



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

[REDACTED]
Taryn S.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2019000439

Appeal No. 0120162172

Agency No. 200P06122015102987

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120162172 (August 14, 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).

Complainant worked as a Medical Support Assistant in the Department of Veterans Affairs' (VA's) Northern California Health Care System at the Chico Outpatient Clinic in Chico, California. On June 3, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (Caucasian), sex (female), disability, and reprisal (opposing sexual harassment and participation in the present EEO complaint) when:

(1) on April 14, 2015, a physician for the Primary Care Women's Health Clinic ("GYN") threatened Complainant when he gave her a hug, forcibly grabbed her neck, kissed her

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.

with his tongue, grabbed the belt loops of her pants, and told her she was turning him on and they needed to get together;

(2) on April 17, 2015, a Supervisory Medical Support Assistant (“S1”) informed her that a Human Resources Specialist (“HRS”) directed her (S1) to provide information from Complainant’s medical records;

(3) on April 22, 2015, she was belittled when a Social Worker (“SW”) informed her that the Administrative Officer/Patient Advocate (“PA”) commented to him that she (PA) heard that SW was intimate with Complainant;

(4) on May 18, 2015, she was belittled when informed from a VA police report that the Clinic’s Physician Manager stated that Complainant was an unstable person who might be making the sexual harassment complaint to get time off from work;

(5) on May 18, 2015, she was belittled when informed from a VA police report that a nurse (“LVN”) stated that Complainant was cutesy and flirty with GYN; and the previous summer, Complainant went to GYN’s office, stated that she had something to show him, and subsequently pulled her pants down;

(6) on May 18, 2015, a Nurse Manager (“NM”) threatened Complainant with disciplinary action for contacting other nursing and clinical staff regarding her claims;

(7) on May 18, 2015, she was belittled when informed from a VA police report that LVN stated that Complainant was attracted to GYN because he was young and successful;

(8) on May 18, 2015, she became aware from a VA police report that LVN accused Complainant of setting up GYN because she was lazy, did not want to work, and was looking for a way out; and

(9) on May 18, 2015, she became aware from a VA police report that LVN stated that Complainant’s ex-husband was African-American and that her son was mixed-race.

Our prior decision in EEOC Appeal No. 0120162172 reversed the Agency’s final decision and concluded that the evidence of record established that Complainant had proven that she was subjected to discrimination and harassment as alleged. In doing so, the prior decision reversed the Agency’s dismissal of claims 4, 5, 7, 8 and 9 for failure to state a claim, and determined that these allegations were relevant to Complainant’s overall assertion that management officials and co-workers engaged in retaliatory conduct by spreading false rumors, sharing her personal medical information and threatening discipline to thwart the investigation of Complainant’s sexual harassment complaint.

The lengthy appellate decision detailed its comprehensive reasoning, fully supported by the evidence of record, that led to the conclusion that responsible Agency officials failed to act appropriately when learning of GYN's inappropriate behavior towards employees. The decision found that Complainant was subjected to harassment and unlawful reprisal, and that her medical records were inappropriately accessed.

In its request for reconsideration, the Agency expresses its disagreement with the appellate decision, including the reversal of the dismissal of claims 4, 5, 7, 8, and 9. In doing so, they have essentially raised the same arguments previously made during the original appeal. We emphasize that a request for reconsideration is not a second appeal to the Commission. See EEO MD-110, Ch. 9, § VII.A. Rather, a reconsideration request is an opportunity to demonstrate that the 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. The Agency has not done so here.

It also asks that the relief ordered be modified to eliminate those provisions requiring EEO training for certain named individuals, consideration of disciplinary action of certain named individuals, and the placement of the appellate decision in GYN's Official Personnel File. We, however, see no adequate justification proffered to support the modification of the remedies ordered in our initial 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 No. 0120162172 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

The Agency is ordered to take the following remedial action to the extent that it has not already done so:

1. Within ninety (90) days of the date this decision is issued, the Agency shall restore to Complainant any and all sick leave, annual leave, and leave without pay, taken as a result of the Agency's discriminatory or retaliatory actions set forth above.
2. Within ninety (90) days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision with appeal rights addressing the issues of compensatory damages no later than thirty (30) days after the completion of the investigation.

3. Complainant, through counsel, shall also submit a request for attorney's fees and costs in accordance with the Attorney's Fees paragraph set forth below. No later than thirty (30) days after the Agency's receipt of the attorney's fees statement and supporting affidavit, the Agency shall issue a final agency decision with appeal rights addressing the issues of attorney's fees and costs. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.
4. Within thirty (30) days of the date this decision is issued, the Agency shall send a copy of this decision to the Department of the Army at Fort Sam Houston, San Antonio, Texas, for placement in GYN's Official Personnel Folder.
5. Within ninety (90) days of the date this decision is issued, the Agency shall provide at least sixteen (16) hours of in-person or interactive EEO training to the following individuals: (a) S1; (b) the entire Human Resources Department at the Chico VA and any other Human Resource Department that was involved with Complainant's complaints of sexual harassment and retaliatory harassment; (c) the responsible Physician Manager; (d) NM; (e) S2; (f) LVN; and (g) PA to ensure that they become aware, and continue to be aware of, their obligations, responsibilities, and rights under EEO laws and regulations, including sexual harassment, retaliatory harassment by supervisors and coworkers, and the protection and handling of confidential medical information.
6. Within sixty (60) days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1, S2, the responsible Physician Manager, NM, HRS, SHRS, PA, and LVN. 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 or employees have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
7. The Agency shall immediately post a notice in accordance with the paragraph below.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at Department of Veteran Affairs (VA) Northern California Health Care System at the Chico Outpatient Clinic in Chico, California, 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).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she 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 the date this decision was issued. 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 (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.

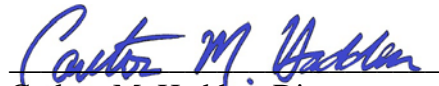
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (P0610)

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 5, 2019

Date