



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

[REDACTED]  
Alda F.,<sup>1</sup>  
Complainant,

v.

Scott Pruitt,  
Administrator,  
Environmental Protection Agency,  
Agency.

Appeal No. 0120171676

Agency No. 2014-0030-R13

**DECISION**

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 26, 2017, finding no discrimination concerning her complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, we MODIFY the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Environmental Protection Specialist, GS-12, at the Agency's National Center for Radiation Field Operations (NCRFO), Las Vegas, Nevada.

On July 9, 2014, Complainant filed her complaint, which was later amended. Therein, Complainant alleged discrimination based on race (African-American) when she was subjected to disparate treatment and a hostile work environment in that:

- (1) In January 2014, her request for career development training to attend a class at University of Nevada, Las Vegas was denied by her immediate supervisor (S1), her second level supervisor (S2), and her Deputy Director (D1);

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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.

- (2) In March 2014, her request to be removed as a Radiological Emergency Response Team (RERT) "Field Team" member was denied by S1, S2, and D1;
- (3) On April 2, 2014, her request to be removed as purchase card holder was denied by S1, S2, and D1;
- (4) On multiple occasions in 2010 and 2011, she had been held to different standards than non-African-American coworkers with respect to promotions and career opportunities by her former second level supervisor (FS2), S2, and D1;
- (5) In April 2014, her request to be exempted from participating in a Capstone Exercise was denied by S1, S2, and D1;
- (6) In April 2014, she was unfairly appointed to serve on the health and safety committee by S2 when other staff members could have been appointed;
- (7) In April 2014, S1 exempted her from doing her laboratory duties to attend a dry run training session; but then pulled her out of the required dry run training to attend a health and safety meeting instead of requiring the alternative committee member to attend the meeting in her place; and
- (8) In April 2014, she was assigned health and safety purchase card duties in the Center for Radiation Filed Operations Preparedness and Response (CRPR) by S1, S2, and D1.

Additionally, Complainant further alleged that she was discriminated against based on race (African-American) and in reprisal for prior EEO activity when:

- (9) On June 17, 2014, S1 gave her push back when she asked to take lunch at a specific time to accommodate a medical appointment;
- (10) On June 19, 2014, S1 in the presence of another identified supervisor (SS1) asked Complainant to set up a purchase account to buy items without Complainant being present in contravention of Agency policy and with knowledge that such an action could lead to discipline for Complainant; and
- (11) On June 19, 2014, S1 questioned her about a purchase that had not yet been paid when he was aware that her purchase card account had been suspended temporarily.

Additional harassment claims were accepted for investigation including:

- (12) On December 30, 2014, SS1 told employees to stay away from those staff members (to include Complainant), who had filed EEO complaints, causing other staff members to avoid interaction with her; and

- (13) On Friday, January 23, 2015, she greeted SS1 but he did not respond to her.

After completion of the investigation of the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ) or request an immediate final Agency decision. Complainant did not request a hearing or a final Agency decision upon receipt of the notice. Subsequently, the Agency issued its final Agency decision concluding that it asserted legitimate, nondiscriminatory reasons for its action, which Complainant failed to rebut. On appeal, Complainant contests that the Agency failed to issue its final Agency decision in a timely manner and requests the Commission sanction the Agency by issuing default judgement in her favor.

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

#### *The Agency's issuance of its final Agency decision*

Initially, we will address the Agency's issuance of its final Agency decision and Complainant's request for default judgment in her favor as a sanction. EEOC Regulations provide that an agency shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision from the agency, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. 29 C.F.R. § 1614.110(b).

On April 24, 2015, Complainant received the Agency's notice to request a hearing or a final Agency decision within 30 days after her receipt of the notice. Complainant requested neither within the requisite 30-day time limit. The Agency did not issue its final decision within 60 days thereafter as set forth in the regulations. Meanwhile, Complainant requested a final Agency decision on numerous occasions. The Agency ultimately issued its final decision on July 26, 2017, i.e., more than two years after the requisite time limit to issue its final Agency decision. The Agency has provided no explanation for the late issuance of the final Agency decision. Therefore, we find that the Agency did not comply with its obligation to issue a final decision in accordance with the timeframes set forth at 29 C.F.R. § 1614.110(b). Accordingly, we find that a sanction in this case is appropriate.

Sanctions serve a dual purpose. On the one hand, they aim to deter the underlying conduct of the non-complying party and prevent similar misconduct in the future. Barbour v. U.S. Postal Serv., EEOC 07A30133 (June 16, 2005). On the other hand, they are corrective and provide equitable remedies to the opposing party. Given these dual purposes, sanctions must be tailored to each situation by applying the least severe sanction necessary to respond to a party's failure to show good cause for its actions and to equitably remedy the opposing party. Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009). Several factors are considered in "tailoring" a sanction and determining if a particular sanction is warranted: 1) the extent and nature of the non-compliance, and the justification presented by the non-complying party; 2) the prejudicial effect of the non-compliance on the opposing party; 3) the consequences resulting from the delay in justice; and 4) the effect on the integrity of the EEO process. Gray v. Dep't of Defense, EEOC Appeal No. 07A50030 (Mar. 1, 2007).

In the case at hand, we find that the Agency failed to comply with the EEOC's regulations. We note that the Agency did not provide any explanation for its extraordinary delay in issuing its final Agency decision. However, we note that Complainant did not make a showing that she was prejudiced by the Agency's delay. Thus, although the Agency failed to issue a timely decision as required by regulation, we find that the Agency did not act in a manner to warrant a default judgment sanction. *See, e.g. Josefina L. v. Soc. Sec. Admin.*, 0120142023 (July 19, 2016), *req. for recon. den'd*, EEOC Request No. 0520170108 (Feb. 9, 2017) (finding that the Agency's 571-day delay in issuing the decision did not warrant sanctions, as complainant did not show she was prejudiced by the delay); Abe K. v. Dep't of Agric., EEOC Appeal No. 0120141252 (Nov. 4, 2016)(declining to sanction an agency that issued a decision after approximately 326 days when complainant failed to show that he was prejudiced by the delay); Jocelyn R. v. Dep't of Def., EEOC Appeal No. 0120152852 (Mar. 11, 2016) (citing Vunder v. U.S. Postal Serv., EEOC Appeal No. 01A55147 (May 12, 2006) (declining to sanction an agency that issued a decision after approximately 371 days)).

Based on the specific circumstances of this case, we find the most appropriate sanction to address the Agency's conduct is to order the Agency to: (1) post a notice at its Office of Civil Rights in Washington, D.C. regarding its failure to comply with the Commission's regulatory timeframes and orders; and (2) provide training to its EEO personnel who failed to comply with our regulatory timeframes. Our decision to sanction the Agency in this matter will effectively emphasize to the Agency the need to comply with Commission regulations and orders in a timely manner.

#### *Disparate Treatment/Harassment Claim*

Turning to the merits of the instant case, after a review of the record, assuming *arguendo* that Complainant had established a *prima facie* case of discrimination, we find that the Agency has articulated legitimate, nondiscriminatory reasons for the alleged incidents. Complainant

indicated that she had been working at the Agency since 1985 as a secretary. In August 2001, she became an Environment Protection Specialist at the Center for Planning and Training (CPT) in NCRFO. At the time of the incidents at issue, Complainant was an GS-12, Environmental Protection Specialist at the CPT, NCRFO. She was the only African-American at CPT and one of only two African-Americans in NCRFO. She was supervised by a former first level supervisor (FS1) up until November 2013, at which time S1 became her first level supervisor.

Regarding claim (1), S1 indicated that Complainant did not submit a request for the training to attend a class at University of Nevada, Las Vegas. While they had a discussion about that S1 told Complainant that S1 could not support the request because there was no funding available for the training and the office was operating under a continuing resolution. S2 agreed with S1's decision. D1 indicated Complainant did not discuss the subject matter with her. There is no evidence that S1 granted the subject training to any of his employees. Complainant acknowledged that with S1's suggestion and approval, she took a 10-hour on-line "Radiological Emergency Response" course in April 2014.

Regarding claim (2), S1 indicated that Complainant requested to be permanently removed from the RERT Field Team but she gave no reason for the request other than the fact she wants to be reassigned to another position within RERT. S1 denied the request because the subject assignment was a primary function of his team and with the manpower reductions over the years, the team needed Complainant who was experienced with radiation. Also, the team needed Complainant's specialized training and experience. S2 and D1 both agreed with S1's decision.

S1 indicated that two employees, identified by Complainant, did not request to be permanently removed from the RERT Field Team. The employees asked that they not participate in an upcoming exercise as a Field Team member. Their request was denied and they both participated in the exercise. We note that the two employees were Physical Scientists and not an Environmental Protection Specialist as Complainant was.

Regarding claim (3), S1 indicated that upon Complainant's request to be removed as purchase card holder, S1 discussed the request with D1. D1 informed S1 that the Agency had placed a moratorium on the issuance of any new card holders so if Complainant was relieved of the duties, he would not be able to appoint any other staff person to function as card holder until the moratorium was lifted. Based on this information, S1 informed Complainant that she would support her request when another individual was qualified and assigned. S2 indicated that Complainant did excellent work as a purchase card holder. Complainant indicated that she worked as a purchase card holder for over 18 years. Complainant does not indicate that she previously made the same request and was denied by management.

Regarding claim (4), Complainant claimed that FS1, who supervised her up until November 2013, unsuccessfully made attempts to promote her to GS-13 from her GS-12 position. D1 indicated that FS1 requested and was provided D1's input and support for proposed accretion of duty promotion for Complainant. FS1 acknowledged that he approached FS2, who was Complainant's former second level supervisor, and D1 about Complainant's accretion of duties

and he was informed that they needed more evidence that Complainant was working at the GS-13 level. FS1 acknowledged that he never submitted a written promotion package for Complainant. FS1 further stated that D1 informed him that management was not considering any accretion of duties since multiple organizational changes were occurring at that time.

Complainant indicated that an identified coworker received "OAR's 2011-2012 Long-Term Training Program" opportunity but she did not. However, she acknowledged that the identified coworker was a Health Physicist and not an Environmental Protection Specialist as she was. Management stated that for 2011 Oak Ridge Health Physics training, they selected a GS-13, Environmental Protection Specialist, who was much better qualified than Complainant due to his working knowledge of health physics, strong mathematical skills, and relevance of the opportunity as it related to his position at NCRFO. Complainant did not indicate that her qualifications for the training was superior to those of the foregoing selectee.

Regarding the 2011 RTFL training, management had no record of anyone at NCRFO attending that training and did not believe anyone was approved to attend the subject training. Furthermore, management indicated that when reviewing training requests, they always considered their financial position and synergy between the request and NCRFO's mission. Complainant does not allege that she was denied any specific training or career opportunities other than those specified above.

Regarding claim (5), Complainant indicates that on February 5, 2014, she asked S1 that she be exempted from the Capstone Exercise, which was scheduled to take place in April 2014, due to her personal conflict (taking a course at the university). S1 denied the request. Later in March 2014, she again asked S1 that she be exempted from the April 2014 exercise because she needed to visit her farther-in-law who was ill. S1 approved the request. Complainant acknowledged that she was excused from the exercise and did not participate in the April 2014 exercise.

Regarding claim (6), S2 indicated that he appointed Complainant to serve on the health and safety committee because she worked well with others and had good observational skills. S2 indicated that he appointed other employees, i.e., GS-12 to GS-15, Environmental Protection Specialists, Physical Scientists, and a Health Physicist, to serve on the health safety committee as their collateral duty in 2013 and 2014.

Regarding claim (7), S1 indicated that all his CPT staff, including Complainant, were required to attend the dry run training session. At the time of the incident, S1 was informed that the health and safety committee did not have a quorum and asked him if his CPT staff could attend the meeting. S1 thus pulled all three staff members, including Complainant, from the dry run training to take one hour off from the training to attend the committee meeting. S1 indicated that he and all three CPT members, including Complainant, attended the committee meeting.

Regarding claim (8), D1 indicated that Complainant was assigned health and safety purchase card duties for NCRFO, not CRPR,<sup>2</sup> because: her previous purchase card duties as the purchase card holder for NCRFO's radon program had ended; she was an experienced purchase card holder; and there had not been a lead health and safety purchase card holder for over two years due to the former holder's resignation.

Regarding claim (9), S1 indicated that Complainant wanted to take her lunch earlier than usual which would cause her to miss the last hour of a morning training session. When S1 asked her to explain the reason, Complainant told him that it was for her medical appointment. S1 immediately approved the request which Complainant acknowledged.

Regarding claim (10), S1 indicated that on that incident date, he asked Complainant if she could make the purchase over the telephone since he needed to purchase material for a training that week. Complainant refused and told S1 that she had to be present in order to present her card at the time of the purchase. Complainant believed that S1's request was to set her up for discipline in violation of the Agency purchase card policy. Complainant, S1, and SS1 then went to the store to make the purchase. S1 stated that it was his understanding that purchases with credit card could be made either over the telephone or in person and Complainant did make other purchases over the telephone. There is no evidence Complainant was subjected to any adverse action as a result of this incident.

Regarding claim (11), S1 indicated that he merely told Complainant that another staff member asked him to find out the status of payment on a bill and if the payment could be processed soon. S1 stated that he was not aware that Complainant's purchase card account had been suspended temporarily due to her failure to complete mandatory training at that time.

Regarding claim (12), SS1 denied the December 30, 2014 incident. SS1 indicated that he was on leave from December 19, 2014, to January 4, 2015. SS1 was not in Complainant's supervisory chain. Although there is a statement from a coworker that contradicts SS1, that is the only evidence in support of Complainant's claim. Under the circumstances, we can not find that Complainant proved discrimination or retaliation by a preponderance of the evidence for claim (12).

Regarding claim (13), SS1 stated that he did not recall the incident but he usually greeted employees.

After a review of the record, we find that Complainant failed to show that the Agency's articulated reasons were a mere pretext for discrimination. Regarding the discrete incidents, we find that Complainant failed to show that any of the actions were motivated by discrimination. Regarding her claim of harassment, considering all the events, we find that Complainant failed to show that it was related to any protected basis of discrimination. Based on the foregoing, we find that

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<sup>2</sup> The Agency, undisputed by Complainant, indicates that it erred identifying claim (8) as it involved CRPR when it actually involved NCRFO.

Complainant has failed to show that the Agency's action was motivated by discrimination as she alleged.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's finding of no discrimination based on race and reprisal for prior EEO activity. The Agency's final decision, however, is MODIFIED in accordance with this decision and the ORDER herein.

### ORDER

Unless otherwise indicated, the Agency is ordered to complete the following remedial actions within 60 days of the date this decision is issued:

1. The Agency shall post a notice in accordance with the paragraph herein.
2. The Agency shall provide in-person or interactive training to its EEO management officials in the Office of Civil Rights regarding their responsibilities concerning case processing under 29 C.F.R. Part 1614.

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.

### POSTING ORDER (G0617)

The Agency is ordered to post at its Office of Civil Rights facility located in Washington, D.C. copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the



compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

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 (M0617)

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. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. 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. Complainant's request 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 agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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 (T0610)

This decision affirms the Agency’s final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, **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:



Carlton M. Hadden, Director  
Office of Federal Operations

November 29, 2018

Date