

Edmond Walker, a Temporary Rural Carrier Relief, filed a class complaint alleging that discriminatory acts had been continuing for a class of disabled permanent rehabilitation employees in the Postal Service. The EEOC Administrative Judge certified the class. On appeal, the Postal Service argued that the certified class was poorly defined and the class members were unidentifiable. The EEOC found that the class was sufficiently defined to enable the parties to identify potential class members. The EEOC also determined that the class met all the requirements for certification, and therefore, ordered the Postal Service on March 18, 2008 to process the class complaint within 30 days. *Walker v. Potter*

Background

The lawyers in [Glover/Albrecht EEO Class Action complaint](#) sought to include Walker case:

“On March 9, 2002, class counsel filed a motion requesting that the Commission add Edmond Walker as a co-class agent in this case. Mr. Walker’s issues included restricting permanent rehabilitation employees’ work hours; including overtime. In considering this issue, the Administrative Judge noted to the parties that if Mr. Walker and his issues were added to the lawsuit the entire class would have to be renoticed. In light of the possible delay and the additional complexity of adding this issue, class counsel withdrew his request to add Mr. Walker as a co-class agent who raised the overtime issue. Class counsel did not abandon this issue. Instead, Mr. Walker filed a separate class complaint which includes the overtime issue.”

Edmond C. Walker, the class agent in the Walker class action, filed a complaint on August 19, 2002. Walker alleged that, since April 2000, the Postal Service discriminated against individuals with disabilities by:

1. Placing disabled individuals in permanent rehabilitation positions without engaging in the interactive process as required by law;
2. Restricting disabled individuals who are placed in permanent rehabilitation [sic] to limited work hours without any medical justification and without consulting the individual with a disability;
3. Fail[ing] to allow individuals with a disability, who have been placed in permanent rehabilitation positions, to work the number of hours determined appropriate by the individual and his/her physician and which are available; and
4. Fail[ing] to allow individuals with a disability, who have been placed in permanent rehabilitation positions, to use assistive devices in the workplace to accommodate their disabilities, including but not limited to, electric scooters, notwithstanding that said assistive devices pose no threat to safety or inconvenient [sic] in the workplace.

This claim has been analyzed to include denial of overtime.

On December 12, 2003, an EEOC Administrative Judge issued a decision concerning the Walker class complaint. The Administrative Judge ordered the Postal Service to “identify all those pending complaints that raise the same issue as the Walker class complaint during the time frame encompassed by the Walker class complaint, January 1, 2000, to the present.” For those complaints that had already been forwarded to an Administrative Judge– AJ ruled that they be placed into abeyance by the Administrative Judge assigned to the case.

The Administrative Judge issued a decision on May 12, 2005, granting certification after finding that the requirements of commonality, typicality, numerosity, and adequacy of representation were satisfied. Addition-

ally, the AJ found there was no basis for dismissal of the class complaint under 29 C.F.R. § 1614.107. Accordingly, the AJ certified the following class: “all permanent rehabilitation employees whose duty hours have been restricted, from January 1, 2000, to the present, allegedly in violation of the Rehabilitation Act of 1973.” The AJ stated that “[f]or purposes of this litigation a permanent rehabilitation employee includes any rehabilitation program employee whose USPS employee records reflect an employee status code of LDC 69 and/or an employee status code of RC and/or RD.”

On September 30, 2005, the agency issued its Notice of Final Action declining to implement the AJ’s decision. On appeal, the agency argues that the certified class is poorly defined and the class members are unidentifiable. The agency notes that the AJ provided no definition for the phrase “duty hour restriction” which it argues makes the class legally untenable. The agency claims that although the AJ identified two specific types of restrictions in his definition - restrictions limiting the number of hours generally worked and duty hour restrictions that allegedly result in the denial of overtime - the types of restrictions are open to all sorts of interpretations. Further, the agency claims it is impossible to identify who had duty hours restricted or who among permanent rehabilitation employees are disabled. The agency stated that although it can determine the number of permanent rehabilitation employees between January 1, 2000, and the present, there is no way to identify which of those employees had their duty hours restricted.

The Postal Service Argued that “the determination of whether a purported class member is disabled, regarded as disabled, or has a record of a disability cannot be made without resort to thousands of mini trials, making class treatment inappropriate. The agency notes that although a person in a permanent rehabilitation job by definition has an injury causing a permanent restriction, this does not mean that every injury necessarily constitutes an impairment under the Rehabilitation Act or that every permanent restriction constitutes a substantial limitation on a major life activity. The agency states that given the varying natures of permanent rehabilitation employees’ injuries, there is only one major life activity which they all have in common: working. However, the agency notes that the permanent rehabilitation employees are all working and argues that therefore, that they cannot be considered substantially limited in working.”

The Postal Service also argued that “complainant’s EEO Counselor contact is untimely since no acts of discrimination occurred within the 45 days prior to his May 29, 2002 EEO Counselor contact on the class issue. Rather, the agency argues that the alleged discriminatory action occurred in May 2000, when complainant first accepted a 14-hour a week permanent rehabilitation position. With regard to the AJ’s finding that complainant moved for class certification at a reasonable point in the process, the agency claims that complainant did not formally move for class certification until December 8, 2003, almost 3 1/2 years after Filing his individual complaint and did not file a class complaint until August 22, 2002, more than two years after filing his individual complaint.”

EEOC’s response in part: “We find that complainant has met the requirements of commonality and typicality. Complainant alleged that the agency has a nationwide practice of restricting the duty hours of permanent rehabilitation employees who are disabled. In support of his allegation, complainant submitted declarations from employees from geographically dispersed agency facilities who each asserted that they were permanent rehabilitation employees and had then-work hours restricted. Thus, we find that the evidence supplied is sufficient to support an inference that there is a class of persons who were harmed by the identified agency policy or practice of restricting work hours and that the class will share common questions of fact.”

“It is the decision of the Commission to certify the class comprised of individuals with disabilities in permanent rehabilitation positions who had their duty hours restricted beginning on March 24, 2000. The agency is ORDERED to process the remanded class complaint in accordance with 29 C.F.R. §1614.204(e) et seq. Within 15 calendar days of the date this decision becomes final, the agency shall notify all class members of the acceptance of the class complaint in accordance with § 1614.204(e). Within 30 calendar days of the date this decision becomes final, the agency shall provide the appropriate EEOC District Office with a copy of the notice sent to the class members, and shall request the appointment of an AJ, who shall undertake the continued processing of the complaint pursuant to § 1614.204(f) et seq. The agency shall provide a copy of the notice of certification and request for appointment of an EEOC Administrative Judge to the Compliance Officer, as referenced herein.”