



In the Matter of:

**OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR,**

**ARB CASE NO. 00-059**

**ALJ CASE NO. 87-OFC-11**

**PLAINTIFF,**

**DATE: May 24, 2000**

**v.**

**LAWRENCE AVIATION INDUSTRIES, INC.,**

**DEFENDANT.**

**BEFORE: THE ADMINISTRATIVE BOARD**

### **REMAND ORDER**

This case arose under Executive Order 11246, reprinted as amended in 42 U.S.C. §2000e note (1988) and the regulations promulgated pursuant to its authority at 41 C.F.R. Chapter 60. The Secretary of Labor found, *inter alia*, that Lawrence Aviation Industries (Lawrence) “discriminated against women in hiring into the entry level general factory helper position in 1981” in violation of the Executive Order. *Office of Federal Contract Compliance Programs v. Lawrence Aviation Industries, Inc.*, Case No. 87-OFC-11, Dec. & Rem. Ord., June 15, 1994. The Secretary remanded the case to the Administrative Law Judge (ALJ) for recalculation of damages and subsequently entered a Final Decision and Order adopting the ALJ’s calculation of the back pay, *Office of Federal Contract Compliance Programs v. Lawrence Aviation Industries, Inc.*, Case No. 87-OFC-11, Fin. Dec. & Ord., Nov. 9, 1995.

Lawrence appealed the Secretary’s decision to the United States District Court for the Eastern District of New York. The district court affirmed the Secretary’s decision. *Lawrence Aviation Industries, Inc. v. Reich*, 28 F.Supp.2d 728 (E.D.N.Y. 1998). Lawrence appealed to the United States Court of Appeals for the Second Circuit, and on July 6, 1999, that court issued an order affirming in part the district court’s decision, but questioning whether the Secretary had considered fully Lawrence’s arguments when making the damage award. The appellate court remanded the case to the district court “for further appropriate proceedings, including further remand to the agency for proceedings consistent with this order.” *Lawrence Aviation Industries, Inc. v. Reich*, 182 F.3d 900

(table), 1999 WL 494870 (2d Cir.).<sup>1/</sup> Specifically, the court noted that Lawrence introduced evidence “for the purpose of showing that certain of the female applicants would not have been available to work at Lawrence for the full 61.29 weeks” upon which the back pay award was based, but that there was no indication in the record that the agency considered the evidence. *Id.* at 1999 WL 494870 \*\*1. The court expressed no view on the persuasiveness of Lawrence’s evidence. However the court stated,

Assuming . . . that the agency [*i.e.*, the Department of Labor] was correct in applying its presumption that all female employees would have worked until laid off, the agency nevertheless has not passed upon evidence arguably sufficient to overcome this presumption as to certain of the female applicants.

*Id.* Thus, the court concluded that on remand the Department of Labor should have the opportunity to consider the evidence. The court also suggested that the agency might wish to consider whether the back-pay award should be offset by the wages the female applicants actually earned. The court did not consider this issue because Lawrence did not raise it on appeal. However the court noted that Lawrence had raised it in the administrative proceedings, and left it to our discretion to determine whether to consider the issue on remand.

Accordingly, we **REMAND** this case to the ALJ for further proceedings as the appellate court ordered. Should Lawrence pursue its argument that the back-pay award should be offset by actual wages earned, the ALJ should consider the argument and any response by the OFCCP, in rendering a recommended decision and order.

**SO ORDERED.**

**PAUL GREENBERG**

Member

**E. COOPER BROWN**

Member

**CYNTHIA L. ATTWOOD**

Member

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<sup>1/</sup> The Administrative Review Board received the case record from the district court on May 17, 2000.