



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

████████████████████  
Lawrence L.,<sup>1</sup>  
Complainant,

v.

Isabel Casillas Guzman,  
Administrator,  
Small Business Administration,  
Agency.

Appeal No. 2023002216

Hearing No. 420-2021-00167X

Agency No. 12-20-008

DECISION

Following its February 27, 2023, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ.

ISSUE PRESENTED

Did the EEOC Administrative Judge abuse his discretion when he sanctioned the Agency with a default judgment in favor of Complainant for failing to timely upload the hearing transcript to FedSEP?

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Loan Servicing Assistant in Birmingham, Alabama.

---

<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.

Complainant testified that he has been diagnosed with both anxiety and depression and that, as a result, he has problems communicating. He stated his psychological conditions decrease his health status both mentally and emotionally. Complainant stated that, on the job, with the customers calling in daily and with some of them being so forceful, it sometimes made him hyperventilate, resulting in him having to get up from his desk and either go to another room or outside to get himself together. Complainant stated that he was taking four different medications for his anxiety and depression.

On March 20, 2020, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him based on disability and in reprisal for prior protected EEO activity. By letter dated July 2, 2020, the Agency accepted the formal complaint for investigation and determined that the formal complaint was comprised of the following claim:

On November 24, 2019, Complainant was informed his request to be removed from telephone duty as a reasonable accommodation was denied.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of the right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing.

On January 27, 2022, the AJ issued a Prehearing Conference Order. Therein, the AJ set forth that the hearing would be held on February 28, 2022. The Order also set forth, in pertinent part, “[t]he Agency shall upload the hearing transcript to FedSEP no later than 14 days after the hearing concludes.” Finally, the Order set forth that “[f]ailure to...comply with the instructions of this order is cause for default judgment or dismissal of the hearing request.”

The AJ held a hearing on February 28, 2022. On May 26, 2022, the AJ issued an Interim Decision granting a default judgment in favor of Complainant. Specifically, the AJ reasoned, “the Agency was instructed to upload the hearing transcript to FedSEP no later than 14 days after conclusion of the hearing to be held on February 28, 2022. The hearing took place as scheduled but the Agency has still not uploaded the hearing transcript. The Agency was advised in the prehearing conference order that failure to comply with the instructions of the order would be cause for default judgment.” The AJ found that Complainant was entitled to make-whole relief and stated that Complainant should file a petition for attorney’s fees and damages.

On June 2, 2022, subsequent to the AJ’s May 26, 2022, decision issuing judgment in favor of Complainant, the Agency filed a Motion for Reconsideration of Interim Decision. Therein, the Agency requested that the AJ rescind his decision issuing default judgment in favor of Complainant. The Agency’s attorney asserted that the hearing transcript was sent to the Agency via email on March 14, 2022, and that it was an unintentional oversight that he did not upload the hearing transcript in a timely manner. The Agency attorney asserted that he misunderstood and thought the court reporting service was simultaneously supplying the AJ with the hearing transcript.

He asserts that he realized for the first time on May 26, 2022 (date of the AJ Interim Decision issuing default judgment in favor of Complainant), that the hearing transcript was not provided to the AJ by the Court Reporting Service. He further asserted that shortly thereafter the Agency uploaded the hearing transcript to FedSEP on May 31, 2022.

On June 3, 2022, the AJ sent an email to the parties instructing Complainant to respond to the Agency's motion in conjunction with his petition for damages and attorney's fees.

On June 16, 2022, Complainant filed his request for damages and petition for attorney's fees. The record before us, however, does not contain a response from Complainant regarding the Agency's Motion for Reconsideration. However, the Agency in its Response Opposing Complainant's Request for Damages and Attorney's Fees sets forth that Complainant's counsel on June 6, 2022, sent an email to the AJ and Agency Counsel stating that Complainant should prevail on the merits and opposed the Agency's Motion for Reconsideration. The Agency attorney stated that since Complainant did not file his response via FedSEP/portal, per the AJ's Order, there is no copy of it in the record.<sup>2</sup>

The Agency in its Response Opposing Complainant's Request for Damages and Attorney's Fees (Agency Response) set forth that the AJ's Interim Decision issuing default judgment in Complainant's favor was the only communication that the Agency had with anyone regarding the untimeliness of the transcript. Agency's counsel stated that neither the AJ nor Complainant's counsel contacted him regarding the transcript not being filed by March 14, 2022. Agency Response at 2 n. 2.

On February 14, 2023, the AJ issued a decision on damages and attorney's fees and awarded, inter alia, \$10,000.00 in non-pecuniary compensatory damages and \$8480.00 in attorney's fees. In the February 14, 2023 decision, the AJ did not expressly address the Agency's Motion for Reconsideration seeking the AJ to rescind his default judgment in favor of Complainant.

On February 27, 2023, the Agency issued a final order rejecting the AJ's default judgment in favor of Complainant and filed the instant appeal. On appeal, the Agency argues that the AJ abused his discretion in issuing default judgment in favor of Complainant. Specifically, the Agency states that the AJ did not issue an Order to Show Cause and the Agency did not have an opportunity to respond and show good cause for the delay in uploading the transcript prior to the AJ issuing the sanction of default judgment. The Agency states, "[w]hile the Agency was able to file its Motion for Reconsideration of the Interim Decision, a motion for reconsideration of an interim order imposing default judgement is substantially different than an opportunity to explain why sanctions should not be imposed." The Agency also set forth that default judgment is too harsh of a sanction in this matter.

---

<sup>2</sup> The record contains a copy of the AJ's June 14, 2021, Initial Conference and Scheduling Order. Therein, the AJ set forth, in pertinent part, that "all submissions must be filed via email *and* FedSEP/Portal." (Emphasis added).

Finally, the Agency set forth that the AJ abused his discretion of issuing a monetary award to Complainant without first determining if Complainant established a prima facie case of discrimination.

Complainant does not submit a statement or brief in opposition to the Agency's appeal.

### STANDARD OF REVIEW

While a hearing was held in this matter, the AJ did not issue a decision on the merits but rather issued default judgment in Complainant's favor as a sanction against the Agency. Thus, we find a *de novo* review is the proper standard of review in the instant matter. In essence, we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's factual conclusions and legal analysis. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110) at Chap. 9 § VI. A. (Aug. 5, 2015) sets forth that a *de novo* standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that the EEOC "review the documents, statements, and testimony of the record, including any timely and relevant submissions of the parties, and...issue its decision based on the Commission's own assessment of the record and its interpretation of the law."

### ANALYSIS AND FINDINGS

We find that default judgment was not an appropriate sanction in this matter. The Commission has held that sanctions, while corrective, also act to prevent similar misconduct in the future and must be tailored to each situation, applying the least severe sanction necessary to respond to the party's failure to show good cause for its actions, as well as to equitably remedy the opposing party. Rountree v. Dep't of the Treasury, EEOC Appeal No. 07A00015 (July 13, 2001); Hale v. Dep't of Justice, EEOC Appeal No. 01A03341 (Dec. 8, 2000). The Commission has emphasized that the purpose of the sanction is to deter the underlying conduct of the non-complying party. See Barbour v. U.S. Postal Serv., EEOC Appeal No. 07A30133 (June 16, 2005).

The factors pertinent to "tailoring" a sanction, or determining whether a sanction is, in fact, warranted include: 1) the extent and nature of the of non-compliance, including justification presented by the non-moving party; 2) the prejudicial effect of the non-compliance on the opposing party; 3) the consequences resulting from the delay in justice, if any, and 4) the effect on the integrity of the EEO process. Gray v. Dep't of Def., EEOC Appeal No. 07A50030 (March 1, 2007); Voysest v. Soc. Sec. Admin., EEOC Appeal No. 01A35340 (Jan 18, 2005).

The Commission has, on occasion, issued default judgment in cases where an Agency failed to timely submit the complete record to the Commission. We determine, however, that those cases are distinguishable from the instant matter.

For example, in Amina W. v. Dep't of Energy, EEOC Appeal No. 0120113823 (Nov. 17, 2015), req. for recons den., EEOC Request. No. 0520160143 (Oct. 12, 2017) we issued default judgment in favor of a complainant after the agency failed to provide us with the hearing transcript despite repeated requests and failed to respond to our Notice to Show Good Cause Why Sanctions Should Not Be Imposed. In the instant matter, the AJ sanctioned the Agency based on this single delay in uploading the hearing transcript, while in Amina W., the agency “repeatedly” failed to comply with EEOC orders and never produced the hearing transcript, even subsequent to our expressed request to do so in its Order to Show Cause. Moreover, in the instant matter, the record reflects that the Agency uploaded the transcript within a few days of receiving the AJ’s Interim Decision issuing a default judgment against the Agency. Significantly, the Agency sets forth that it did not receive any notice *prior* to the AJ’s Interim Decision (from the AJ or Complainant) that the Agency was delayed in uploading the hearing transcript or requesting a copy of the transcript. We find that default judgment was too harsh of a sanction for the specific circumstances in this matter.

We further find that the AJ did not provide the Agency with an opportunity to respond regarding its delay in providing the hearing transcript prior to issuing his sanction, default judgment in favor of Complainant, by issuing the Agency a Show Cause Order. Equal Employment Opportunity Directive for 29 C.F.R. Part 1614, Chap. 7, Sect. III(A) (Aug. 5, 2015) requires that an AJ issue a Show Cause Order before issuing sanctions. See also Miguelina S v. Dep’t of Justice, EEOC Request No. 2019002953 (Jan. 27, 2020). Based on these specific circumstances and given that a hearing has already taken place, we remand this matter in order for a decision to be issued by an EEOC AJ on the merits of the complaint.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we VACATE the default judgment in this case and REMAND this matter back to an EEOC Administrative Judge to issue a decision on the merits of the complaint in accordance with the ORDER below.

### ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency shall resubmit the complete complaint file and a copy of this appellate decision to the EEOC’s Birmingham District Office Hearings Unit. Thereafter, the assigned Administrative Judge shall issue a decision on the merits of the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

### IMPLEMENTATION OF THE COMMISSION’S DECISION (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

#### 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 (R0124)

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 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. **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

January 29, 2024  
Date