



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

[REDACTED]
Willie P.,¹
Complainant,

v.

Todd Hunter,
Acting Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2023000477

Hearing No. 480-2020-00563X

Agency No. 200P-0691-2019104667

DECISION

On November 29, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 30, 2022 final order concerning an equal employment opportunity (EEO) 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

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.

ISSUES PRESENTED

Whether Complainant is entitled to further monetary relief and a new position.

BACKGROUND

Complainant worked for the Agency as a Registered Nurse at the Agency's facility in Los Angeles, California. During his time at the Agency, Complainant alleged that he was subjected to harassment and constructive discharge based on sex (male, LGBT+), religion (Agnostic), and disability when:

1. Beginning around April 2019, Complainant's co-workers made derogatory and offensive comments referencing his sexuality;
2. On or around April 18, 2019, and May 16, 2019, management failed to take action when informed that Complainant's co-workers uttered derogatory remarks about his sexuality;
3. On May 16, 2019, Chief Nurse AT informed Complainant that a fact-finding was going to be conducted into rumors of Complainant's sexuality;
4. On May 28, 2019, AT failed to act after receiving reports that Complainant's co-workers made offensive remarks about his sexuality;
5. On May 28, 2019, AT pressured Complainant to make untruthful statements about his co-workers;
6. On or around July 16, 2019, co-worker CC handed Complainant printed anti-homosexual excerpts from the Bible and
7. On or around July 16, 2019, Complainant's peers subjected him to prayers during an employee gathering.

On September 27, 2019, Complainant filed a formal EEO complaint. After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing July 18 – 20, 2022, and issued a decision on July 25, 2022.

In her decision, the AJ found that the Agency had subjected Complainant to a hostile work environment when it subjected him to harassment on the bases of sex (male), sexual orientation (LGBT), and religion (Agnostic). The AJ found that Complainant did not establish a claim of hostile work environment based on disability or a constructive discharge and found in favor of the Agency on those claims. More specifically, Complainant failed to establish that his working conditions were so intolerable that he was compelled to resign. The AJ did not doubt that Complainant found his work environment stressful and unpleasant. However, the AJ did not find that Complainant was compelled to resign on June 16, 2019. The AJ stated that she had to review the working conditions at the time Complainant submitted his resignation.

The AJ awarded the Complainant non-pecuniary damages for the emotional impact of the discrimination in the amount of \$150,000.00 (One Hundred Fifty Thousand Dollars). Complainant was also awarded Attorney's Fees of \$56,372.50 (Fifty-Six Thousand Three Hundred Seventy-Two Dollars and Fifty Cents), plus Costs of \$900.60 (Nine Hundred Dollars and Sixty Cents), for a total of \$57,273.10 (Fifty-Seven Thousand Two Hundred Seventy-Three Dollars and Ten Cents). On August 30, 2022, the Agency issued a final Agency decision that incorporated the finding of the AJ and ordered the payment of attorney's fees and compensatory damages to be paid within 60 days of the date of the Final Order. The 60-day deadline of the Final Order fell on Sunday, October 30, 2022. On October 31, 2022, Complainant filed the instant appeal, followed, on November 29, 2022, by a supporting brief. Complainant alleged the payment was credited to him on November 1, 2022. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the lateness of the Agency's payment to him, entitles him to a penalty against the Agency. Complainant argues that the Agency's failure to pay him by October 31, 2022, should result in a late payment fee of interest on the total damages, attorney's fees, and costs. Complainant also argues that additional relief in the form of placement in a position he would have occupied, absent the discrimination.

The Agency opposes Complainant's appeal.

ANALYSIS

Section 717(d) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16(d), as amended by section 114(2) of the Civil Rights Act of 1991, Pub. L. 102-166 (Nov. 21, 1991), provides that “the same interest to compensate for delay in payment shall be available [to federal employees] as in cases involving nonpublic parties.” By enacting the 1991 amendments, the Congress expressly waived the federal government’s sovereign immunity from interest for delay in the payment of all monetary awards to victims of employment discrimination in the federal government to same extent that any non-federal entity would be subject to. Charles E. v. Dep’t of Justice, EEOC Appeal No. 07 20180006 (July 19, 1918). Accordingly, Petitioner is entitled to any interest that accrued because of the Agency’s delay in awarding backpay, compensatory damages, attorneys’ fees that resulted in a loss of value of those obligations. Madelaine G. v. Dep’t of State, EEOC Appeal No. 2020000241 & Petition No. 2019005970 (Sept. 2, 2020).

The Commission has held that, “[i]f payments were made with a reasonable time, however, the Commission will not award interest.” Homer B. v. Dep’t of the Army, EEOC Appeal No. 0120161342 (May 24, 2018) citing Complainant v. U.S. Postal Serv., EEOC Request No. 0520140042 (Mar. 28, 2014) (substantial compliance found and therefore no interest awarded).

Payment was credited to Complainant on November 1, 2022. Pursuant to 29 C.F.R. § 1614.604(g), the first day counted shall be the day after the event from which the time period begins, and the last day of the period shall be included, unless it falls on a Saturday, Sunday or Federal holiday. The Final Order was dated August 30, 2022, and the first day in which the 60-day deadline was August 31, 2022, making the deadline Sunday, October 30, 2022. However, because the last day fell on a Sunday, the final day was October 31, 2022. The Agency asserts that the payment was issued on October 31, 2022, to Complainant’s bank, but the payment was credited on November 1, 2022, an objectionably reasonable amount of time from October 31, 2022. Further, Complainant has not shown that the Agency did not make payment on October 31, 2022, and was subsequently credited the next day, on November 1, 2022. We find that Complainant is not entitled to any additional compensation. The Agency remitted payment in a reasonable time period from the deadline, or possibly on the day of the deadline.

Finally, Complainant was unsuccessful on his claim of constructive discharge and is not entitled to placement in a position related to this claim.

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 final order.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 their 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

February 24, 2025
Date