



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Alissa U.,¹
Complainant,

v.

Deb A. Haaland,
Secretary,
Department of the Interior,
(Geological Survey)
Agency.

Request No. 2024004771

Appeal No. 2022000423

Agency No. DOI-USGS-19-0593

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Appeal No. 2024004771.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022000423 meets the criteria detailed in 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.

BACKGROUND

During the relevant time, Complainant worked for the Agency as a Cybersecurity Specialist in Reston, Virginia. On October 4, 2019, Complainant filed a formal complaint claiming that she was discriminated against based on race, sex, age, and in reprisal for prior protected activity when:

1. On an unspecified date in January 2019, the Cybersecurity Specialist Supervisor (S1) denied Complainant a temporary promotion and when she requested compensation for the GS-13 work she was performing, she was prevented from performing those duties;
2. On October 22, 2019, S1 issued Complainant a rating of 4 for element 3 of her Fiscal Year (FY) 2019 performance review which Complainant felt she should have received a rating of 5;
3. On an unspecified date in 2017, the Information Security Office Chief (S2) issued Complainant an unfavorable rating for her FY 2017 performance after she presented him with 15 pages of accomplishments;
4. On an unspecified date in 2018, S1 informed Complainant that "specific additional responsibilities" had to be performed to achieve a "superior or exceptional" rating;
5. S2 denied Complainant job opportunities and work assignments that would lead to a promotion when:
 - a. On October 10, S1 attempted to limit Complainant's participation and exclude her from the Personal Reliability (PR) Account Clean-Up Project,
 - b. On October 10, 2019, S1 told Complainant to stop working on the project until she and S2 gave her further action, and
 - c. Complainant never received credit for the work activities that she successfully performed at the USGS and the ISO..

Following an investigation, the Agency provided Complainant with a copy of the investigative report and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge.

In accordance with Complainant's request, the Agency issued a final decision. Finding no discrimination in connection with any of the above-referenced claims. However, the Agency did conclude that Complainant had been subjected to per se reprisal in connection with an email that S2 sent to her on an unspecified date in January 2020. The Agency identified the unlawful retaliatory act as follows:

The Agency subjected Complainant to per se reprisal when, in January 2020, S2 sent an email to Complainant in which he stated that Complainant "was harassing him because he did not want to hear another thing about a promotion." The Agency found that because Complainant had raised her non-promotion as part of a prior EEO complaint, the email could have on its face, discouraged an employee from participating in the EEO process.

To remedy the violation, the Agency, among other matters, ordered a supplemental investigation into Complainant's entitlement to compensatory damages. On September 30, 2021, following the issuance of a supplemental investigative report, the Agency issued its final decision awarding Complainant \$284.83 in pecuniary compensatory damages and \$750.00 in non-pecuniary compensatory damages, for a total award of \$1,034.83. Complainant's appeal followed on October 29, 2021. On December 3, 2021, Complainant, through Counsel, submitted a brief in support of her appeal.

In Appeal No. 2022000423, the Commission affirmed the Agency's final decision. First, the Commission addressed the timeliness of Complainant's appeal of the liability final decision. The Commission found that there are no indications that the decision was returned as undeliverable. Complainant therefore had until April 14, 2021 to file her appeal on the Agency's final decision on liability. She did not do so until October 29, 2021. Her appeal of the Agency's liability finding was filed 199 days late. The Commission found that the lack of a decision on the remedy did not preclude Complainant from appealing the liability finding on its merits. The Commission that Complainant's appeal of the March 15, 2021 final decision on liability was untimely.

Next, the Commission found that Complainant's appeal brief was not timely filed and no justification was provided for the delay. The Commission therefore determined that the appeal brief would not be considered.

Finally, on the issue of remedies, the Commission found no basis to disturb the Agency's award of \$284.83 in pecuniary compensatory damages, and found no basis to disturb the Agency's award of \$750.00 in non-pecuniary compensatory damages, for a total compensatory damages award of \$1034.83.

The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

Complainant, through counsel, contends that Complainant's brief was timely, as the Commission's Office of Federal Operations granted Complainant a requested extension. Complainant also argues that Complainant's appeal was also timely, because the Agency's March 15, 2021 decision was not a "Final" decision for purposes of appeal.

In response, the Agency contends that the Commission properly dismissed Complainant's appeal of the merits final decision, as untimely filed. The Agency contends further that the damages awarded, approved by the Commission in the prior decision, were reasonable and proper. Finally, the Agency concedes that Complainant's appeal brief was timely filed, as the record reflects that Complainant's counsel requested, and received, an extension from the Commission for filing an appeal brief. The Agency contends, however, that the consideration of Complainant's appellate brief would not have modified the prior decision.

STANDARD OF REVIEW

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).

ANALYSIS

We have reviewed the submission by Complainant in support of the instant request for reconsideration. However, we determine there is no reason to disturb the Commission's prior decision. Noting that Complainant's appellate brief was timely filed as asserted by the Agency in its response to Complainant's contentions in the instant request, we agree that consideration of that brief would have reflected no impropriety in the prior decision.

A request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VII.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.

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. 2022000423 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

ORDER

To the extent that it has not already done so, the Agency is ORDERED to take the following remedial actions:

1. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant pecuniary compensatory damages in the amount of \$284.83 and non-pecuniary compensatory damages in the amount of \$750.00 for a total award of \$1,034.83. If the Agency has already awarded Complainant a lesser amount, it shall award Complainant the difference between what it has already paid Complainant and the amount specified in this order.
2. Within 90 calendar days of the date this decision is issued, the Agency shall provide two hours of interactive EEO training to the individual identified in this decision as S2. The training shall include an emphasis on reprisal and the duty of management officials to prevent reprisal

in the workplace. If the individual identified as S2 is no longer employed by the Agency, it shall furnish documentation of this individual's departure date.

3. Within 120 calendar days of the date this decision is issued, the Agency shall consider taking disciplinary action against the official identified as S2 to the extent that this individual is still employed by the Agency. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.

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

December 10, 2024
Date