



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

[REDACTED]
Lonny C,¹
Complainant,

v.

Deb A. Haaland,
Secretary,
Department of the Interior
(Bureau of Reclamation),
Agency.

Request No. 2024004848

Appeal No. 2022001508

Hearing No. 550-2018-00313X

Agency No. DOI-BOR-16-0530

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022001508 (August 1, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022001508 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 as a File Clerk, GS-0305-5, at the Agency's Management Services Office, Finance and Accounting Division, Fiscal Services and Accounts Receivable Group in Lakewood, Colorado.

Complainant filed a formal complaint, claiming discrimination based on sex (sexual orientation), disability (deafness/perceived tumor), and in reprisal for prior protected EEO activity when:

1. from December 14, 2015, through June 26, 2016, Complainant was denied reasonable accommodation;
2. on or about June 24, 2016, Complainant was terminated; and
3. from December 14, 2015, through June 24, 2016, Complainant was subjected to a hostile work environment when, in addition to the above incidents, management officials:
 - a. denied Complainant proper training,
 - b. were hostile and uncooperative in training,
 - c. refused to communicate in an appropriate manner and their communication was harsh and aggressive,
 - d. scrutinized Complainant's work,
 - e. made threatening remarks regarding Complainant's sexual orientation, and
 - f. failed to provide notice of performance deficiencies.

Following an investigation, Complainant timely requested a hearing before an EEOC Administrative Judge (AJ). The AJ issued a summary judgment decision in favor of the Agency finding that Complainant was not subjected to discrimination as alleged. The Agency issued a final order fully adopting the AJ's decision.

In Lonny C. v. Department of the Interior, EEOC Appeal No. 2020004093 (Aug. 5, 2021), the Commission affirmed the Agency's final order in part.

The Commission agreed that Complainant failed to establish that he was subjected to discrimination based on his sexual orientation. Further, the Commission affirmed the AJ's decision finding that Complainant was not subjected to a hostile work environment as alleged in Claim 3. However, the Commission found that Complainant demonstrated the Agency failed to reasonably accommodate him in Claim 1 and unlawfully terminated him in Claim 2.

To remedy the discrimination, the Commission ordered the Agency to, among other things, offer Complainant reinstatement with appropriate reasonable accommodation; determine Complainant's entitlement to the appropriate amount of additional back pay with interest, and other benefits; and to conduct a supplemental investigation into Complainant's entitlement to compensatory damages, attorney's fees, and to issue a final decision on those matters.

After the Agency completed its supplemental investigation into compensatory damages and attorney's fees, the Agency issued a final decision on compensatory damages on January 20, 2022. The Agency denied Complainant attorney's fees and costs and reimbursement for any medical expenses because he did not provide evidence he incurred any such costs. The Agency awarded Complainant \$60,000 in compensatory damages. The Agency credited Complainant's testimony that his health declined since being terminated, and that he was forced to move on from sedentary employment to a position that required extensive physical exertion. Complainant testified to experiencing depression, an apathetic attitude, loss of confidence, and fear that he would not be able to find work at his age. Complainant noted that the unemployment rate within the deaf community is four times higher than the general hearing population. To this end, Complainant experienced anxiety and a loss of trust. Thus, the Agency determined that Complainant had established an entitlement to \$60,000 in non-pecuniary compensatory damages. Complainant appealed.

In EEOC Appeal No. 2022001508, the Commission found that Complainant presented no arguments regarding the Agency's award of compensatory damages. After a thorough review of the evidence, we found that the Agency's award of \$60,000 for nonpecuniary, compensatory damages was appropriate.

We found that this amount is not motivated by passion or prejudice, is not “monstrously excessive” standing alone, and is consistent with the amounts awarded in other cases. See Dolores J. v. Dep't of Veterans Affairs, EEOC Appeal No. 2022000405 (Mar. 29, 2023) (complainant awarded \$50,000 based on own testimony of sleeplessness, suicidal ideations, and loss of relationships as a result of discrimination); Jona R. v. Dep't of State, EEOC Appeal No. 2020004549 (Mar. 31, 2022), req. for recon. den. EEOC Request No. 2022003028 (Oct. 6, 2022) (complainant awarded \$60,000 in non-pecuniary compensatory damages where denial of reasonable accommodation caused stress, depression, anxiety, withdrawal from social situations and family, exacerbation of preexisting conditions, and beginning of new medical conditions); Carol P. v. Small Business Admin., EEOC Appeal No. 2021004687 (Mar. 9, 2022) (\$50,000 in nonpecuniary damages awarded when complainant suffered loss of job, mood swings, emotional distress, marital discord, and loss of self-esteem after agency failed to process reasonable accommodation request resulting in complainant's separation). The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

Complainant only proffers various arguments contending that his compensatory damages award is inadequate. However, in response, the Agency maintains that Complainant could have previously offered these contentions in his appeal, but Complainant “cannot now attempt to make novel arguments in attempt to obtain a second appeal.”

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 submissions by Complainant in support of the instant request for reconsideration. However, we determine that there is no reason to disturb the Commission’s prior decision.

As already noted, Complainant raises little argument to support his request for reconsideration. We note that during the original appeal from the Agency's final decision, Complainant presented no arguments concerning the Agency's award of compensatory damages. We emphasize that 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 § 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 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. 2022001508 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

ORDER

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

1. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$60,000 in non-pecuniary compensatory damages.

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 (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

January 13, 2025

Date