



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



Larraine D.,
Denese G.
Kerrie F.,¹
Complainants,

v.

Samantha Power,
Administrator,
Agency for International Development,
Agency.

Request Nos. 2022001084, 2022001085, 2022001086

Appeal Nos. 2020003744, 2020003745, 2020003746

Hearing Nos. 570-2019-00109X, 570-2019-00110X, 570-2019-00111X

Agency Nos. OCRD-005-17-F, OCRD-006-17-F, OCRD-007-17-F

DECISION ON REQUEST FOR RECONSIDERATION

Complainants timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its consolidated decision in EEOC Appeal Nos. 2020003744, 2020003745, and 2020003746, (November 9, 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).

¹ This case has been randomly assigned a pseudonym which will replace Complainants' names when the decision is published to non-parties and the Commission's website.

As a threshold matter, EEOC regulations allow the Commission to consolidate two or more complaints filed by two or more complainants, consisting of substantially similar discrimination claims, or relating to the same matter. 29 C.F.R. § 1614.606. For the sake of clarity and administrative efficiency, we exercise our discretion and consolidate the above-referenced requests.

Complainants joined the Foreign Service at the Agency between 1989 and 1993. At varying times in their careers, Complainants advanced from working as Foreign Service Officers to Senior Foreign Service Officers. On January 19, 2017, the three complainants each filed a formal EEO complaint claiming that the Agency continuously paid them a salary less than that paid to similarly situated men performing jobs requiring substantially equal skill, effort, and responsibility under similar working conditions.

Following an investigation, Complainants timely requested hearings before an EEOC Administrative Judge, but subsequently withdrew their requests. Thereafter, the Agency issued three final decisions, finding no discrimination was established in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or the Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d) et seq.

The three complainants appealed. On appeal, complainants claimed, among other things, that the Agency final decisions “appear to be the product of the Agency’s Office of General Counsel rather than the Agency’s EEO office.”

In consolidated Appeal Nos. 2020003744, 2020003745, and 2020003746, we vacated the Agency’s final decisions and remanded the matter back to the Agency for further processing. Specifically, it was determined that although the Agency’s EEO Office had issued the final decisions, they did not appear to be from deliberation and work independent of the defensive function of the Agency’s Office of General Counsel as required by regulation and EEOC guidance. On remand, the Agency was ordered to issue three new final decisions “by a fair, impartial, and objective official with no interference from the Agency’s Office of General Counsel.” In addition, the Agency was notified that the Agency’s failure to maintain an independent EEO Office had been referred to EEOC’s Federal Sector Programs, which provides oversight to federal agencies’ EEO programs.

We note that while complainants’ attorneys identify the matters raised before us as a “Request for Clarification,” we conclude it is more appropriate to consider this matter as a request for reconsideration of our prior appellate decision under 29 C.F. R. § 1614.405(c).

Complainants’ attorneys do not dispute the Commission’s findings below. However, they argue that merely directing the Agency to issue new final decisions does not serve to deter the Agency from the actions taken in its prior final decisions.

They expressly seek attorney's fees as a sanction following the Agency issuance of new final decisions, and further request that the Commission hold in abeyance any ruling on the amount of fees to be awarded until they can review the new final decisions and, if appropriate, file new appeals and determine how much in attorney's fees the new final decisions and appeals cost complainants.

We have reviewed the instant request for reconsideration and determine that there is nothing that requires expansion from, or clarification of, the Commission's prior decision. Moreover, we find it unnecessary to hold in abeyance any request for added attorney's fees. Specifically, we note that this request can readily be raised if and when appeals are filed from the new Agency final decisions. 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. Complainants have not done so here.

After reviewing the previous decision and the entire record, the Commission finds that the requests fail to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to deny the requests. The consolidated decision in EEOC Appeal Nos. 2022001084 et al, remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

To the extent it has not already done so, the Agency is directed to take further action in accordance with the Order below.

ORDER

Within 60 days of the date this decision is issued, the Agency shall issue three new final decisions by a fair, impartial and objective official with no interference from the Agency's Office of General Counsel.

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 31, 2022

Date