



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

██████████
Michael L.,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Request No. 2023005145

Appeal No. 2021004766

Hearing No. 451-2016-00176X

Agency No. IRS-16-0081-F

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Michael L. v. Department of the Treasury, EEOC Appeal No. 2021004766 (June 20, 2023). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c).

Complainant, a GS-0501-11 Senior Individual Taxpayer Advisory Specialist at the Agency's Wage and Income/CARE Field Assistance facility in San Antonio, Texas, filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), disability, and in reprisal for protected EEO activity when, among other things, his Supervisor accused him of lying to the EEO Office.

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.

At the conclusion of the investigation, Complainant timely requested a hearing. The AJ issued a summary judgment decision in favor of the Agency finding that Complainant was not subjected to discrimination or reprisal as alleged. The Agency subsequently issued a final order fully adopting the AJ's decision. In Michael L. v. Department of the Treasury, EEOC Appeal No. 2020003199 (May 19, 2021), the Commission reversed the Agency's final order as to Complainant's claim that his Supervisor accused Complainant of lying to the Agency's EEO Office. The Commission, among other things, ordered the Agency to conduct a supplemental investigation into Complainant's entitlement to compensatory damages.

After the supplemental investigation, the Agency issued a decision awarding Complainant \$4,500 in non-pecuniary compensatory damages. In Michael L. v. Department of the Treasury, EEOC Appeal No. 2021004766 (June 20, 2023), the Commission affirmed the Agency's decision.

In his request for reconsideration, Complainant expresses his disagreement with the previous decision and largely reiterates arguments previously made on appeal. Complainant contends that he is entitled to an increase in the compensatory damages awarded.

We have reviewed the various arguments raised by Complainant in the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision. Complainant presents arguments which were previously raised and considered or could have been raised during the original appeal. The Commission emphasizes that a request for reconsideration is not a second appeal. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VI.A (Aug. 5, 2015); *see, e.g., Lopez v. Dep't of Agric.*, EEOC Request No. 0520070736 (Aug. 20, 2007). Rather, a reconsideration request is an opportunity to demonstrate that the appellate decision involved a clearly erroneous interpretation of material fact or law, or will have a substantial impact on the policies, practices, or operations of the Agency. Complainant has not done so here. Thus, we conclude that Complainant has not presented any persuasive evidence to support reconsideration of the Commission's decision.

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to DENY the request. The decision in EEOC Appeal No. 2021004766 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the order set forth below.

ORDER (D0617)

To the extent the Agency has not already done so, the Agency is ordered to take the following remedial action:

1. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$4,500 in nonpecuniary compensatory damages.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

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.

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (P0124)

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 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.

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 23, 2024

Date