



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

████████████████████  
Woodrow B.,<sup>1</sup>  
Complainant,

v.

Julian Castro,  
Secretary,  
Department of Housing and Urban Development,  
Agency.

Appeal No. 0120143194

Hearing No. 443-2011-00178X

Agency No. HUD-00111-2010

DECISION

Complainant filed an appeal with this Commission alleging that the Agency failed to comply with its April 2, 2014 final action.

BACKGROUND

The record indicates that Complainant, a former Community Planning and Development Representative, filed a formal complaint alleging that the Agency discriminated against him on the bases of race and color when on June 7, 2010, he was informed by his supervisor that he had been terminated from his position during his probationary period. Following an investigation and receipt of the report of investigation, Complainant timely requested a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). The AJ assigned to the case held a hearing on March 28 and 29, 2012, and issued a decision on February 21, 2014. In the decision, the AJ determined that Complainant established that the Agency had discriminated against him based on his race and color when it terminated him.

To remedy the discrimination, the AJ ordered the Agency to reinstate Complainant to his former position with training and a mentor, and to remove all references to Complainant's termination from its employment records. Additionally, the AJ ordered the Agency to

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

determine and pay Complainant back pay and other benefits he would have received had he remained an employee since June 3, 2010. Finally, the AJ awarded Complainant \$25,000.00 in non-pecuniary damages and proven attorney's fees. On April 2, 2014, the Agency issued a final order fully implementing the AJ's decision and the relief ordered.

Complainant filed the instant appeal claiming that the Agency failed to fully comply with the AJ's order. Specifically, Complainant argues that the Agency erred by reducing his back pay award by \$31,218.00 based on the amount of unemployment insurance he received. Complainant contends that this amount should not have been deducted as it was not earned from other employment and that such a deduction is contrary to the "collateral source rule." In addition, Complainant claims that the Agency has not entered \$43,360.08 into his retirement account as ordered. Finally, Complainant claims that he has incurred additional attorney's fees.

In response, the Agency asserts that it simply followed its long-standing policy and reduced Complainant's back pay amount by the amount which he received in unemployment insurance. The Agency argues that while Complainant received this amount from the State of Wisconsin, the Agency fully reimburses states which make such payments, and therefore, these payments cannot be viewed as collateral. Further, the Agency contends that the collateral source rule does not apply to federal agencies because the agencies fund employee benefits through the Federal Employees Compensation Account, and states are fully reimbursed for payments made to federal employees. The Agency argues that if it did not deduct the amount, Complainant would be paid the amount twice, which would result in a financial hardship to the Agency. Finally, the Agency objects to any additional attorney's fees.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.504 provides that final action which has not been the subject of an appeal or civil action shall be binding on the Agency, and that if Complainant believes that the Agency has failed to comply with the terms thereof, Complainant shall notify the EEO Director, in writing, of the alleged noncompliance within 30 days of when Complainant knew or should have known of the alleged noncompliance. If, after 30 days from the date of the Agency's receipt of the Complainant's written allegations of noncompliance, Complainant is not satisfied with the Agency's attempt to resolve the matter, Complainant may appeal to the Commission for a determination as to whether the Agency has complied with the terms of its decision. 29 C.F.R. § 1614.504(b).

In the instant case, Complainant challenges the Agency's deduction of the amount in unemployment insurance he collected from the State of Wisconsin after his discriminatory termination from his back pay award. Complainant has requested application of the "collateral source" rule, which holds that "benefits received by the plaintiff from a source collateral to the defendant may not be used to reduce that defendant's liability for damages." Finlay v. U.S. Postal Serv., EEOC Appeal No. 01942985 (Apr. 29, 1997) (citing 1 Dobbs, Law of Remedies 3.8(1), at 372-73 (2d ed. 1993)). The Commission examined the application of the collateral

source rule in Wallis v. U.S. Postal Serv., EEOC Appeal No. 01950510 (Nov. 13, 1995), and determined that the application of the rule was appropriate and consistent with Commission precedent. Additionally, the Commission has previously stated on numerous occasions that an agency may not deduct unemployment compensation from a complainant's back pay award. See Collick-Brown v. Dep't of Navy, EEOC Appeal No. 01910904 (Mar. 26, 1991); Dana v. U.S. Postal Serv., EEOC Appeal No. 0192164 (June 11, 1993); Vashi v. U.S. Postal Serv., EEOC Appeal No. 07A50056 (Dec. 5, 2007) (citing Scott v. U.S. Postal Serv., EEOC Appeal No. 01921641 (June 11, 1993)). Accordingly, the Commission finds that the Agency improperly deducted unemployment compensation from Complainant's back pay award.

In addition, Complainant contends that the Agency has not yet paid the proper amount in retirement benefits. The Agency submitted no arguments or evidence regarding this matter. As a result, to the extent it has not done so already, the Commission orders the Agency to pay the retirement benefits.

To the extent Complainant incurred additional attorney's fees in connection with obtaining full remedial relief, he should present a verified statement of fees in accordance with the Order below.

### CONCLUSION

Based upon a thorough review of the record, consideration of the arguments of the parties, and for the foregoing reasons, the Commission finds that the Agency has not complied with its final order. The Agency is directed to comply with the Order below.

### ORDER

To the extent that it has not already done so, the Agency is ORDERED to take the following remedial actions:

1. Within 60 days of the date of receipt of this order, the Agency shall pay Complainant \$31,218.00 (plus applicable interest) in back pay that it improperly deducted. In addition, the Agency shall determine and pay any other benefits due Complainant, including retirement benefits, previously not paid.

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

### ATTORNEY'S FEES (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be

paid by the Agency. The attorney shall submit a verified statement of fees to the agency -- not to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of this decision becoming final. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File A Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

#### STATEMENT OF RIGHTS - ON APPEAL

##### RECONSIDERATION (M0416)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within

twenty (20) calendar days of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. The requests may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the

time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in black ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

May 13, 2016  
Date