



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

[REDACTED]
Owen L.,¹
Complainant,

v.

Kiran Ahuja,
Director,
Office of Personnel Management,
Agency.

Request No. 2021004857

Appeal No. 2020000990

Hearing No. 451-2016-00071X

Agency No. 2015013

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2020000990 (July 15, 2021). 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).

During the relevant time, Complainant worked as a Human Resources Specialist, GS-0201-12, at the Agency's Office of Human Resources Strategy - Organization Design and Position Classification (ODPC) in San Antonio, Texas.

Complainant filed a formal complaint, claiming discrimination based on race, color, sex, disability, and age when he was denied a promotion to the GS-13 level.

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.

After an investigation, Complainant requested a hearing. The assigned EEOC Administrative Judge (AJ) tried unsuccessfully to schedule a hearing via remote video-conferencing (VTC) and ultimately held an in-person hearing from August 19 – August 21, 2019. While the hearing request was pending, Complainant filed two motions for sanctions and a motion to amend his complaint. In the amendment, Complainant alleged that the Agency subjected him to a hostile work environment when a supervisor published an email revealing confidential information about the processing of the complaint, including details of an unsuccessful mediation attempt. The AJ adjudicated both claims and issued a bench decision granting Complainant's motions for sanctions and entered a default judgment against the Agency, despite finding insufficient evidence of an unlawful motive. The AJ issued an order for relief including a retroactive promotion to GS-13 with back pay and benefits, compensatory damages, and training for the supervisor who published the email at issue. Thereafter, the Agency issued a final order declining to implement the AJ's decision and appealing the matter to the Commission. Complainant filed a cross-appeal.

In EEOC Appeal No. 2020000990, the Commission found that the AJ's imposition of a default judgment, the severest sanction, without warning was an abuse of discretion. The Commission found that more appropriate sanctions, tailored to address the nature, severity, and impact of the supervisor's disclosures, would include training the identified supervisor on his responsibilities regarding participation in the EEO process, particularly the need to strictly observe confidentiality, and the consideration of disciplinary action. The Commission, therefore, entered an order directing the Agency to provide EEO training for that supervisor and to consider whether disciplinary action should be taken against him. However, the Commission agreed with the AJ that the record was insufficient to establish that the Agency's decision not to promote Complainant to GS-13 was based on his race, color, sex, age, or disability. The Commission also agreed with the AJ that the record was insufficient to establish a discriminatory motive with respect to the email disclosures or a hostile work environment. The Commission issued an order modifying the Agency's final order.

In the instant request for reconsideration, we have carefully reviewed Complainant's arguments and determine that the matters either were raised or could have been raised below. We emphasize that a request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VI.A (Aug. 5, 2015); *see, e.g., Lopez v. Dep't of Agric.*, EEOC Request No. 0520070736 (Aug. 20, 2007). 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. 2020000990 remains the Commission's decision.

The Commission's order contained therein is reiterated below and the Agency is instructed to take action accordingly. **There is no further right of administrative appeal on the decision of the Commission on this request.**

ORDER

To the extent that it has not already done so, the Agency is ordered to take the following action:

1. Within 60 calendar days of the date this decision is issued, the Agency is ordered to provide eight hours of in-person or interactive training to the official in the ODPC identified in the decision as S2. The required training shall cover that official's responsibilities under Title VII of the Civil Rights Act, the ADEA, and the Rehabilitation Act, particularly his responsibility to maintain the confidentiality of EEO proceedings, including the confidentiality of what transpires during ADR. If the official identified as S2 is no longer employed, the Agency shall provide documentation of his departure date.
2. Within 60 calendar days of the date this decision is issued, the Agency shall consider taking disciplinary action against the official identified as S2 if this individual is still employed by the Agency. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.

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). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

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

March 2, 2022

Date