



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Calvin D.,¹
Petitioner,

v.

Ryan D. McCarthy,
Secretary,
Department of the Army,
Agency.

Petition No. 2019004326

Appeal No. 0120171662

Agency No. ARWSMR15FEB00498

DECISION ON A PETITION FOR ENFORCEMENT

On June 28, 2019, 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. 0120171662 (September 25, 2018). The Commission accepts this petition for enforcement pursuant to 29 C.F.R. § 1614.503.

BACKGROUND

At the time of events giving rise to this complaint, Petitioner worked as a Military Test Plans Analyst at the Agency's Army Test and Evaluation Command facility in Fort Bliss, Texas.

Petitioner filed a complaint in which he alleged that the Agency discriminated against him on the bases of race (Caucasian), sex (male), and age in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. The Agency issued a final decision determining that Petitioner failed to establish that he was subjected to discrimination as alleged. Petitioner appealed the Agency's final decision to the Commission.

In Appeal No. 0120171662, the Order also directed that Agency to: 1) post the Notice of Violation and 2) provide training to the EEO management officials regarding their

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.

responsibilities concerning case processing. The matter was assigned to a Compliance Officer and docketed as Compliance No. 2018000004 on September 26, 2018. In the approximately 9 months since that time, the Agency has failed to file the ordered report of its compliance with EEOC Appeal No. 0120171662.

ANALYSIS AND FINDINGS

EEOC Regulations 29 C.F.R. § 1614.502(a) and § 1614.503 provide that relief ordered in a final² EEOC decision is “mandatory and binding” on the agency. The regulations also provide that, on behalf of the Commission, its 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 to show cause to the head of the agency, a referral to the Office of Special Counsel, and/or judicial enforcement.

Here, the Agency has not provided any indication to the Commission that it has complied with orders. Moreover, the Agency has not submitted any statement of its position or explanation in response to notification of the docketing of the instant petition for enforcement.

Even more concerning, the Agency’s refusal to report on its compliance with the Commission’s order in this case appears to be part of a larger, ongoing pattern of similar failures. EEOC’s OFO is currently faced with multiple cases involving the Agency where it is unable to effectively fulfill its regulatory responsibility to monitor compliance with its orders because the Agency has failed to provide the required reports and/or evidence of its compliance. See EEOC Petition Nos. 2019001866, 2019004318, 2019004319, 2019004320, 2019004321, 2019004322, 2019004323, 2019004324, 2019004325, 2019004327, 2019004328, 2019004329, 2019004330, 2019004334, 2019004335, 2019004336, 2019004337, 2019004338, 2019004339, 2019005948, 2020002241, 2020002242, and 2020002245.

Based on the Agency’s failure to provide evidence of its compliance with EEOC’s order in EEOC Appeal No. 0120171662, we cannot conclude that it is in compliance. The Commission directs the Agency to immediately take action consistent with the Order below.

² Here, EEOC Appeal No. 0120171662 is the Commission’s final decision as no requests for reconsideration were filed.

ORDER**The Agency shall:**

- 1) **Within 120 calendar days from the date this decision is issued**, provide training to the EEO management officials regarding their responsibilities concerning case processing.
- 2) **Within 30 calendar days of the date this decision is issued**, post a notice in accordance with the paragraph below.
- 3) **Within 60 calendar days of the date this decision is issued**, issue a written report to Director, Federal Sector Programs (FSP), Office of Federal Operations (OFO) that includes:
 - a. An analysis of its Fiscal Year 2018 - 2019 Agency-wide EEO reporting on compliance with EEOC orders to identify problem areas in meeting regulatory reporting requirements, including timely reporting and providing adequate evidence of compliance with EEOC orders.
 - b. A detailed action plan setting forth how the problems identified in its analysis will be corrected, delays ended, and compliance reporting brought in accordance with EEOC regulations. Such plan will include specific and reasonable timeframes within which to meet such goals. The Agency shall provide quarterly progress reports to FSP on the achievements of its action plan throughout the remainder of FY 2020 and shall include a report of its progress in its next MD-715 report.
- 4) The Agency is further directed to submit its 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).

POSTING ORDER (G0617)

The Agency is ordered to post at its Equal Employment Opportunity Compliance and Complaints Review office, located in Fort Belvoir, Virginia, copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

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 Petitioner and his/her representative.

If the Agency does not comply with the Commission's order, the Petitioner may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Petitioner 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 Petitioner 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 Petitioner 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.

PETITIONER'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 Petitioner's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 30, 2020

Date