University, at page 6, you identify Reverend Robins as a 'hiring manager' for the Teaching Assistant position. As such, she acts in a management capacity for Duke University and Duke may have a management representative present. The presence of counsel does not change the decision that there is insufficient evidence to show that Duke University discriminated against you based on your disability or veteran status.

5. **Complainant's Comment:** FCCM § 6C03.b7 (p.197) and § 6F01.a (p.208) - Field office failed to identify documents from similar complaint investigations (ADA violation) against the university; in this case the same attorney represented the University against plaintiff in a case still being adjudicated the same year I filed my complaint.

OFCCP's Response: You did not supply us with specific information regarding these complaints. OFCCP inquired with NC Dept. of Commerce, EEOC Area Director, & DOL VETS office in Atlanta and Duke University about open and closed complaint investigations but no documentation was received verifying this specific complaint.

6. **Complainant's Comment:** FCCM § 6C06 (p.198) - Field Office exceeded the outer limits of the timeliness standard, of 180 days, by 102 days, without any notice sent to me.

OFCCP's Response: Based on the correspondence in the case file, OFCCP was in constant communication with you, receiving documentation about your allegations up to and past the 180 day period. In February 15, 2017, you modified your complaint which removed the 180 day investigation timeframe that would have expired in March 2017. As of March 14, 2017, the complaint was amended to identify disabled Veteran status. You were notified of the modified status as well as the University. OFCCP accepted your request to modify the complaint and thoroughly reviewed the allegations and found that there is insufficient evidence Duke University discriminated against you based on your disability or veteran status.

7. **Complainant's Comment:** FCCM § 6J01.a (p.223) - I was denied the "opportunity, prior to the completion of the investigation, to introduce new or previously unconsidered evidence." The field office issued their NORI before the ten-day window they offered to me closed, and then did not take any of the information I supplied into consideration.

OFCCP's Response: On June 22, 2017, prior to issuing the NORI, OFCCP held a teleconference with you to indicate the investigation was complete, discussed the findings, and to see if you had any additional information. You sent an email to inquire about the investigation but provided no additional evidence for investigation. Additionally, in your request for reconsideration no new evidence has been provided for investigation and therefore we continue to find that there is insufficient evidence Duke University discriminated against you based on your disability or veteran status.

8. **Complainant's Comment:** A review was conducted rather than an investigation *OFCCP has not fulfilled its statutory obligations under 41 CFR §60-300.61(d)*. The field office solicited data from other local agencies (NC Dept. of Commerce, EEOC Area Director, & DoL VETS office in Atlanta) identifying their action as a "compliance evaluation," not as an investigation.

OFCCP's Response: OFCCP conducted a thorough complaint investigation and found there is insufficient evidence to show that Duke University discriminated against you based on your veteran or disability status. As with any OFCCP complaint investigation or evaluation, notification letters are sent to other agencies to determine (1) if a complaint has been filed with their agency by the complainant, (2) if any complaints have been filed against the contractor to obtain the latest status and (3) to inform them about the complaint received. The

content of the letters request information about complaints filed.

9. **Complainant's Comment:** On site interviews were conducted by a "compliance officer," not by an investigator or other licensed professional obligated to know and apply pertinent legal standards.

OFCCP's Response: One of the primary responsibilities of an OFCCP Compliance Officer is to conduct complaint investigations. Compliance Officers are supervised by Assistant District Directors and District Directors. A thorough complaint investigation was conducted that included face-to-face interviews of applicants, employees and managers during an onsite at the University. We also examined selection procedures and personnel records. After considering all the evidence gathered during the investigation a determination was made that there is insufficient evidence to show Duke University discriminated against you based on your disability or veteran status.

10. **Complainant's Comment:** Compliance Officer did not pose interview questions with any attention to timeframe in which my complaint was situated because it was an evaluation of current compliance rather than an investigation of historical fact; when asked nearly two months after the University revised its policy to include "veteran status," Reese could truthfully answer "Yes" to the present-tense question posed to him. The compliance officer was therefore not "primarily focused on the specific allegations" (FCCM § 6A, p.191) of my complaint, but on the overall compliance of the University at the time of the interview.

OFCCP's Response: The questions asked during the investigation were relative to the time frame of your allegations. As with all investigations, questions are asked relative to the investigation time frame and current status to ensure compliance or ongoing noncompliance that may need to be addressed.

11. **Complainant's Comment:** Compliance Officer did not ask questions in a uniform investigative manner (see FCCM §6G03.c, p.215); they failed to ask the Coordinator of Student Records/Registrar and Director of Admissions and Financial Aid any questions about EEO/Affirmative Action at all and failed to record any of the Assistant VP Harassment and Discrimination Compliance responses to the same.

OFCCP's Response: Compliance Officer's ask similar questions in a variety of ways to elicit a response. We found nothing in the interview questions or responses to provide us with good cause to reopen the investigation.

12. **Complainant's Comment:** Demonstrably false statements, including the above, were accepted without question by the field office because it was not investigating past behavior or treatment of veterans.

OFCCP's Response: Without any specific incidences as to what statements were accepted by OFCCP that was indeed false, OFCCP does not have good cause to reopen the investigation.

13. **Complainant's Comment:** Multiple substantive allegations based on FCCM § 6E03 to 6E08 were not given any attention. Including those of intimidation by the Professor of Theological Ethics, failure to intervene in a hostile environment by Dean of the Divinity School Elaine Heath, and other discriminatory acts.

OFCCP's Response: As stated in the NORI, the allegations of intimidation based on your name change were investigated as well as the hostile environment, harassment and; there was insufficient evidence to your support your allegations. Without any other discriminatory acts provided, OFCCP concluded its investigation to your allegation.

14. **Complainant's Comment:** NORI contains assessments not supported by evidence. The NORI claimed "no evidence" that Robins interacted with other administrators about my protected activity, but this is an argument from silence. When asked "*Did you discuss Mr. Isaac's veteran status with any of your supervisors before making any hiring decisions. Please explain in details.*" Robins offered no response, meaning the NORI relied on subjective assessment of her credibility without objective criteria to support its finding.

OFCCP's Response: Review of Ms. Robins interview indicates she was asked if she were aware of the veteran status of the TAs to which she responded she was not aware when the information was requested nor was she aware when she made the hiring decision. Because of her response to not knowing the veteran status on any TAs, the OFCCP did not ask the questions noted.

15. **Complainant's Comment:** The NORI claimed power over assignment of evening precepts was "outside Contractor's control," but no evidence supports this assertion. Multiple students had similar reservations about being assigned to an inconvenient and less desirable precept, which I made clear to the field office. These facts heighten the appearance of **pretext** in the university's defense of 1) their failure to treat my initial hiring on its merits or the duties created by their AAP, evidenced by Robins' false assertion, documented in the OIE Final Report, that I 'didn't have much teaching experience,' and 2) their emotionally-motivated decision making, evidenced by Robins' remark, documented in the OIE Final Report, that I 'should be happy [I] got paid the same for half the work.'

OFCCP's Response: The NORI reads at page 4 "With respect to working conditions, OFCCP's investigation found that you were not the only TA who worked in the evening session during the 2016 spring semester and that the number of students in each session was dependent on the number of students who chose to participate in each session, which was outside of Contractor's control." OFCCP's further review indicates there is no evidence nor was there solicitation or coercion by Duke to influence the student's decisions to attend

the evening session. Selection of evening courses was made by the students and therefore, not under OFCCP's jurisdiction.

16. **Complainant's Comment:** The NORI claimed "no evidence" that the unannounced removal of flyers advertising a university-approved course by, a non-veteran faculty with a history of anti-military bias and discrimination, was discrimination. The field office took no apparent effort to interview, who coerced a colleague, into advocating their removal. Nor did the field office interview despite his subsequent attempt to intimidate and coerce *me* into removing them, describing his threat (a prima facie case of quid pro quo) to remove himself from the course unless I took down my course flyers as having "asked" me to take them down.

OFCCP's Response: The Professor of Theological Ethics was interviewed on March 24, 2017. As stated in the NORI, Professor of Christian Ethics was not interviewed due to the flyer removal incident being addressed with the Professor of Theological Ethics, the individual who stated he made the request directly to you to have the flyer removed.

17. **Complainant's Comment:** The NORI claimed "no evidence" that disclosing my protected activity rose to unlawful harassment, but I claimed it represented a materially adverse action within *a pattern of harassment*. His remark "Why are you asking about this now" served a rhetorical slight meant to undermine my character and paint me in a negative light before my peers while removing any attention to the fact his own EEO training failed to meet the requirements of VEVRAA. Another person present that day remembered the interaction in this way; *I was surprised that Isaac asked him about veterans, since the presentation mostly covered racial bias and I don't recall veterans coming up. I was also surprised when, in answering Isaac's question, Reese disclosed that Isaac was asking about something they'd discussed privately, on a different occasion. It seemed unprofessional for Reese to disclose to the whole group that he and Isaac had spoken about the matter before, since Isaac may have been speaking to Reese about it in confidence.*

OFCCP's Response: The NORI states at page 4, "Similarly, while our investigation revealed that Complainant and the Vice President of the Office of Institutional Equity had a public discussion on the treatment of veterans, OFCCP found no evidence that this official's public statements amounted to a hostile work environment or were frequent, pervasive or severe enough to rise to the level of unlawful harassment." There is no indication the discussion rose to the level of consistency or continuous communication, creating a pattern that would rise to pervasive activity. In addition, without the name or title of the person you allege made the comment noted, OFCCP cannot provide a response.

18. **Complainant's Comment:** The NORI claimed the field office interviewed "faculty members who are veterans." This is not supported by the case file or the facts as they regard the Divinity School, because there are not veterans on faculty.

OFCCP's Response: The veteran status of the employees is received on a voluntary basis. OFCCP's investigation included interviews of TAs and faculty members who are veterans and; who indicated they were not harassed or subjected to a hostile work environment at Duke based on their veteran status.

19. **Complainant's Comment:** The NORI claimed there was "insufficient evidence" that the name change which originated from Robins' office and correlates directly to the time in which I was engaged in protected activity, was intimidation, but that was not my claim. I claimed it was *harassment* (name calling, negative treatment, derogatory speech, p.179 & 304), and calling the isolated and derogatory act a "typographical error" is clearly pretext and should be investigated as such.

OFCCP's Response: OFCCP investigated the incident and found it was a typographical error and not an act of intimidation. Once Duke received legal documentation of your last name and your social security card, the name was officially changed in the HR system. There were no other alleged incidences related to your name identified in the complaint that would be investigated as an allegation of intimidation.

20. **Complainant's Comment:** Results are demonstrably false. *OFCCP had conclusive evidence of noncompliance which it failed to identify.* By their own admission, none of the managers interviewed by the field office actually received EEO training, directly contradicting Reese's testimony and representing a clear violation of VEVRAA.

OFCCP's Response: The issue is currently being conducted via a compliance evaluation and is not direct evidence that you were discriminated against based on your veteran status.

21. **Complainant's Comment:** With the exception of the AAP, *no university policy included "Veteran Status" until November 7, 2016.* That means the University grievance procedure never actually protected me as a veteran while I had an active internal complaint with OIE. This also means that they remained noncompliant for a full 55 days while OFCCP was involved. The University has therefore provided false information to a federal agency. This also constitutes *a pattern of discrimination* "that goes beyond isolated individual incidents." (FCCM, § 6E03.b, p. 202)

OFCCP's Response: The AAP reviewed contained the acceptable language. The Code of Federal Regulations at 41 CFR 60-1.32 – Intimidation and interference covers all federal contractors and all protected statuses regarding harassment, intimidation, coercion or discrimination. Therefore, your rights as a veteran are protected.

Your appeal correspondence provided no materials additional to those already in the case file and your arguments therein are repetitions of those in your complaints and interviews. For the reasons stated and as evidenced above, our administrative review did not substantiate your complaint that Duke University

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violated its obligations under the nondiscrimination and affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212), Section 503 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act. Therefore, we concur with the finding of no violation by the Raleigh Area Office. This letter concludes the Department's processing of this complaint. Every effort was made to ensure that your request for reconsideration received our full and exhaustive attention.

Sincerely,



Samuel B. Maiden
Regional Director — Southeast

c: Vincent Price
President
Duke University
207 Allen Building, Box 90001
Durham, North Carolina 27708