



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

[REDACTED]

Jody L.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Western Area),
Agency.

Appeal No. 2019001860

Agency No. 4E-800-0113-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated October 15, 2018, dismissing a formal complaint of unlawful 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.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Clerk in Littleton, Colorado.

On September 19, 2018, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of race (Hispanic), national origin (Mexican), sex (male), and color when on May 11, 2018, he was issued a Letter of Warning (LOW).

In its October 15, 2018 final decision, the Agency dismissed the formal complaint for failure to state a claim. The Agency reasoned that the Letter of Warning was reduced to an official discussion in the grievance process.

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.

The instant appeal followed. On appeal, Complainant asserts that he received discipline based on his protected classes. In addition, he asserts that the EEO counseling he received on this matter was not proper.

ANALYSIS AND FINDINGS

The Agency dismissed the formal complaint for failure to state a claim reasoning that the LOW was reduced to an official discussion. We find, however, that this matter is more properly analyzed as to whether Complainant's claim has been rendered moot.

The regulation set forth at 29 C.F.R. § 1614.107(a)(5) provides for the dismissal of a complaint when the issues raised therein are moot. To determine whether the issues raised in Complainant's complaint are moot, the factfinder must ascertain whether: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur; and (2) interim relief or events have completely or irrevocably eradicated the effects of the alleged discrimination. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); Kuo v. Dep't of the Navy, EEOC Request No. 05970343 (July 10, 1998). When such circumstances exist, no relief is available and no need for a determination of the rights of the parties is presented.

We acknowledge the record contains a copy of a grievance agreement dated June 12, 2018. Therein, the record reflects that the LOW would be reduced to an official discussion effective June 12, 2018. However, the record is devoid of documentation (such as an affidavit) reflecting that the LOW was actually expunged from Complainant's file. In addition, a review of the record reflects that Complainant has consistently requested compensatory damages as a remedy throughout the EEO process.

The Commission has held that an agency must address the issue of compensatory damages when a complainant shows objective evidence that he has incurred compensatory damages, and that the damages are related to the alleged discrimination. Jackson v. U.S. Postal Serv., EEOC Appeal No. 01923399 (Nov. 12, 1992), req. for recons. den, EEOC Request. No. 05930306 (Feb. 1, 1993). Should complainant prevail on this complaint, the possibility of an award of compensatory damages exists. See Glover v. U.S. Postal Serv., EEOC Appeal No. 01930696 (Dec. 9, 1993). Because Complainant requested compensatory damages, the Agency should have requested Complainant provide some objective proof of the alleged damages incurred, as well as objective evidence linking those damages to the adverse actions at issue. See Allen v. U.S. Postal Serv., EEOC Request No. 05970672 (June 12, 1998). In the instant matter, the Agency failed to address the issue of compensatory damages.

We REVERSE the Agency's final decision dismissing Complainant's complaint and we REMAND this matter to the Agency for further processing in accordance with the Order below.

ORDER (E0618)

The Agency is ordered to process the remanded claim in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claim **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.

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 (R0610)

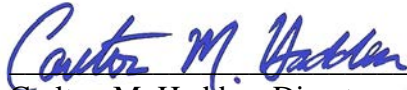
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:



Carlton M. Hadden, Director
Office of Federal Operations

April 3, 2019

Date