



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Stanton S.,¹
Petitioner,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Petition No. 2024005253

Appeal No. 2023002828

Agency No. 200H-0646-2020103675

DECISION ON A PETITION FOR ENFORCEMENT

On September 27, 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. 2023002828 (March 21, 2024). 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 ordering the Agency to pay nonpecuniary compensatory damages. For the reasons discussed below, the Commission GRANTS the petition for enforcement.

ISSUE PRESENTED

Whether the Agency has complied with the Commission's order to pay Complainant an additional \$75,000 in non-pecuniary compensatory damages.

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 Plumber at the Agency's Heinz Campus VA Medical Center in Pittsburgh, Pennsylvania. Petitioner filed a complaint in which he alleged that the Agency discriminated against him on the basis of reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Petitioner appealed the Agency's final decision to the Commission, and in Appeal No. 202001199, the Commission found that the Agency had subjected Complainant to retaliatory harassment for which the Agency was liable. The Commission ordered the Agency to conduct a supplemental investigation as to Complainant's entitlement to compensatory damages, restore any leave Complainant took because of the harassment and compensate Complainant for any Leave Without Pay taken as a result of the harassment.

Pursuant to the Commission's order, the Agency conducted a supplemental investigation into Complainant's entitlement to compensatory damages. The Agency issued a final decision on Complainant's entitlement to compensatory damages, awarding Complainant a total of \$8,325.00 in pecuniary compensatory damages for past and future medical expenses as well as awarding Complainant \$175,000.00 in non-pecuniary compensatory damages. See Stanton S. v. Dep't of Veterans Affs., EEOC Appeal No. 2023002828 (March 21, 2024).

Complainant appealed the Agency's award of compensatory damages to the Commission and on appeal, the Commission affirmed the Agency's award of pecuniary, compensatory damages but modified the Agency's award of non-pecuniary compensatory damages to award Complainant a total of \$250,000.00. The Commission therefore ordered the Agency to take the following actions:

- I. To the extent it has not already done so, within 60 days of the date this decision is issued, the Agency will pay Complainant \$8,325.00 in pecuniary compensatory damages.
- II. To the extent it has not already done so, within 60 days of the date this decision is issued, the Agency will pay Complainant \$250,000.00 in nonpecuniary, compensatory damages. If the Agency has already

paid Complainant its initial award of \$175,000.000, the Agency will pay Complainant an additional \$75,000.00 in nonpecuniary, compensatory damages.

The matter was assigned to a Compliance Officer and docketed as Compliance No. 2024002717 on March 21, 2024.

On May 21, 2024, Petitioner submitted the petition for enforcement at issue, stating that the Agency had failed to pay the additional amount of \$75,000.00 in non-pecuniary compensatory damages.

In spite of repeated requests to the Agency for a compliance report on this matter, to date, the Agency has not responded.

CONTENTIONS ON PETITION FOR ENFORCEMENT

Petitioner contends that the Agency has failed to pay the additional amount of \$75,000.00 in non-pecuniary compensatory damages as ordered by the Commission.²

The Agency did not respond to the petition for enforcement.

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

EEOC Regulations 29 C.F.R. § 1614.502(a) and § 1614.503 provide that relief ordered in a final EEOC decision is “mandatory and binding” on the agency. The regulations also provide that, on behalf of the Commission, EEOC’s Office of Federal Operations (OFO) “shall take all necessary action to ascertain whether the agency is implementing the decision of the Commission.” Finally, the regulations provide that failure to implement EEOC orders will subject the agency to a variety of enforcement actions, including the issuance of a notice

² During the pendency of this petition for enforcement, Petitioner acknowledged that the Agency paid the additional amount in compensatory damages.

to show cause to the head of the agency, a referral to the Office of Special Counsel, and/or judicial enforcement.

In this case, although we note that Petitioner acknowledged that the Agency ultimately paid the additional amount in compensatory damages as of November 2024, we are troubled by the Agency's failure to respond to any of the Commission's repeated requests for information or its failure to file a compliance report, as ordered. Under the circumstances, we find that granting the petition for enforcement is necessary due to the Agency's continuing failure to provide a compliance report as evidence that it has, in fact, complied with our previous Order.

We note that due to the Agency's persistent compliance issues, the Agency is currently the subject of a review by OFO's Federal Sector Programs (FSP), requiring the Agency, inter alia, to submit an Action Plan to FSP documenting its plans to improve the problems in its difficulty in complying with regulatory timeframes and the Commission's orders. We hereby place the Agency on notice that any further noncompliance with the Commission's orders will be reported to FSP and the Commission reserves the right to take further action as necessary in order to ensure the Agency's compliance with our orders, which may include the issuance of a notice to show cause to the head of the Agency. See, e.g., Nannette T. v. Dep't of the Army, EEOC Petition No. 2019004335 (Jan. 31, 2020) (ordering agency to submit written report to OFO's Director, Federal Sector Programs based on pattern of failing to report compliance with EEOC orders).

CONCLUSION

Accordingly, the Petition for Enforcement is GRANTED and the matter is REMANDED to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER (C0618)

The Agency is ordered to take the following remedial action:

- I. To the extent it has not already done so, within 60 days of the date this decision is issued, the Agency will pay Complainant \$250,000.00 in nonpecuniary, compensatory damages. If the Agency has already

paid Complainant its initial award of \$175,000.000, the Agency will pay Complainant an additional \$75,000.00 in nonpecuniary, compensatory damages.

- II. 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.

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.

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.

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 (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

January 22, 2025

Date