

## AGE DISCRIMINATION, OR SIMPLY OUTDATED CONTACT INFORMATION?



A former air traffic controller sued the Federal Aviation Administration (FAA), citing a violation of the Age Discrimination in Employment Act (ADEA) for not rehiring him. But it was his untimely charges and responses to court filings which ultimately cost him the case. The man worked for the FAA from 1974 to 1981. President Regan barred FAA's employment of members of the PATCO (Professional Air Traffic Controllers Organization) due to a strike in 1981, and the bar wasn't lifted until 1993 by President Clinton. At that time, the man applied for reemployment. Shortly thereafter, he moved to a new address but did not inform the FAA that the address had changed. A letter was sent to the man regarding notification of any changes in information, and another letter was sent back to FAA due to an expired forwarding order. In 2000, the FAA reviewed applicants whose contact information was unavailable. The man was listed as inactive and was not rehired. He filed an age discrimination charge with the EEOC (Equal Employment Opportunity Commission) in 2002 – he was 42 when he had reapplied. The EEOC dismissed the complaint because the man waited too long to file and the delay was unfounded. This was followed by a complaint filed in an Ohio district court, claiming an ADEA violation. He asserted that the FAA had hired



applicants with equal or lesser qualifications and refused to hire anyone over the age of 40. \_\_\_\_\_The FAA filed a motion to dismiss and for summary judgment. The district court granted the motion, noting that the EEOC complaint was untimely, even considering the latest action – his inactive status prompted in 2000. The court further stated that the man did not have a substantial case, as he was unable to establish that he had an active application at the time of the alleged discrimination. The appeals court, however, conceded a point of argument and remanded the case back to district court. The FAA served its discovery requests for the district court, but the man neglected multiple requests for his discovery responses. The FAA filed a motion to compel, and after the man failed to respond, filed a motion for sanctions and for summary judgment, as the plaintiff could not prove his case. Once again, the man failed to respond to the motion. With only the FAA's evidence, the district court granted the motion, stating that the man had not shown that his age was the reason for the FAA's refusal to rehire him. About a week later, the man filed a motion for relief and asked for time to respond to the motion for summary judgment. He cited "excusable neglect" – his counsel's email address had changed, and he had not received any notification of the motion in question. The FAA argued that the man's attorney had not kept up-to-date on the case for a six-month period, which it did not consider excusable neglect. As such, the plaintiff should not be entitled to relief. The district court agreed, and the motion for relief was denied. Appellate judges likewise saw nothing "excusable" about not checking on the case for six months and affirmed the denial of the plaintiff's motion.