



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

[REDACTED]
Heath P.,¹
Complainant,

v.

Richard V. Spencer,
Secretary,
Department of the Navy,
Agency.

Request No. 2019000048

Appeal No. 0120162808

Hearing No. 551-2015-00061X

Agency No. DON-14-4523A-01590

DECISION ON REQUEST FOR RECONSIDERATION

BACKGROUND

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120162808 (July 17, 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).

On June 2, 2014, Complainant filed a formal complaint in which he alleged, in pertinent part, that the Agency subjected him to discrimination based on sex/sexual orientation and in reprisal for previous EEO activity when it terminated him from employment on March 21, 2014. After a hearing, an EEOC Administrative Judge (AJ) found that Complainant's second-level supervisor

¹ 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.

(S2) was partly motivated to terminate him because of his EEO activity. However, the AJ also found that the Agency proved that it would have nevertheless terminated Complainant for legitimate, nondiscriminatory reasons apart from its unlawful retaliatory motive. Consequently, the AJ determined that Complainant was entitled to declaratory and injunctive relief, but not personal relief, such as reinstatement. The AJ ordered the Agency to pay Complainant any attorney's fees and costs he incurred with this complaint; to provide a neutral reference for Complainant when contacted by prospective employers; to conduct two hours of EEO training for management officials, supervisors, and employees at the Puget Sound Naval Shipyard and Intermediate Facility Shop 38 where the discrimination occurred; and to post a notice of the finding of discrimination.

The Agency fully implemented the AJ's decision in a final order. Complainant appealed the AJ's decision to the Commission, challenging the AJ's determination that the Agency proved that it would have nonetheless terminated him absent discriminatory or retaliatory motives. In our previous decision, the Commission affirmed the AJ's findings. Heath P. v. Dep't of the Navy, EEOC Appeal No. 0120162808 (July 17, 2018). However, the Commission modified the AJ's order of relief by increasing the mandated EEO training for Shop 38 managers and employees from two hours to eight hours, and by specifying that the training must be completed within 60 days of the issuance of the Commission's decision. Additionally, the Commission repeated the AJ's order that the Agency pay Complainant all costs incurred with his complaint, consider taking appropriate disciplinary action against S2, provide a neutral reference for Complainant when contacted by prospective employers, and post a notice of the finding of discrimination.

RECONSIDERATION REQUEST

In its request for reconsideration, the Agency requests that the Commission decrease the ordered eight hours of EEO training to two hours. The Agency contends that the Commission's modification to the order adding six additional hours of training beyond the AJ's order will have a substantial impact on Agency operations because Shop 38 performs all the Marine Machinery Mechanic functions for the shipyard's mission, which is part of overall ship readiness for national security. The Agency maintains that Shop 38 is comprised of approximately 930 employees, with more than 100 of these employees deployed overseas in places such as Singapore and Japan. The Agency notes that it has already provided 1,860 hours of EEO training in compliance with the AJ's order, as well as an additional 930 hours. The Agency contends that training 930 Shop 38 employees has been disruptive to its operations because of the chain impact that flows to other shops and sailors when Shop 38 cannot perform its mechanical functions on military ships.

Additionally, the Agency requests that if the Commission determines that two hours of training is insufficient, the additional six hours of training should be limited to S2 and his supervisors, instead of the remainder of Shop 38. Alternatively, the Agency requests that the Commission add six months to the deadline, which would "soften the substantial impact" that six more hours of training will have on its operations.

ANALYSIS AND FINDINGS

After reconsidering the previous decision and the entire record, the Commission finds that the Agency's 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. In so finding, we note that the Agency fully implemented and did not appeal the AJ's decision, which ordered EEO training for Shop 38 management officials, supervisors, and employees.

However, we reopen on our own motion to clarify our Order. Under EEO Management Directive 110 (MD-110), Chapter 9, Section IX(A)(2), an Agency will be afforded 120 days to provide in full whatever relief has been ordered. MD-110, Chap. 9, sec. IX(A)(2) (Aug. 5, 2015). While the possibility of shortening the usual time-frame is contemplated in that section, see id., we find that a contraction of time is not warranted in this case. Further, the primary purpose of the training order is to correct a contributing factor to the occurrence of discrimination, i.e., a lack of awareness on the part of the responsible management official(s) regarding the rights and obligations imposed by EEO laws. We may order training of other personnel to ensure that they also are aware of such rights and obligations. While we retain the provision of the Order requiring all Shop 38 management and supervisory officials to receive eight hours of training, we determine that it is sufficient in this case for the Agency to provide two hours of training to Shop 38's non-supervisory, non-managerial personnel.

CONCLUSION

After reconsidering the previous decision and the entire record, it is the decision of the Commission to reopen EEOC Appeal No. 0120162808 our own motion to MODIFY the Order therein. The decision in EEOC Appeal No. 0120162808 otherwise 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 consistent with this decision and as set forth below.

ORDER

To the extent it has not already done so:

1. Within 60 calendar days from the date this decision is issued, the Agency shall pay Complainant all costs which he incurred in connection with this complaint;
2. The Agency shall provide Complainant a neutral reference in the event that any subsequent potential employer contacts the Navy as an employment reference;
3. Within 120 calendar days from the date this decision is issued, the Agency shall provide at least eight (8) hours total of EEO training to all management officials at the Puget Sound Naval Shipyard and Intermediate Maintenance Facility Shop 38 on the provisions of Title VII of the Civil Rights Act of 1964, including the right to work in an environment free from reprisal and sex (including sexual orientation) discrimination and the right to use the

EEO system to remedy violations of EEO laws. The training shall consist of in-person or computer-based interactive training.

4. Within 120 calendar days from the date this decision is issued, the Agency shall provide at least two (2) hours total of EEO training to all non-management/supervisory employees at the Puget Sound Naval Shipyard and Intermediate Maintenance Facility Shop 38 on the provisions of Title VII of the Civil Rights Act of 1964, including the right to work in an environment free from reprisal and sex (including sexual orientation) discrimination and the right to use the EEO system to remedy violations of EEO laws. The training shall consist of in-person or computer-based interactive training.
5. The Agency shall consider taking appropriate disciplinary action against S2. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
6. The Agency shall post a notice in accordance with the paragraph entitled "Posting Order."

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 to show that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Puget Sound Naval Shipyard and Intermediate Maintenance Facility Shop 38 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.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

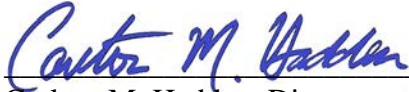
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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.

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

February 14, 2019

Date