



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

[REDACTED]  
Eve E.,<sup>1</sup>  
Petitioner,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Petition No. 2023004669  
Request No. 2022004753  
Appeal No. 2022001134  
Hearing No. 530-2014-00183X  
Agency No. 200H05422013102146

**DECISION ON A PETITION FOR ENFORCEMENT**

On August 16, 2023, the Equal Employment Opportunity Commission (EEOC or Commission) docketed a petition for enforcement to examine the enforcement of an Order set forth in EEOC Request No. 2022004753 (July 20, 2022). The Commission accepts this petition for enforcement pursuant to 29 C.F.R. § 1614.503. Petitioner alleged that the Agency failed to fully comply with the Commission's order when it failed to offer her reinstatement and failed to redact her removal from her SF-50. For the following reasons, the Commission DENIES the petition.

**ISSUE PRESENTED**

Whether the Agency has complied with the Commission's Order in EEOC Appeal No. 2022001134 (July 20, 2022).

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

### BACKGROUND

During the relevant time, Petitioner worked for the Agency as a Vocational Rehabilitation Specialist, GS 9, at the Agency's Veterans Affairs Medical Center in Coatesville, Pennsylvania.<sup>2</sup>

Petitioner filed a formal complaint, claiming discrimination based on disability in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., when:

1. From September 2012 through January 24, 2013, the Supervisory Vocational Rehabilitation Specialist failed to provide a reasonable accommodation to Petitioner in the form of a private office space;
2. On January 23, 2013, Petitioner was informed that she would be terminated during her probationary period, effective January 24, 2013.

Following an investigation, Petitioner requested a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). The AJ held a hearing on August 11, 2015, and issued a decision on March 2, 2018. The AJ concluded that the Agency violated the Rehabilitation Act when it failed to provide Petitioner with a reasonable accommodation and when it terminated her employment.

The AJ entered judgment in Petitioner's favor and awarded in pertinent part, the following make-whole relief:

The Agency shall reinstate Petitioner to the position of Vocational Rehabilitation Specialist, GS-1719-09, Temporary Appointment, or a substantially equivalent GS-09 position in her current geographic location retroactive to the date she was terminated. The Agency shall also credit Petitioner for all time previously served as a probationary employee prior to her wrongful termination. *Or at the Petitioner's option, the Agency shall issue Petitioner back pay, for time period remaining on the four (4) year temporary appointment retroactive to the date of her termination.* (emphasis added).

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<sup>2</sup> All references herein are as "Petitioner" although she may have been described otherwise in any pertinent documents discussed in this decision.

The AJ also ordered the Agency to remove any mention of termination from Petitioner's Form SF-50 in her personnel file.

On April 4, 2018, the Agency issued a final order fully adopting the AJ's findings and relief.<sup>3</sup> The Agency's Office of Employment Discrimination Complaint Adjudication ordered management to immediately reinstate Petitioner to the position of Vocational Rehabilitation Specialist, GS-1719-09, Temporary Appointment, or to a substantially equivalent GS-09 position in her current geographic location, retroactive to the date Petitioner's employment was terminated. The Office of Employment Discrimination Complaint Adjudication noted that if Petitioner elected to decline the offer of reinstatement, she must notify the Agency within 30 days, and the Agency would then be required to issue Petitioner back pay plus interest for the time period remaining on the four (4) year temporary appointment, retroactive to the date of her termination. Specifically, the Office of Employment Discrimination Complaint Adjudication determined that Petitioner's back pay award shall commence on January 25, 2013 through February 28, 2015 (four years from date of appointment). Ultimately, the Agency unsuccessfully attempted to contact Petitioner concerning her reinstatement and/or back pay. On February 17, 2021, the Agency processed Petitioner's compensatory damages, which this Commission noted was almost three years after the OEDCA issued its Order implementing the AJ's award of remedies.

Thereafter, Petitioner retained counsel in order to obtain the Agency's compliance with its April 4, 2018 Order. Petitioner, through counsel, filed an Allegation of Noncompliance with the Agency seeking compliance with the Order regarding reinstatement and additional back pay. After the Agency did not respond, Petitioner filed an appeal to the EEOC seeking enforcement of the Agency's Order on April 13, 2021. See Eve E. v. Dep't of Veterans Affairs, Appeal No. 2022001134 (July 20, 2022). The Commission affirmed the Agency's determination that Petitioner's back pay be calculated beginning on January 25, 2013 (the day after Petitioner's wrongful termination) and extending to February 28, 2015 (four years from the date of Petitioner's appointment).

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<sup>3</sup> Petitioner appealed the Agency's final decision. However, the Commission dismissed this appeal as untimely filed. See Eve E. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120182107 (Dec. 11, 2019). Petitioner sought reconsideration of this dismissal which the Commission also denied. See Eve E. v. Dep't of Veterans Affairs, EEOC Request No. 2020002386 (Sep. 3, 2020).

The Commission noted that the AJ's order clearly stated that Petitioner was entitled to "back pay for time period remaining on the four (4) year temporary appointment retroactive to the date of her termination." Consequently, the Commission explained that it lacked any authority, at this stage of appeal, to alter the AJ's award of back pay.

The Commission also noted that Petitioner hired counsel to address the Agency's failure to timely comply with the AJ's order regarding compensatory damages and determined that Petitioner was entitled to attorney's fees to cover services used to secure Agency compliance. Finally, the Commission ordered the Agency to conduct several other remedial actions required by the AJ. The matter was assigned to a Compliance Officer and docketed as Compliance No. 2022004025.<sup>4</sup>

Petitioner appealed the Commission's findings in a request for reconsideration, which this Commission denied. See Eve E. v. Dep't of Veterans Affairs, Request No. 2022004753 (January 31, 2023). In the request, Petitioner reiterated arguments on appeal and argued that the back pay at issue was related to Petitioner's reinstatement, not an election for back pay after declining reinstatement. Petitioner argued that she elected to be reinstated and that her reinstatement includes back pay. In the request, the Commission pointed out, as detailed on appeal, the AJ only discussed back pay in the order *as an alternative* to Petitioner's declining the offer of reinstatement. The Commission reiterated that it does not have the authority to alter the AJ's decision, because Petitioner did not timely appeal the Agency's final order implementing the AJ's order, and therefore, the AJ's order is binding.

Request No. 2022004753 restated the Commission's prior Order in accordance with the AJ's findings:

1. Within 30 days of the date of this decision is issued, the Agency shall offer to reinstate Petitioner to the position of Vocational Rehabilitation Specialist, GS-1719-09, Temporary Appointment, or a substantially equivalent GS-09 position in her current

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<sup>4</sup> The Commission closed this compliance matter as Petitioner sought a request for reconsideration. See also Eve E. v. Dep't of Veterans Affairs, EEOC Request No. 2020002386 (Sep. 3, 2020).

geographic location retroactive to the date she was terminated. The Agency shall also credit Petitioner for all time previously served as a probationary employee prior to her wrongful termination. Or at the Petitioner's option, the Agency shall issue Petitioner back pay, for time period remaining on the four (4) year temporary appointment retroactive to the date of her termination.

2. To the extent the Agency has not already done so, the Agency shall remove all indications of termination and language indicating termination for performance from Petitioner's Form SF-50. The revised Form SF-50 shall also be updated in the Petitioner's eOPF file.
3. In addition, within 60 days of the date this decision is issued, the Agency is ordered to determine Petitioner's entitlement to attorney's fees and costs associated with the attorney's efforts to obtain compliance with the Agency's Final Order and with the processing of the instant appeal referenced below.

The request added a footnote to the Order regarding Petitioner's temporary appointment. The footnote stated:

We note that the Agency's offer of reinstatement to her former position should include the possibility that Petitioner's temporary appointment will be renewed. Based upon the record, Petitioner's three former co-workers who also began their employment with the Agency at the same time as Petitioner under the same temporary appointments had their appointments renewed repeatedly and the same opportunity for renewal should be offered to Petitioner, as it would have been, absent her wrongful termination. We also remind the Agency of its obligation to provide Petitioner an effective, reasonable accommodation for her disabilities, should Petitioner accept the offer of reinstatement.

Additionally, the request directed the Agency to submit a report of compliance. The matter was assigned a Compliance Officer and docketed as Compliance No. 2023001729.

The Agency submitted a compliance report on April 7, 2023. Therein, the Agency demonstrated it had complied by issuing Compliant back pay for four year per Petitioner's option *in lieu of reinstatement*. By declaration of compliance as well as providing a copy of the cashed check, the Agency showed that on January 10, 2023, Petitioner cashed a check for \$103,059.08 which as calculated in the report was the entirety of four years of pay from termination through February 28, 2015 (four years from the date of Petitioner's appointment). Per the declaration provided, the Agency mailed the necessary paperwork for processing back pay to Petitioner in October 2021, which Petitioner completed and returned to the Agency later the same month in order to process payment of back pay.

The Agency also demonstrated that references to Petitioner's termination were removed from her SF-50 by submitting copies of a reissued SF-50. Additionally, the Agency stated it issued attorney's fees to Petitioner's attorney in February 2023.

On August 16, 2023, Petitioner submitted the instant petition for enforcement. The Petitioner contends that the Agency failed to comply with reinstatement as ordered by this Commission. Petitioner contends that she only wanted reinstatement and the check cashed as back pay from January 2023, should be collected as a debt against her by the Agency after reinstating her. As evidence of her intention for reinstatement, Petitioner attached emails from June 2021 mentioning her desire for reinstatement while the EEOC was processing her appeal, EEOC Appeal No. 2022001134.

#### STANDARD OF REVIEW

EEOC Regulation 29 C.F.R. § 1614.503(a) provides that an aggrieved person may petition for enforcement of an order issued by the Commission under its appellate jurisdiction.

#### ANALYSIS

The sole issue raised in Petitioner's Petition for Enforcement is her entitlement to reinstatement to the position of Vocational Rehabilitation Specialist, GS-1719-09, Temporary Appointment, or a substantially equivalent GS-09 position in her current geographic location per the AJ's and this Commission's Orders.

EEOC Regulations 29 C.F.R. § 1614.502(a) and § 1614.503 provide that relief ordered in a final EEOC decision is “mandatory and binding” on the agency. The regulations also provide that, on behalf of the Commission, OFO “shall take all necessary action to ascertain whether the agency is implementing the decision of the Commission.” Finally, the regulations provide that failure to implement EEOC orders will subject the agency to a variety of enforcement actions, including the issuance of a notice to show cause to the head of the agency, a referral to the Office of Special Counsel, and/or judicial enforcement.

As evidenced by the signed and cashed back pay check, as well as Petitioner completing and returning the necessary paperwork in order to issue the back pay, we find Petitioner clearly elected the option for back pay. During the process of trying to reinstate Petitioner or determine whether Petitioner’s position could be accommodated at her current geographic location, Petitioner submitted the necessary back pay paperwork in October 2021, per the Agency. Thereafter, Petitioner cashed the back pay check the Agency issued to her in January 2023. Petitioner does not dispute that she cashed the check for \$103,059.08.

As clearly stated in the AJ’s and this Commission’s prior Orders, “the Agency shall offer to reinstate Petitioner...Or at the Petitioner’s option, the Agency shall issue Petitioner back pay, for time period remaining on the four (4) year temporary appointment retroactive to the date of her termination.” The Order clearly indicated Petitioner had the option for reinstatement or back pay, not both. By filling out the back pay paperwork, returning it to the Agency, signing and cashing the back pay check, Petitioner clearly selected the back pay option. Therefore, the Agency fulfilled its obligation under the Order to make Petitioner whole in this regard. Petitioner’s argument that she now desires reinstatement and the back pay to be a debt to be collected by the Agency out of her salary is without merit and inequitable to enforce upon the Agency.

In the petition for enforcement, Petitioner cites to Raymond L. Gockley v. Department of Energy, asserting this caselaw supports her argument that acceptance of back pay does not relieve an Agency of its obligations. See EEOC Appeal No. 01862008 (September 17, 1987). Petitioner’s application of this case to the matter at hand is misconstrued.

In Gockley, the Commission clarified that an acceptance of part of the relief to make a complainant whole does not relieve the Agency of its entire obligations under a settlement agreement. Here, Complainant clearly had the choice of reinstatement or back pay, not both. While Complainant's communicated desire for reinstatement to her attorney are unknown, it is clear Complainant accepted the back pay option by cashing the check in January 2023. Complainant never argues the amount of back pay or cashing of the check was not her intention, rather that requests the option of both (a) collecting the back pay *and* (b) getting reinstated. The AJ and this Commission did not order this remedy.

### CONCLUSION

After a review of the record, we find that Petitioner has failed to show the Agency is not in compliance with the order in EEOC Request No. 2022004753. Therefore, the Commission DENIES Petitioner's petition. There is no right of administrative appeal from this denial.

### 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 Petitioner'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

December 4, 2024

Date