



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

[REDACTED]
Sallie M.,¹
Petitioner,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Great Lakes Area),
Agency.

Petition No. 2024004002

Appeal No. 2020005227

Agency No. 4J606012118

DECISION ON A PETITION FOR ENFORCEMENT

On May 31, 2024, 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. 2020005227 (May 11, 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 regarding reimbursement for her increased tax burden resulting from the lump sum of back pay awarded. For the following reasons, we GRANT the petition and REMAND the matter for further action.

ISSUE PRESENTED

The issue presented is whether the Agency failed to fully comply with the Commission's order regarding the back pay award following a finding of discrimination.

¹ 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

At the time of events giving rise to this complaint, Petitioner worked as a Sales and Services Distribution Associate at the Agency's Twenty-Second Street Station in Chicago, Illinois.

Petitioner filed a complaint alleging that the Agency discriminated against her based on disability (physical) and in reprisal for prior protected EEO activity in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Petitioner claimed a failure to accommodate when her requests for light duty and reasonable accommodations were denied, and she was not permitted to return to work since July 16, 2018. The Agency issued a final decision finding no violation of the Rehabilitation Act. Petitioner appealed the Agency's final decision to the Commission.

In Appeal No. 2020005227, the Commission found that, while the Agency eventually accommodated Petitioner, it violated the Rehabilitation Act when it failed to timely engage in the interactive process from July 20, 2018, until April 22, 2019. As part of the remedies, the Agency was ordered to provide back pay and benefits from July 20, 2018, through April 22, 2019.

The matter was assigned to a Compliance Officer and docketed as Compliance No. 2022004838.

On May 25, 2024, Petitioner contacted the Commission and contended that the Agency failed to comply with providing compensation for her tax liability after receipt of a lump sum for her back pay. She noted that the Agency issued her a check for \$48,693.74 on or about January 10, 2023, and it resulted in adverse tax consequences. Petitioner stated that on May 12, 2024, the Agency requested a statement from her explaining how the back pay award adversely affected her tax liability. The Agency also asked for her federal and state income tax returns for the years related to the back pay, and not just the year in which she received the back pay, including documents submitted with her tax returns, such as a W-2, 1099, etc. Petitioner asserted that the Agency's document requests were overreaching, and she prepared the calculations showing that her adverse tax consequences totaled \$10,273.00.

On May 31, 2024, the Commission docketed the instant petition for enforcement.

On September 18, 2024, the Agency submitted a Final Compliance Report and stated that the only remaining compliance issue was Petitioner's claim for increased tax liability. The Agency had an Accountant review her claim, and he requested additional documentation. Petitioner responded that she provided sufficient information for the Agency to either approve or disagree with her calculations. However, she has not yet supplied the requested documentation and necessary information.

CONTENTIONS ON PETITION

Petitioner contends that she did not respond to the Agency's request for additional documentation because it was not timely. Petitioner further asserts that she provided the Agency with sufficient information and she "strongly disagrees" with the Accountant's assessment that her documentation is incomplete. Petitioner argues that the Agency is not in full compliance with the Commission's order because it has not paid her adverse tax consequences, and she reiterates her request for \$10,273.00.

The Agency responds that Petitioner bears the burden to establish the amount of increased tax burden, if any, and she must show the differential between this tax burden and the taxes she would have paid had she received the payments as part of her salary. When the Accountant determined that additional documentation was needed, specifically for tax years 2018, 2019, and 2023, Petitioner did not respond. The Agency requests that the Commission dismiss the instant petition.

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

In the case of a lump sum back pay award, individuals are compensated for the extra tax that they are required to pay as a result of receiving a lump sum award, as opposed to the actual amount of taxes that they would have paid if they had received the funds over a period of time, usually several years. It is the receipt of the funds in one lump sum that causes the extra tax liability, not the back pay award itself.

The tax liability calculation must be based on the taxes that the individual would have paid if she had received the back pay as a regular salary during the back pay period. See Damon Q. v. United States Postal Serv., EEOC Petition No. 0420170005 (Jul. 25, 2018).

The Commission has held that complainants need to submit detailed calculations showing the tax liability that they would have incurred for each year of the back pay period; the tax liability they would have incurred in each of those years if they had received the back pay in the form of a regular salary; and the tax liability that they incurred solely as a result of their receipt of the lump sum back pay award. Israel F. v. Dep't of Homeland Security, EEOC Petition NO. 0420120010 (Aug. 3, 2016). Any adverse tax consequence award depends on evidence demonstrating the increase in taxes paid. Once a complainant provides detailed calculations and supporting evidence, an agency shall issue a decision on the tax liability matter. See Maxine C. v. Dep't of Justice, EEOC Petition No. 2022001072 (Sept. 15, 2022); Peggie T. v. Dep't of the Interior, EEOC Appeal No. 2020001880 (Apr. 22, 2021).

Here, Petitioner provided self-generated spreadsheets for her request for \$10,273.00 in adverse tax consequences from the lump sum back pay. The record shows that the accountant reviewed Petitioner's submissions in support for her request and determined that additional documents were needed from Petitioner. For example, federal and state 1040 forms without the back pay amounts and various 1099 forms. Petitioner responded that the Agency had sufficient information and that its request was an overreach.

Petitioner noted that she initially procured an accountant, but their arrangement fell through, and she prepared her own calculations. However, there is no indication that Petitioner has any accounting qualifications or experience. We find that it is reasonable for the Agency to request the involvement of a professional accountant due to the complexity of the determination of any increased tax burden resulting from Petitioner receiving \$48,693.74 in 2023, as compared to the taxes she would have paid had she received these payments in 2018 and 2019 as part of her regular salary.

Thus, we REMAND the matter back to the Agency so that Petitioner may provide appropriate calculations from an accountant with supporting evidence or the requested documentation to the Agency for the Accountant to calculate any adverse tax consequences due to her receipt of the lump sum back pay.

ORDER

The Agency is ORDERED to take the following remedial actions within **thirty (30) calendar days** from the date of this decision:

1. Request that Petitioner provide appropriate calculations from a certified public accountant (CPA) with supporting evidence OR submit the following documents requested by the Agency's Accountant:
 - a) 2023
 1. Federal form 1040 with-out Back-pay amount
 2. 2023 Form IL-1040 with-out Back-pay amount
 3. Form 1099-R for Line item 5a Pension and annuities
 4. Form 1099-SSA for line item 6a Social Security benefits
 5. Form W-2 for line 1a for the difference between what is reported by USPS for a total of \$7,066
 6. Schedule ICR for the amount reported on line 16 of the State tax form IL-1040
 - b) 2019
 1. Federal form 1040 with Back-pay amount
 2. 2023 Form IL-1040 with Back-pay amount
 3. Form 1099-INT for Line item 2a Tax exempt Interest and 2b Taxable Interest
 4. Schedule ICR for the amount reported on line 16 of the State tax form IL-1040
 - c) 2018
 1. Federal form 1040 with Back-pay amount
 2. 2023 Form IL-1040 with Back-pay amount
 3. Form 1099-INT for Line item 2b Taxable Interest
 4. Schedule ICR for the amount reported on line 16 of the State tax form IL-1040

Petitioner is advised that any claim for reimbursement should include the tax documentation and calculations showing the tax liability that she actually incurred for each year of the back pay period, the tax liability that Petitioner would have incurred in each of those years if Petitioner had received the back pay in the form of a regular salary, and the difference in the amounts (i.e. tax liability that Petitioner incurred solely as a result of Petitioner's receipt of the lump sum back-

pay award). If applicable, Petitioner may provide documentation to support reimbursement of any costs and fees incurred from hiring a CPA to calculate the amount of increased tax liability. Petitioner shall cooperate with the Agency's efforts and provide the relevant information requested by the Agency within **sixty (60) calendar days** of the Agency's request. If Petitioner fails to cooperate, the Commission shall conclude that the Agency has fully complied with the previous back pay order.

2. Within **sixty (60) calendar days** of receipt of Petitioner's claim and supporting documents, the Agency shall pay the amount of adverse tax consequences and any associated CPA costs and fees.

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 (R0124)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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

November 14, 2024
Date