



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

[REDACTED]
Tiffanie M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Great Lakes Area),
Agency.

Request No. 2020002389

Appeal No. 0120182054

Hearing No. 440-2013-0096X

Agency No. 4J-606-0152-12

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120182054 (Dec. 18, 2019). 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).

The record reflects the following chronology of events. Complainant worked as a Customer Service Supervisor at the Agency's Jefferson Park Annex in Chicago, Illinois. On November 8, 2012, Complainant filed a formal EEO complaint. Complainant claimed that the Agency subjected her to discriminatory harassment based on race (African American), sex (female), color (black), disability, and in reprisal for prior protected EEO activity when:

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.

1. On July 25, 2012, she was charged eight hours of sick leave, without notification;
2. In August 2012, she was removed from a training class;
3. On August 10, 2012, her schedule was changed from a 4:00 a.m. start time to a 6:30 a.m. start time;
4. On August 31, 2012, her manager raised her voice at Complainant and made the statement "you need to transfer out."
5. On September 21, 2012, she was verbally assaulted by a manager, including the manager placing her hand in Complainant's face;
6. On October 17, 2012, her manager yelled at Complainant about moving her car in the parking lot;
7. On October 18, 2012, her manager yelled at Complainant for not getting enough mail moved;
8. On October 20, 2012, she was issued a 5-day letter and moved out of her bid job assignment;
9. On unspecified dates, management disclosed her medical information and failed to maintain said medical information in separate confidential medical files.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). A hearing was held on the merits of the formal complaint on November 8-9, 2016, and a hearing was held on damages on May 18, 2017. An AJ decision was issued March 18, 2018. The Agency subsequently issued a final action adopting the AJ's decision on April 20, 2018.

Complainant prevailed on three of her claims. Specifically, the AJ found the following: (1) Complainant was discriminated against based on disability when in August 2012, she was removed from her 3999 Route Inspection Training; (2) Complainant was discriminated against based on reprisal when on October 20, 2012, the Agency reassigned her, and (3) the Agency violated the Rehabilitation Act when, in mid-October 2012 and specifically on October 18, 2012, it improperly released her medical information. The AJ awarded a total of \$17,000 in compensatory damages and ordered the Agency to take appropriate disciplinary action against the responsible management officials and to provide EEO training on the requirements of Title VII.

Complainant filed an appeal on several issues. Complainant contended, in pertinent part, that the AJ erred in awarding the hourly rate for attorney's fees based on her attorney's normal Grand Rapids, Michigan rates, instead of the claimed Chicago market rates.²

In our prior decision, we found that the AJ did not err in awarding counsel's customary hourly rate in his Grand Rapids, Michigan law firm. EEOC Appeal No. 0120182054 (Dec. 18, 2019).

In her request, Complainant, through her attorney, reiterates that the reasonable hourly rate in this matter should be the higher Chicago based rate. Specifically, Complainant, through her attorney, asserts "[r]ather than award Complainant's attorney Chicago rates, the decision erroneously upheld the [AJ's] awarding of Complainant's customary hourly rates in Grand Rapid, Michigan." Complainant reasserts that affidavits from other attorneys in the Chicago area support the requested higher hourly rates.

In response, the Agency requests that we deny Complainant's request for reconsideration.

Our prior decision properly denied Complainant's request for a higher hourly rate in attorney's fees. In his decision, the AJ awarded Complainant his customary hourly rate of \$375 reasoning that this was the best evidence of the reasonable hourly rate. Our prior decision properly noted that Complainant worked in the Jefferson Park Carrier Annex of the Chicago Post Office, and that the case was heard in the Chicago District Office. Our prior decision also properly set forth that:

[t]he Commission has held that complainants can go elsewhere to find an attorney to handle their specific case, even when it results in payment of a higher hourly rate than the prevailing market rate where the matter arose, but this is not the situation here. See Southerland v. U.S. Postal Serv., EEOC Appeal No. 01A05403 (Oct. 16, 2002). In the instant matter, Complainant chose to hire an attorney with lower hourly rates from outside of the market where allegations arose. Nothing in the record supports an assertion that Complainant's counsel performed his duties any differently than he would have if the case arose, or was litigated in Grand Rapids.

We acknowledge that Complainant on appeal and in her request for reconsideration cites a district court case, Driscoll v. George Wash. Univ., 55 Supp. 3d 106 (D.D.C. 2014) for the proposition that she should be awarded the hourly rate where the case was litigated. In the federal sector, federal district and circuit court cases may be persuasive or instructive, but are not binding on the Commission. Furthermore, in Driscoll, the Court noted that plaintiffs' counsel performed a great deal of work for the case within Washington, D.C., despite the fact that plaintiffs' counsel is located in New Paltz, New York. In the instant matter, we acknowledge that Complainant's attorney attended the administrative hearing in Chicago.

² Complainant's counsel had a customary rate of \$375 per hour, and \$275 per hour for the junior attorney on the case. Counsel claimed that hourly compensation should have been at the prevailing market rate for the Chicago area at \$475 and \$300 per hour respectively.

However, we find based on our review of the Attorney's Fee application that most of the work for this matter was performed at counsel's location in Grand Rapids (i.e. telephone conferences with Complainant, drafting various motions, reviewing pertinent documents etc.).

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. 0120182054 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

ORDER

The Agency is ORDERED to take the following remedial action within sixty (60) days from the date this decision is issued:

To the extent it has not already done so, the Agency shall pay Complainant \$61,462.84 in attorney's fees and costs.

The Agency is further directed to submit a report of compliance as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying the corrective action has been implemented as ordered.

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.

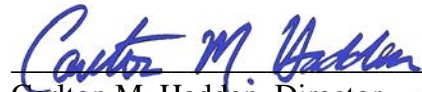
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

September 16, 2020
Date