



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

[REDACTED]  
Margorie F,<sup>1</sup>  
Petitioner,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs  
(Veterans Health Administration),  
Agency.

Petition No. 2024003918

Appeal No. 2022001439

Agency No. 2004-0590-2021102023

**DECISION ON A PETITION FOR ENFORCEMENT**

On January 18, 2022, the Equal Employment Opportunity Commission (EEOC or Commission) docketed a petition for enforcement to examine the enforcement of an Order set forth in EEOC Appeal No. 2022001439 (June 14, 2002). 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 to include supporting documentation of its backpay award calculation. Petitioner later filed a supplemental request for attorney's fees. For the reasons discussed below, we deny Complainant's petition request.

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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 period at issue, Petitioner worked as an Advanced Medical Support Assistant at the Agency's Community-Based Outpatient Clinic in Virginia Beach, Virginia. Petitioner filed a formal complaint, claiming discrimination based on disability. Petitioner appealed the Agency's final decision, finding no discrimination, to the Commission. On June 14, 2023, the Commission determined that the Agency had violated the Rehabilitation Act regarding a failure to accommodate and constructive discharge. The Commission issued an Order for relief which specified that the Agency had to, among other remedial actions, determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501 within 90 calendar days of the decision. See Marjorie F. v. Department of Veterans Affairs, EEOC Appeal No. 2022001439 (June 14, 2023).

The matter was assigned to an EEOC Compliance Officer and docketed as Compliance No. 2023003704 on June 15, 2023. The Compliance Officer requested a compliance report on October 24, 2023, January 2, 2024, and February 26, 2024. The Agency did not respond to the Compliance Officer's requests.

On March 29, 2024, the Agency issued Complainant a leave and earnings statement indicating a payment of \$143,532.97 which included \$13,940.33 in interest.

On May 22, 2024, through Counsel, Petitioner submitted the instant petition for enforcement. Petitioner's Counsel contended that the Agency failed to make a determination as to the appropriate amount of back pay, benefits, and interest. Specifically, Counsel for Petitioner stated that the Agency had not met its obligation to explain how it had calculated back pay, benefits, and interest and for which pay periods.

On June 18, 2024, the Commission notified the Agency that this matter was docketed under the captioned petition number.

On July 3, 2024, the Agency submitted an interim compliance report documenting that it had taken remedial actions required by the appellate decision in Appeal No. 2022001439. The interim compliance report stated that its computations of the back pay awarded to Complainant were pending.

On July 8, 2024, the Agency responded to the instant petition for enforcement. The Agency's response included, as backpay calculations, its final settlement pay audit, final leave calculations, and interest calculations. The Agency stated that its compliance with the Order from Appeal No. 2022001439 was complete and requested that this present petition action be closed.

On October 31, 2024, Petitioner's Counsel filed a supplemental motion for attorney's fees, acknowledging that the Agency filed its report of compliance as of July 8, 2024. However, Counsel asserted that the Agency had failed to timely provide the requested documents prior to the filing of the petition despite multiple requests from Complainant's counsel as well as requests for a compliance report from the Commission. Thereafter, Counsel argued that Petitioner was entitled to an award of reasonable attorneys' fees and costs because engagement of Complainant's Counsel was necessary to obtain the Agency's compliance.

The Agency did not respond to Complainant's motion for attorney's fees.

#### ANALYSIS

Title VII and the Commission's regulations authorize the award of reasonable attorney's fees and costs to a prevailing party. 29 C.F.R. § 614.501(e); see also EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at 11-1 (Aug. 5, 2015). To establish entitlement to attorney's fees, a petitioner must first show that they are a prevailing party. See Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 532 U.S. 598 (2001).

Here, the overall compliance record shows that the Agency has, albeit untimely, provided Petitioner adequate documentation of its calculations of back pay. The Agency's July 8, 2024 response to the instant petition fully rectified Petitioner's concerns regarding back pay calculations. Given that the Agency has now complied with our remedial Order, we find that Petitioner is not a prevailing party and is not entitled to attorney's fees and costs incurred in the instant matter.

#### CONCLUSION

Based on the foregoing, we find the Agency is in substantial compliance with our Orders from Appeal No. 2022001439. Consequently, we DENY the petition for enforcement.


PETITIONER'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

December 30, 2024  
Date