



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

[REDACTED]  
Dinah L.,<sup>1</sup>  
Complainant,

v.

Jovita Carranza,  
Administrator,  
Small Business Administration,  
Agency.

Appeal No. 2019001982

Hearing No. 530-2015-00004X

Agency Nos. 03-10-039,  
09-13-051

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) alleging that the Agency is not in compliance with the terms of the Offer of Resolution into which the parties entered. See 29 C.F.R. § 1614.109(c); 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Business Opportunity Specialist, GS-12, at the Agency's West Virginia District Office in Clarksburg, West Virginia. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On May 2, 2018, Complainant and the Agency entered into an Offer of Resolution ("Offer") to resolve the matter. The Offer provided, in pertinent part, that:

- (1) The Agency will place Complainant in the position of Lead Business Opportunity Specialist, GS-13/Step 1, or a substantially equivalent position, with back pay computed in the manner prescribed by 5 CFR § 550.805, retroactive to January 14,

---

<sup>1</sup> 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.

2011, with all intervening constructive step increases, with full retirement service credit;

- (2) The Agency will provide remedial EEO training for the Agency units relevant to EEOC Nos. 530-2011-00014X and 530-2015-0004X (as consolidated in 530-2015-0004X; hereinafter "EEOC No. 530-2015-0004X");
- (3) Notification consistent with 29 C.F.R. § 1614.501(a)(1);
- (7) The Agency will expunge from the Agency's records any adverse materials related to the allegations specified in consolidated EEOC No. 530-2015-0004X.

By letter to the Agency dated September 9, 2018, Complainant alleged that the Agency was not in compliance with the Offer, and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that the Agency failed to do the following:

1. Pay Complainant the full amount of back pay and interest, and provide Complainant full formal documentation confirming her promotion to grade GS-13. The Agency also issued Complainant a performance evaluation on October 17, 2018, listing her as a GS-12, and the SF-50s listing Complainant as a GS-12 remain in her official personnel folder (OPF);
2. Provide any remedial EEO training as specified in paragraph 2 of the Offer;
3. Post notice within the Agency's West Virginia District Office in Clarksburg, West Virginia, as required by paragraph 3 of the Offer; and
4. Provide Complainant notification that the Agency has completed the document expunction specified in paragraph 7 of the Offer.

When the Agency did not respond to Complainant's notice of failure to comply with the terms of the resolution after 35 days from the notice of noncompliance, Complainant filed the instant appeal pursuant to 29 C.F.R. § 1614.504(b).

#### CONTENTIONS ON APPEAL

On appeal, Complainant alleges that the Agency has failed to fully implement the terms of the Offer, specifically the terms in paragraphs 1-3 and 7. Complainant states that the posting of a notice of discrimination as required in paragraph 3 of the Offer was something that could have easily been accomplished with little to no delay. Complainant also argues that the Agency's delay in its implementation of paragraph 1 of the Offer was unnecessary because position descriptions for the Agency are readily available. Complainant states that even after contacting Agency's counsel, the Agency still does not have a definitive timeline as to when the terms of the Offer will be implemented.

Complainant states that as of the date of her appeal, December 7, 2018, she had not received a response from the Agency or resolution by way of complete compliance of the terms of the Offer. Complainant asserts that due to the Agency's delayed actions to implement the terms and her necessity to have her counsel pursue compliance with the Offer, she is also due to receive the attorney's fees associated with this appeal.

In its response to Complainant's appeal, the Agency responds regarding each term of the offer as follows:

#### Item 1a: Promotion

The Agency first states that the delay in promotion was due to the need to develop a substantially similar position to that of Lead Business Opportunity Specialist for Complainant. The Agency goes on to state that, due to the District Office's inability to support an additional supervisor at any grade level, it needed to classify a new position in compliance with the regulations established by the Office of Personnel Management (OPM). The Agency also states that to categorize Complainant as the Lead Business Opportunity Specialist would mean that she would need other Business Opportunity Specialists to lead, however, she was the only Business Opportunity Specialist in the office. The Agency states that the classification of Senior Area Business Opportunity Specialist, the position Complainant was ultimately placed in, was completed on August 8, 2018. Complainant was placed in the position at the start of the Fiscal Year 2019. The Agency argues that, given the level of complexity in creating this new position and its need to balance compliance with the Offer against the Agency's mission, that it placed Complainant in her position in a reasonable time.

#### Item 1b. Back Pay

The Agency states that back pay could not be calculated and subsequently paid until the Senior Area Business Opportunity Specialist position was finalized. The Agency states that the National Finance Center (NFC) provides financial management to the Agency and both the Agency and NFC would be calculating the back pay retroactive to January 14, 2011. The Agency could only calculate the payment for the preceding year (2017-2018), and NFC was tasked with calculating payments for the remaining years (2011-2017). The Agency explains that prior to the back pay being processed, the personnel actions effectuating the promotion, all corrections and cancellations of personnel actions, and all within grade increases had to be created. The Agency states that only once those actions were accomplished could Complainant be paid her back pay, which the Agency states occurred on November 2, 2018. The Agency again states that given the complexity of the task that it was accomplished in a reasonable amount of time.

#### Item 2: Remedial EEO Training

The Agency states that the training was set up in the Agency's Talent Management Center on October 16, 2018 with a deadline of October 31, 2018.

### Item 3: Notification

The Agency states that notice is posted consistent with 29 C.F.R. § 1614.501(a)(1) in the Agency's West Virginia District Office.

### Item 7: Expungement

The Agency states that after review it determined that no records contain adverse materials related to the allegations specified in consolidated EEOC No. 530-2015-00004X, and that it was an oversight not to notify Complainant that the review was complete.

The Agency states that its efforts to implement the terms of the Offer began prior to Complainant's notice of failure to comply with the Offer. It states that, while a date certain was not available, the Agency complied with all terms of the Offer in a reasonable amount of time.

## ANALYSIS

Under 29 C.F.R. § 1614.109(c), after requesting a hearing, an offer of resolution may be made by the Agency, within the regulatory timeframe, to a complainant represented by counsel, and complainant shall accept or reject the offer within thirty (30) days. Under 29 C.F.R. § 1614.109(c)(3), "[T]he offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The agency's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, an agency may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered."

The Commission finds that an Offer of Resolution that provides all the remedial relief a complainant would have been entitled to had a finding of discrimination been made, once accepted by the complainant is akin to a final decision that is binding upon an agency. The Agency is required to implement all items listed in the Offer. Failure to do so is subject to appeal to the Commission pursuant to 29 C.F.R. § 1614.504(b). On September 9, 2018, Complainant notified the Agency's EEO Director regarding the Agency's noncompliance with the Offer.<sup>2</sup>

With regard to Item 1 of the Offer, the Agency has not provided any documentation to demonstrate its compliance. The Agency represented that it paid the back pay as of November 2, 2018. However, the Agency in an April 30, 2018 email stated that interest would be included, and it is currently unclear whether all agreed upon monies have been paid to Complainant.<sup>3</sup>

---

<sup>2</sup> The Complainant notified the Agency's Assistant Administrator of the Office of Diversity Inclusion and Civil Rights.

<sup>3</sup> See Complainant's submission dated December 7, 2018, page 42. Email from Agency OGC attorney, titled "[Complainant] v. SBA, EEOC No. 530-2015-0004X [*sic*], Offer of Resolution."

While we understand the complexity of creating a new position for Complainant and the delays this caused in making backpay calculations, all we have currently before us on appeal is the Agency's unsupported assertion that it fully paid Complainant all money due. Without supporting evidence, we cannot find that this aspect of the Offer has been implemented.

In its brief, the Agency includes a declaration stating that the deadline for Item 2, the EEO training, was October 31, 2018, but there is nothing stating that the training required in Item 2 actually occurred or documentation demonstrating the same. Again, without supporting evidence, such as an affidavit from an Agency official which states the time, place and list of employees who participated in the training, as well as the subjects covered by the training, then we cannot find that this term of the Offer has been implemented.

The Agency states that it is in compliance with Item 3, the posting of a notice consistent with 29 C.F.R. § 1614.501(a)(1). It represented that the notice informed the employees of the District Office of their right to be free of unlawful discrimination. However, the Agency also states that there was no finding of unlawful discrimination in the instant case and, as such, it states that there is no notification to the staff that discrimination will not recur. Since we do not have a copy of the actual notice, we cannot determine if it contained everything that was required in the regulation. Moreover, as the agency's Offer specifically stated it would post a notice that complies with the regulation, it cannot pick and choose which aspects of the regulation it will adhere to. Therefore, again we find insufficient evidence to show that the agency properly implemented Item 3 of the Offer.

As to Item 7 of the Offer, the Agency also states that there were no adverse materials related to the allegations specified in consolidated EEOC No. 530-2015-00004X to expunge from Agency records. The Commission is satisfied that the Agency is in compliance with Item 7, as represented by the affidavit of the Agency attorney who attested to her review of Agency records related to Complainant's allegations.

However, with respect to the other three Items at issue, the Commission finds that it is unclear whether or not the Agency is in compliance. If the Agency is not in compliance with Items 1 through 3, it must come into compliance within the 30 days of the date of this decision and demonstrate the same. If the Agency is in compliance with Items 1 through 3 of the Offer, it must provide documentation clarifying this to the Commission within 30 days.

Commission regulations state that Complainant is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). We have consistently held that a complainant is entitled to reasonable attorney's fees and costs incurred at both the earlier stages of processing of their complaint and on appeal. A complaint has not been fully processed until the complainant has received all the relief due him or her for the agency's prior discrimination. See Konchar v. United States Postal Service, EEOC Appeal No. 01902070 (August 6, 1990).

Therefore, attorney's fees are appropriate when an attorney pursues compliance with the terms of an Offer of Resolution on behalf of a complainant, including with respect to the filing of an appeal pursuant to 29 C.F.R. § 1614.504(b). Therefore, the Agency will pay Complainant for any attorney's fees and costs incurred to pursue the Agency's compliance with the Offer.

### CONCLUSION

The Commission finds that the Agency has not provided sufficient evidence to demonstrate it has fully complied with the terms of the Offer of Resolution made in this case. Therefore, this matter is remanded to the Agency for compliance with the Order stated below.

### ORDER

Within thirty (30) calendar days of the date this decision is issued, to the extent it has not already done so, the Agency shall implement the terms of the Offer of Resolution or otherwise provide proof that such terms have already been fully implemented:

1. The Agency shall document that it has paid back pay and interest, pursuant to Item 1 in its Offer of Resolution, and it shall provide proof of such payments to Complainant and the Commission.
2. The Agency shall provide proof of completion of remedial EEO training for personnel in the WV District Office.
3. The Agency shall provide a copy of posting notice and affidavit as to where and how long it was posted, in complete compliance with 29 C.F.R. § 1614.501(a)(1).
4. The Agency shall document that it has paid Complainant's attorney's fees associated with pursuing the resolution of this matter, including any attorney's fees and costs accrued in filing this appeal.

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).

### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is 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 (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision.

A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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(c).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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 his or her 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 17, 2020

Date