



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

[REDACTED]
Maxine C.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Capital Metro Area),
Agency.

Request Nos. 2020004720 & 2020004721

Appeal Nos. 2019001571 & 2019003019

Hearing No. 570-2014-00991X

Agency No. 6Z-000-0024-13

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decisions in EEOC Appeal Nos. 2019001571 & 2019003019 (July 7, 2020). 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).

Complainant worked as a Postal Support Employee, Lockmaker, at the Agency's Mail Equipment Shop in Washington, D.C. Complainant filed an EEO complaint alleging the Agency discriminated against her and subjected her to a hostile work environment when her supervisor (S1) sexually harassed her on multiple occasions.

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.

The Agency investigated the complaint, and thereafter Complainant requested a hearing, but subsequently withdrew her request. The Agency issued a final agency decision (FAD) finding no discrimination or harassment. The Agency noted that even if the incidents occurred as Complainant stated, there was no basis for imputing liability to the Agency as management undertook a thorough investigation when Complainant reported the allegations, and the alleged harasser (S1) was reassigned and eventually removed from employment.

In Appeal No. 0120162531 (September 18, 2018), the Commission determined that Complainant established that she was subjected to unwelcome sexual conduct from S1 which created an offensive and hostile work environment. The decision determined that the Agency failed to fully and effectively correct the effects of the discriminatory harassment and was liable for the hostile work environment created by S1. The decision reversed the Agency's decision as to the sexual harassment claim and affirmed it with respect to Complainant's non-sexual hostile work environment, discrimination, and reprisal claims. The decision remanded the matter to the Agency for further processing and directed the Agency to determine the appropriate award for compensatory damages and attorney's fees and costs. The order also included instructions to restore any leave and compensate for any leave without pay taken, and to provide appropriate training to relevant management staff.

The Agency issued a decision regarding Complainant's entitlement to compensatory damages and determined that she was entitled to \$20,000 for non-pecuniary compensatory damages. Complainant's appeal of this decision was docketed as Appeal No. 2019001571.

The Agency also issued a decision on attorneys' fees, in which it applied a 30% across-the-board reduction to the amount of fees requested based on lack of specificity and clear billing errors. It then applied another across-the-board reduction of 50% to the remaining fees because Complainant was unsuccessful in some of her claims. Of the \$203,094.45 that Complainant's attorney requested, the Agency awards \$71,083.01. The attorney also sought \$6,391.05 in costs, but the Agency awarded 4,379.82 in costs. The appeal of the decision on attorneys' fees was docketed as Appeal No. 2019003019.

Our prior decision consolidated the two appeals. With respect to the non-pecuniary compensatory damages, the decision found that Complainant's medical documentation did not show the extent of Complainant's pain and suffering, and although Complainant was made aware that her documentation did not provide specificity, she did not even provide additional information on appeal. Thus, the decision in agreed with the Agency's award of \$20,000, and that the amount was in line with prior Commission cases. The decision noted that Complainant's request for \$185,000-\$200,000 was not consistent with the Commission's prior cases based on the facts of the case.

As to attorneys' fees, the decision determined that the attorney's fees should be \$181,354.34, reducing the requested amount with respect to pre-complaint work and unsuccessful claims. The decision disagreed with the Agency's across-the-board reductions.

The decision found that the Agency owed Complainant \$110,269.33 for attorneys' fees since it had already paid \$71,083.01.

The prior decision further determined that Complainant was entitled to an additional \$1,777.69 in costs.

In her requests for reconsideration, Complainant basically argues she is entitled to additional compensatory damages, albeit for \$30,000, again citing to numerous cases. She provides no additional medical information or new evidence to support her claim for additional damages. We emphasize that a request for reconsideration is not a second appeal to the Commission. See EEO MD-110, Ch. 9, § VII.A. 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. 2019001571 & remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

ORDER

Within sixty calendar days from the date of this decision, the Agency is ordered to take the following actions to the extent it has not already done so:

1. To pay Complainant an additional \$1,777.69 in costs.
2. To pay Complainant an additional \$110,269.33 in attorneys' fees.

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).

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 (P0610)

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 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.

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

November 9, 2020

Date