



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

[REDACTED]  
Rosamaria F,<sup>1</sup>  
Complainant,

v.

Marcia L. Fudge,  
Secretary,  
Department of Housing and Urban Development,  
Agency.

Appeal No. 2024003459

Agency No. HUD-00164-2019

**DECISION**

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) regarding her allegations that the Agency failed to comply with the order in the Agency's October 16, 2023 decision. See 29 C.F.R. § 1614.504.

**ISSUE PRESENTED**

Whether the Agency failed to comply with the order in the Agency's October 16, 2023 decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Account Executive, GS-12, at the Agency's Office of Multifamily Programs, Asset Management Division in Baltimore, Maryland. On August 29, 2019, Complainant filed a formal EEO complaint alleging discrimination on the bases of race, sex, age, disability, and reprisal.

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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.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. On August 10, 2023, the AJ granted the Agency's Motion for Summary Judgment, in part, and denied it in part. Thereafter, the AJ held a hearing on August 21-22, 2023. On September 8, 2023, the AJ issued a decision finding that Complainant established that the Agency discriminated against her on the basis of disability when the Agency failed to provide her with an effective reasonable accommodation. On September 28, 2023, the AJ issued a decision on attorney's fees and costs. Also on September 28, 2023, the AJ issued an order entering judgment where the AJ ordered the Agency to take the following actions within 60 days of the date the order became final:

- (1) The Agency shall calculate the amount of back pay, with interest, and other benefits due to Complainant from August 5, 2019 to February 20, 2020, pursuant to 29 C.F.R. § 1614.501. The Agency shall also adjust Complainant's dates of service accordingly. Within 60 days of determining the amount of back pay and other benefits due Complainant, the Agency shall pay that amount to Complainant. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due.
- (2) The Agency shall pay Complainant the amount of \$25,000.00 in nonpecuniary compensatory damages.
- (3) The Agency shall provide a minimum of 2 hours of interactive Equal Employment Opportunity (EEO) training, focused on the reasonable accommodation process, to all supervisors and managers within the Agency's Office of Multifamily Programs, Asset Management Division.
- (4) The Agency shall email a copy of the attached "Notice to Employees" to all employees within the Agency's Office of Multifamily Programs, Asset Management Division, and post hardcopies of the notice that shall remain posted for 60 consecutive days. The hardcopy notice shall be posted in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take

reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

- (5) The Agency shall pay \$97,818.00, representing attorney's fees incurred in this matter.
- (6) The Agency shall pay \$5,036.46, representing costs incurred in this matter.

On October 16, 2023, the Agency issued a final order where it accepted and agreed to fully implement the AJ's decision. On December 21, 2023, the Agency issued a memorandum documenting its implementation of the AJ's order. The Agency indicated in the memorandum that it had complied with orders two through six, and stated that it had provided an estimated calculation of backpay to Complainant's representative.

By letter to the Agency dated March 27, 2024, Complainant alleged that the Agency had failed to comply with its final order, and Complainant requested that the Agency specifically implement its terms. Specifically, Complainant alleged that the Agency failed to correct Complainant's personnel and payroll records, provide Complainant with a copy of such records, and pay Complainant back pay. Complainant also asserted that the Agency had withdrawn the reasonable accommodation that was the central issue in the AJ's decision. In an email sent on April 18, 2024, the Agency addressed the issue of backpay and identified a payment date.

Thereafter, Complainant filed the instant appeal on May 12, 2024.

Subsequent to the appeal, the Agency responded to Complainant on May 20, 2024, by stating "the Agency has done everything it was ordered to do." Complainant admitted in two separate submissions to the Commission that Complainant had received the undisputed back pay on April 18, 2024. Complainant continued to assert that the delay in payment of the back pay caused Complainant additional mental and financial distress as well as legal costs.

#### CONTENTIONS ON APPEAL

Complainant contends that the delay in payment of the back pay caused Complainant additional mental and financial distress as well as legal costs. Complainant contends that the subsequent removal of Complainant's reasonable accommodation allows her to reinstate the present complaint for further processing. Complainant maintains that the personnel records were not corrected.

The Agency asserts that it fully complied with the AJ's orders. Of note, the Agency states that it paid the required back pay, but its submissions and decisions do not address the adjustment of Complainant's dates of service.

### STANDARD OF REVIEW

As this is an appeal from a decision<sup>2</sup> issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the 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 EEOC "review the documents, statements, and testimony of 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

Regarding back pay, we find the Agency substantially complied with the ordered relief. Complainant twice admitted that the Agency paid the undisputed back pay amount. Both parties acknowledge that the back pay amount was paid late; however, we find a two-to-three-month delay to be substantial compliance under the facts of this case.

Regarding Complainant's assertion that the Agency subsequently removed Complainant's reasonable accommodation, we find no provision in the October 16, 2023 decision ordering a reasonable accommodation. We advise Complainant that allegations of subsequent acts of discrimination shall be processed as separate complaints under 29 C.F.R. § 1614.106, rather than under 29 C.F.R. § 1614.504, and that if Complainant wishes to pursue such a claim, she should contact an EEO Counselor.

The Agency has failed to provide evidence that it has adjusted Complainant's dates of service according to provision 1 of the October 16, 2023 order.

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<sup>2</sup> Although the Agency failed to issue a determination on Complainant's noncompliance letter, we construe the Agency's brief in opposition to Complainant's appeal as the Agency's final decision that it has complied with the Agency's October 16, 2023 decision.

Therefore, we remand this matter to the Agency to show compliance with the dates of service adjustment required in the October 16, 2023 order. Complainant has failed to show that any other provision of the October 16, 2023 order has not been complied with by the Agency.

#### CONCLUSION

We AFFIRM the Agency's decision regarding compliance with the portion of provision 1 of the October 16, 2023 Agency order concerning back pay. We REVERSE the Agency's finding of compliance with the portion of provision 1 of the October 16, 2023 Agency order concerning the adjustment of Complainant's dates of service. We REMAND the matter to the Agency to comply with the adjustment of Complainant's dates of service in accordance with the Order herein.

#### ORDER

Within 60 days from the date this decision is issued, the Agency shall:

1. Show compliance with provision 1 of the October 16, 2023 decision regarding the adjustment of Complainant's dates of service; and
2. Issue a decision showing it has complied with provision 1 of the October 16, 2023 decision regarding the adjustment of Complainant's dates of service.

#### 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.

#### ATTORNEY'S FEES (H0124)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), they are entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### 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 (T0124)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, **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

December 30, 2024

Date