



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

[REDACTED]  
Julianna H.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2023002918

Hearing No. 490-2019-00059X

Agency No. 1G-721-0016-18

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.504(b), concerning the Agency's noncompliance with its January 13, 2022, final order, which implemented an EEOC Administrative Judge (AJ)'s finding of discrimination and award of remedies under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk at the Agency's Processing and Distribution Center in Little Rock, Arkansas.

On July 24, 2018, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African American) and sex (female) when:

1. On June 16, 2018, Complainant was sent home; and
2. On June 17, 2018, Complainant was issued a termination letter.

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<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 timely requested a hearing from an EEOC Administrative Judge (AJ). A hearing was held on October 13, 2021. Following the hearing, the AJ issued a bench decision on October 19, 2021, in favor of Complainant on both claims. To remedy the finding of discrimination, the AJ ordered the Agency to:

1. Reinstate Complainant to her position.
2. Pay back pay and benefits with interest on a make-whole basis for any loss of earnings Complainant suffered as a result of the discrimination, less interim earnings as appropriate, retroactive to the date Complainant's employment was terminated. Back pay includes all forms of compensation, benefits, and privileges of employment including annual leave, sick leave, and retirement contributions.
3. Provide eight hours of EEO training to the responsible management officials and consider disciplining them.
4. Pay Complainant a total of \$21,000.00 in nonpecuniary compensatory damages.

On December 9, 2021, the AJ issued a written decision entering judgment in favor of the Agency, which incorporated the bench decision by reference. The Agency subsequently issued a final order on January 13, 2022, fully implementing the AJ's decision.

On July 18, 2022, the Agency's Senior Labor Relations Specialist in the Arkansas-Oklahoma District emailed Complainant a copy of the Agency's calculations on her entitlement to backpay. Complainant responded the following day and inquired about her leave. After the Agency failed to resolve the issue to her satisfaction, Complainant filed the instant appeal on April 14, 2023, regarding her leave. In filing her appeal, Complainant not only challenges the Agency's failure to restore her leave, but also seeks \$16,000.00 in nonpecuniary compensatory damages, as compensation for the Agency's failure to comply.

In response to Complainant's appeal, the Agency argues, in relevant part, that: 1) Complainant's appeal is untimely under 29 C.F.R. § 1614.401(a) due to her failure to file her appeal with 30 days of receipt of the Agency's final order; and 2) Complainant failed to comply with 29 C.F.R. § 1614.504(a), as she failed to notify the Agency's EEO Director about the Agency's alleged non-compliance with the AJ's remedial order. As such, the Agency argues that the matter is improperly before the Commission.

### ANALYSIS

As an initial matter, we address the Agency's argument that Complainant's appeal is untimely under 29 C.F.R. § 1614.401(a) due to her failure to file her appeal with 30 days of receipt of the Agency's final order. We note that this regulation, in relevant part, specifies that the time period to file an appeal begins 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of an agency's determination. As the Agency had not reached a determination on the allegation of noncompliance at the time of her appeal, we do not find the Agency's arguments regarding timeliness to be persuasive.

EEOC regulation at 29 C.F.R. § 1614.504(a) provides that a final agency action that has not been the subject of an appeal or a civil action shall be binding on the agency. The regulation further provides that if a complainant believes that the agency has not complied with the terms of the final decision, that the complainant shall notify the Agency EEO Director, in writing, within 30 days of the date on which the complainant knew or should have known of the noncompliance. 29 C.F.R. § 1614.504. If the complainant does not receive a response or is not satisfied with said response, the complainant may appeal to the Commission for a determination as to whether the agency is in compliance. 29 C.F.R. § 1614.504(b).

Here, it is undisputed that Complainant raised her allegations of noncompliance with the Senior Labor Relations Specialist the day after she received the Agency's calculations on her entitlement to backpay. While the Agency argues that Complainant failed to comply with § 1614.504(a), by not notifying the Agency's EEO Director of the alleged noncompliance, we note that the Commission has long held that contact with individuals logically connected with the EEO process is sufficient for the purposes of timeliness. See Breanne S. v. U.S. Postal Serv., EEOC Appeal No. 0120181412 (Aug. 7, 2018) (noting that while complainant did not contact EEO Director regarding her allegations of noncompliance, her timely contact with EEO Counselor was sufficient to establish timeliness). As the Commission has previously held that that Labor and Employee Relations is an entity logically connected with the EEO process,<sup>2</sup> we find it appropriate to remand Complainant's allegation of noncompliance to the Agency for processing consistent with this decision and the Order below.

To the extent that Complainant requests \$16,000.00 in nonpecuniary compensatory damages for harm associated with the alleged noncompliance, we find that Complainant is not entitled to such an award. The Commission has consistently stated that in order to receive an award of compensatory damages, Complainant must demonstrate that s/he was harmed because of the Agency's discriminatory action. See McClellan v. Department of Defense, EEOC Appeal No. 01A12900 (Aug. 22, 2002) citing Rivera v. Department of the Navy, EEOC Appeal No. 01934157 (July 22, 1994, req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995)). Clearly, any finding of noncompliance does not involve a determination of whether a discriminatory action has occurred.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REMAND the matter to the Agency for processing in accordance with this decision and 29 C.F.R. §1614.504(b).

### ORDER

The Agency is ordered to process the remanded claim of noncompliance, unless otherwise noted, in accordance with 29 C.F.R. § 1614.504(b).

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<sup>2</sup> Complainant v. U.S. Postal Serv., EEOC Appeal No. 01A01446 (Aug. 5, 2002).

The Agency shall acknowledge to the complainant that it has received the remanded claim, address the issue of noncompliance, and provide a written response with appropriate rights to Complainant within thirty (30) calendar days of the date this decision becomes final. A copy of the Agency's written response shall be sent to the Compliance Officer as referenced below.

#### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 29, 2024

Date