



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

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

v.

W. Thomas Reeder,  
Director,  
Pension Benefit Guaranty Corporation,  
Agency.

Request Nos. 0520180554; 0520180555

Appeal Nos. 0120181496; 0120181497

Agency No. 18007F

**DECISION ON REQUEST FOR RECONSIDERATION**

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in consolidated EEOC Appeal Nos. 0120181496 and 0120181497 (July 12, 2018). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c).

In his underlying complaints, Complainant alleged that the Agency subjected him to unlawful discrimination on the bases of his race (African-American), sex (male), color (Black), age and in reprisal for prior protected EEO activity when, on October 17, 2017, he was informed that he was not selected for promotion to the Financial Management Specialist, GS-0501-13, position posted under Vacancy Announcement No. FOD-CCD-2017-0003 and 0002; and on January 8, 2018, he was informed that he was again not selected for promotion when the Agency made a second selection from the same vacancy announcement.

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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.

In its final decision, the Agency dismissed the complaints, pursuant to 29 C.F.R. § 1614.107(a)(4), as barred by the doctrine of election of remedies since Complainant had filed grievances challenging the non-selections prior to filing his EEO complaints. On appeal, the Commission reversed the Agency's dismissals, finding 29 C.F.R. § 1614.107(a)(4) to be inapplicable because the collective bargaining agreement explicitly excluded from the grievance process non-selection decisions of the type involved here.

In its request for reconsideration, the Agency argues that § 1614.107(a)(4) applies because, by its terms, that section requires dismissal of any EEO complaint filed after a complainant has previously "raised" the same matter in a negotiated grievance procedure that permits allegations of discrimination. The Agency's position is not well taken and ignores directly apposite Commission precedent. The Commission has held that where, as here, a matter raised in a grievance procedure is held to be nongrievable, § 1614.107(a)(4) is inapplicable and an EEO complaint raising the same claim may not be dismissed on election of remedy grounds. See, Johnson v. Dep't of Transp., EEOC Appeal No. 0120101620 (Aug. 17, 2010) ("where an employee files a grievance prior to filing an EEO complaint, but the grievance was denied on the grounds that the subject matter of the grievance was not a grievable matter, complainant did not make a true election."). We find that Complainant's arguments do not demonstrate that the consolidated appellate decision involved a clearly erroneous interpretation of material fact or law or will have a substantial impact on the policies, practices, or operations of the Agency. Accordingly, we find that Complainant has failed to demonstrate that the Commission should reconsider its appellate decision.

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to DENY the request. The decision in EEOC Appeal Nos. 0120181496 & 0120181496 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request

As provided in the statement entitled “Implementation of the Commission's Decision,” the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant. 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

#### 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.

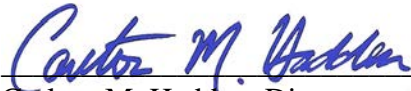
#### COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

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:



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Carlton M. Hadden, Director  
Office of Federal Operations

December 20, 2018

Date