



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

[REDACTED]
Sharon C.,¹
Complainant,

v.

Thomas J. Vilsack,
Secretary,
Department of Agriculture
(Forest Service),
Agency.

Request No. 2024000533

Appeal No. 2022003671

Hearing Nos. 540-2017-00051X
540-2017-00176X
540-2017-00339X
540-2018-00100X

Agency Nos. FS-2016-00411
FS-2016-00695
FS-2017-00076
FS-2017-00316

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022003671 (September 18, 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).

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.

For the reasons set forth below, Complainant's request for reconsideration is DENIED, but Commission MODIFIES the appellate decision.

ISSUE PRESENTED

The issue presented is whether Complainant's request meets the criteria for reconsideration in 29 C.F.R. § 1614.405(c).

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Assistant Superintendent at the Agency's Tonto National Forest in Mesa, Arizona. Starting on April 27, 2016, Complainant filed four formal complaints alleging discrimination based on her sex (female), and in reprisal for prior protected EEO activity. At the conclusion of the investigations, the Agency provided Complainant with the reports of investigations and right to file a hearing before an EEOC Administrative Judge (AJ). Complainant requested hearings. The AJ joined the four complaints for processing and held a hearing on May 7-8, June 20, and June 26, 2019.

On May 14, 2020, the AJ issued a decision finding that Complainant established retaliation when, from 2015 to June 2016, management denied her the ability to function in her normal role with the "Hot Shot Crew," without obtaining temporary assignments with other forest personnel and subsequently accused her of not wanting to function in that role, and when they issued her a Letter of Reprimand on January 19, 2017. The AJ subsequently ordered appropriate remedies, such as backpay, interest, and other benefits from June 6, 2017, through the date Complainant assumed another position in February 2017; compensation for any increased tax burden, upon receipt of Complainant's documentation proving the increased tax burden; non-pecuniary compensatory damages; and attorney's fees.

The Agency issued a final order adopting the AJ's decisions. Complainant did not appeal the Agency's final order.

On June 23, 2022, Complainant filed an appeal before the Commission, alleging that the Agency was not in compliance with the AJ's orders regarding payment of backpay and reimbursement for travel to the hearing.² Complainant also requested that the Agency remove the reprimand and the "wrongful termination paperwork" from her files, with additional compensation as a sanction for the Agency's failure to comply with the AJ's order.

On September 18, 2023, the Commission issued an appellate decision affirming the Agency's decision to reject Complainant's allegations of noncompliance. The record showed that the Agency made repeated efforts to send Complainant's backpay, but she initially failed to inform the Agency of her new mailing address.

² It is undisputed that the Agency paid Complainant \$20,000.00 in non-pecuniary compensatory damages and additional attorney's fees.

Even after Complainant provided her address, the check was returned. The Agency then requested Complainant's bank account information, and when it transferred the backpay and interest, the payments were returned as "Customer Advises Not Authorized." The appellate decision found that the Agency could not make the required backpay payments to Complainant due to her failure to cooperate.

While Complainant requested reimbursement for travel to the EEOC hearing and the removal of adverse paperwork from her files, the AJ had not ordered such relief. The appellate decision also denied Complainant's request for sanctions against the Agency because it substantially complied with the AJ's order, to the extent possible, and the Commission's regulations do not permit financial compensation as a sanction for noncompliance.

Complainant filed the instant request for reconsideration. The Agency opposes Complainant's request.

ANALYSIS AND FINDINGS

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.

In her request, Complainant repeats her arguments that the Agency refused to provide her backpay or reimburse her for her time, travel, and per diem to attend the EEOC hearing. Complainant also requests that the Commission order the Agency to remove her reprimand and the November and December 2019 paperwork related to her termination, and to sanction the Agency for its noncompliance. However, Complainant offers no evidence to dispute the Agency's multiple attempts to send her the ordered backpay and interest, and she only offers broad assertions that the Agency made false claims of paying her and leaving important facts off the record, without explanation. Further, a review of the AJ's decision awarding remedies shows that the appellate decision correctly found that the AJ did not award any reimbursement for costs related to Complainant's travel to the EEOC hearing, or the removal of the reprimand.

A request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, 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 in this case. As such, we DENY Complainant's request for reconsideration.

However, the Commission exercises its discretion to MODIFY the previous appellate decision to include an Order for the Agency to rescind the Letter of Reprimand issued on January 19, 2017. While the AJ's order did not include such order, the reprimand should be removed based on the AJ's finding that it was retaliatory.

The decision in EEOC Appeal No. 2022003671 otherwise remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

ORDER

The Agency is ordered to take the following remedial action:

1. Within 60 days of the date this decision is issued, the Agency will rescind the Letter of Reprimand issued on January 19, 2017.

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, including evidence that the corrective action has been implemented.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0124)

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 their 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 25, 2024

Date