



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

[REDACTED]
Stanton S.,¹
Complainant,

v.

Dat Tran,
Acting Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Request No. 2020005371

Appeal Nos. 2019005938 & 2020002226

Agency No. 200H06462015104577

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Stanton S. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019005938 (Sept. 14, 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, a WG-9 Plumber at the Agency's Oakland Medical Center in Pittsburgh, Pennsylvania, filed an EEO complaint alleging that the Agency subjected him to unlawful discrimination on the bases of his race, disability, and in reprisal for prior protected EEO activity when on he was subjected to hostile work environment. In Stanton S. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120170582 (Apr. 16, 2019) the Commission found that Complainant established that he was subjected to a pattern of racial harassment at the hands of his coworkers that the Agency had failed to take effective steps to correct.

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 matter was remanded to the Agency for a supplemental investigation into Complainant's entitlement to compensatory damages. In the decision, the Agency awarded Complainant \$110,000 in non-pecuniary compensatory damages, \$350 in pecuniary damages, and \$3,960 in attorney's fees. In Stanton S. v. Dep't of Veterans Affairs, EEOC Appeal Nos. 2019005938 & 2020002226 (Sept. 14, 2020), the Commission modified the final decision and awarded Complainant \$175,000 in nonpecuniary compensatory damages and \$7,785 in attorney's fees. Complainant now seeks reconsideration of that decision.

In his request for reconsideration, Complainant argues for an increase in the amount of compensatory damages on the grounds that, in the previous decision, the Commission failed to adequately consider the duration of the harm to which Complainant was subjected or to take into account the impact of inflation on the value of damage awards in comparable cases. We are not persuaded. There is no precise formula for determining the amount of damages for nonpecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). Our review of the record shows that the amount awarded as nonpecuniary compensatory damages was appropriate under all the circumstances. For this reason, we find that Complainant's arguments do not 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. Accordingly, we find that Complainant has failed to demonstrate that the Commission should reconsider its appellate decision.

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 Nos. 2019005938 & 2020002226 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

ORDER

To the extent that it has not already done so, the Agency is ORDERED, within sixty (60) calendar days from the date this decision is issued, to pay Complainant \$175,000 in nonpecuniary compensatory damages and \$7,785 in attorney's fees.

The Agency is further directed to submit a report of compliance, as provided, in the statement entitled "Implementation of the Commission's Decision."

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 (Q0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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

February 2, 2021

Date