

## JOB AND SALARY DISPUTE LEADS TO CONFUSION ON WHAT LEGAL CLAIMS MADE IT TO TRIAL



A Hispanic man's lawsuit against the Department of Transportation (DOT) alleged race and national origin discrimination. It led to convoluted legal disputes concerning the position he was apparently denied and the specification of his claims. The man was a disabled Army veteran and had worked as a civilian air traffic controller for the Department of Defense (DOD), a position he still holds, for a number of years. He began applying for positions in the DOT's Federal Aviation Administration (FAA), hoping for a Miami job to be closer to his family. He applied for an available job, and after several months of hearing nothing was told there was a "hiring freeze" while the FAA awaited funding. He later learned that employees were frequently being hired, and the Hispanic Coalition of Federal Aviation Employees spoke to the DOT on his behalf. Three months later, he was offered a Miami position, which he accepted. However, he realized the pay was lower than he'd anticipated, even lower than what he was earning at the DOD. He was told that it was not calculated incorrectly and that it wouldn't be changed, so he declined the job offer. Around a year later, he learned that non-Hispanics transferring from the DOD received the higher salary that he'd been denied. He filed with the EEOC (Equal Employment Opportunity Commission), but the DOT dismissed the complaint since he hadn't filed in 45 days of the alleged discrimination, which it found was when he declined the offer. He appealed to the EEOC, which agreed that he was unaware of the time limit, so the DOT initiated an investigation and found no discrimination. The man, representing himself, filed a civil suit in a Texas court. The DOT asserted that the job offered to the plaintiff was from a different announcement and was a separate job with a lower salary. It later conceded, as the plaintiff had argued, that the two announcements were for essentially the same position, but at this point there was confusion as to what claims had survived the DOT's motion for summary judgment. A district judge decided there was one remaining claim and deemed it a "delay in hiring." At the end of a two-day trial, the DOT moved for judgment as a matter of law because the plaintiff hadn't established a legal case, had not adequately exhausted his administrative remedies and had not timely filed his EEOC complaint. The trial judge rejected the DOT's two former arguments but accepted its third point, granting the motion as the EEOC charge was time-barred. On appeal, this time with counsel, the man claimed that the DOT had not challenged the EEOC's ruling and therefore had waived its right to argue on timeliness. The DOT countered by asserting that the man hadn't made this argument in district court – such that he had "waived [his] waiver argument." Appellate judges sided with the plaintiff, stating that the DOT, since it had not appealed to the EEOC regarding the time limitations, was legally bound by the initial ruling. Judges acknowledged that the case was perplexing, but as to the untimely complaint, the district court had erred in its judgment, which was reversed and remanded for further proceedings.