



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Barrett V.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021003099

Hearing No. 460-2021-00301X

Agency No. 1G-772-0004-20

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 21, 2021 final decision concerning an equal employment opportunity (EEO) complaint claiming employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Tractor Trailer Operator, PS-8, at the Agency's North Houston Processing and Distribution Center in Houston, Texas.

On February 11, 2020, Complainant filed a formal EEO complaint consisting of the following two matters:

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. Whether the Agency subjected Complainant to discriminatory harassment based on sex (male) and disability when, beginning on or about October 9, 2019, and ongoing, Complainant was not afforded work accommodations, or provided a job offer, and he was sent home.
2. Whether the Agency subjected Complainant to discriminatory harassment based on sex (male), disability, and in reprisal for prior protected EEO activity (instant complaint) when, on October 5, 2019, when Complainant returned to work, his work hours and days off were changed.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of the right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing.

On April 6, 2021, during the pre-hearing process, the Agency filed a motion for sanctions against Complainant. Specifically, the Agency requested that the AJ dismiss Complainant's hearing request and remand the matter to the Agency for further processing due to Complainant's repeated failure to comply with the AJ's orders.

On April 14, 2021, the AJ granted the Agency's motion, dismissed the hearing request with prejudice, and remanded the formal complaint to the Agency for a final decision. The AJ determined that Complainant failed, on multiple occasions, to comply or provide good cause for his failure to comply with the AJ's orders. Specifically, the AJ noted that Complainant failed to take the following actions: (1) appear for a mandatory teleconference as required by the Initial Scheduling Conference Order; (2) comply with the Acknowledgment's requirement that Complainant file a Preliminary Conference Information (PCI) report; (3) confer with Agency counsel as required by the Conference Order; and (4) failed to demonstrate good cause why sanctions should not be imposed.

On May 21, 2021, the Agency issued a final decision regarding the remanded complaint. Therein, the Agency finding no violation of the Rehabilitation Act or Title VII.

The instant appeal followed. On appeal, Complainant only disputes the AJ's dismissal of his hearing request. Complainant states that he failed to attend the AJ's scheduled teleconference, because he did not receive an email informing him of the teleconference, and the email used to notify his representative was incorrect. Complainant further noted that he expected to receive the notice for the scheduling conference by regular mail.

ANALYSIS AND FINDINGS

Here, we note that Complainant has limited his appeal to the AJ's decision to grant the Agency motion for sanctions which resulted in the dismissal of his hearing request and issuance of a final decision on the merits by the Agency.

Consequently, our decision below will only address the scope of what Complainant had disputed on appeal. Therefore, we need not address the merits of the Agency's final decision.

EEOC regulations confer upon its AJs "full responsibility for the adjudication of the complaint, including overseeing the development of the record." 29 C.F.R. § 1614.109. During the hearing stage, AJs also ensure the integrity and efficiency of the administrative process. In executing such responsibility, an AJ is authorized, among other things, to "regulate the conduct of hearings," "exclude any person who is disruptive," issue a decision without a hearing when there are no genuine issues of material fact in dispute, and "impose appropriate sanctions on parties who fail to comply with orders or requests." Equal Employment Opportunity Directive for 29 C.F.R Part 1614 (MD-110), Chap. 7, Sect. III(D) (August 5, 2015).

While EEOC Regulation 29 C.F.R. § 1614.109(f)(3) sets forth the specific types of sanctions an AJ may take when required by the appropriate circumstances, MD-110 indicates that an AJ's ability to issue sanctions is limited to conduct by the parties involving a failure "to comply with the Administrative Judge's order or request." MD-110, Chap. 7, Sect. III(A). Additionally, the MD-110 requires that an AJ issue a Show Cause Order before the issuing sanctions. Id. See also, Miguelina S. v. Dep't of Justice, EEOC Request No. 2019002953 (Jan. 27, 2020).

Our review of the record reflects that the AJ properly determined that sanctions were appropriate in this instance.

On September 22, 2020, the AJ issued, via email, an Acknowledgment Order to the parties.² The Acknowledgment Order informed Complainant that he could gain access to his case on the EEOC Public Portal and indicated that this online system would be the online depository for Complainant to submit all case-related documents. The Acknowledgment Order further directed both parties to submit, no later than fifteen days from the date of the Acknowledgment Order, a PCI to the online system which would inform the AJ of what evidence the parties believed was needed to supplement the record.

The record indicates that Complainant was able to access the online portal from the emailed instructions, and he submitted the PCI. However, Complainant failed to answer the necessary questions on the PCI form. Consequently, Complainant's submission was incomplete.

On March 3, 2021, the AJ issued, via email, an Initial Scheduling Conference Order (Scheduling Order) which required all parties to attend a scheduled teleconference on April 1, 2021, at 9:00 am (central time) using the provided call-in information and instructions. The Scheduling Order indicated that purpose of the teleconference was to review the record, determine the issues and whether discovery was needed. The Scheduling Order further warned both parties that "[f]ailure to follow the orders of the Administrative Judge or to comply with the Commission's regulations may result in sanctions. See 29 C.F.R. § 1614.109(f)(3)."

² The record indicates that due to the COVID-19 pandemic, the AJ served all notices and orders to the parties via electronic mail.

The record indicates that Complainant and his representative failed to appear at the scheduled April 1, 2021 teleconference. The record further indicates that on April 1, 2021 at 10:26 a.m., the AJ issued, via email, a Show Cause Order requiring Complainant to provide good cause for his failure to appear at the scheduled teleconference, no later than April 12, 2021. The Show Cause Order stated, in pertinent part:

Additionally, you are on FINAL NOTICE that failure to comply with an order of the Judge, including a failure to appear for the conference mandated by the Judge, could result in the sanction dismissal of the hearing request and a remand of the EEO complaint to the Agency for final agency decision from which Complainant may appeal. This sanction would be imposed unless Complainant or his representative shows good cause in writing directly sent to the [AJ].

On April 5, 2021, Complainant responded and emailed the AJ the following statement:

The reason for this letter is to apologize for missing the email with my hearing date. I was expecting to be notified by mail. And my email for my representative was listed in correctly [sic]. Again I apologize for this oversight [sic] on my part. And I hope to continue with my case.

On the same day, the AJ, via email, acknowledged Complainant's response. The AJ stated, in pertinent part:

Your email is acknowledged. However, it fails to provide any good-cause reason why you did not appear on the mandatory teleconference given that the attached orders were served upon you via email through our database. That same database also reflects that you entered it. No orders have ever been served by mail upon you; and the Commission is unable to do so due to its pandemic protocol. Moreover, your email offers no justification for your failure to appear on the teleconference after you returned my message during the conference period and indicated that you would dial into the conference line.

Thereafter, the Agency filed its April 6, 2021 motion for sanctions which the AJ granted on April 14, 2021.

Here, the record reflects that Complainant failed to provide good cause for his absence at the scheduled teleconference. Complainant's statement that he was waiting to receive a mailed notice regarding the teleconference is not persuasive. We note that throughout the pre-hearing process, the AJ communicated with both parties via email. The record reflects that Complainant received the electronic correspondence, as he was able to use instructions emailed to him in the Acknowledgement Order to access the online portal to upload the PCI form. Therefore, Complainant cannot later assert, then and again on appeal, that he did not receive an email or that he believed he would receive a mailed notice regarding the teleconference when he had, in fact, received electronic correspondence all along.

Additionally, the AJ noted that on the day of the conference, she and Agency counsel waited thirty minutes for Complainant and his representative to appear. The AJ further noted that she sent Complainant and Complainant's representative a reminder email about the conference, and she also called both Complainant and his representative using the phone numbers on record. Although Complainant returned the AJ's April 1, 2021 call and indicated that he would join the teleconference, Complainant failed to do so.

The Commission has repeatedly held that sanctions must be tailored to each situation, applying the least severe sanction necessary to respond to the party's failure to show good cause for its actions, as well as to equitably remedy the opposing party. See Gray v. Dep't of Defense, EEOC Appeal No. 07A50030 (Mar. 1, 2007); Rountree v. Dep't of the Treasury, EEOC Appeal No. 07A00015 (July 13, 2001); Hale v. Dep't of Justice, EEOC Appeal No. 01A03341 (Dec. 8, 2000). The Commission's interest lies in deterring the underlying conduct of the non-complying party and protecting its administrative process from abuse by either party to ensure that agencies, as well as complainants, abide by its regulations. See Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009). The factors pertinent to "tailoring" a sanction, or determining whether a sanction is even warranted at all, include the following: (1) the extent and nature of the non-compliance, including the justification presented by the non-complying party; (2) the prejudicial effect of the noncompliance on the opposing party; (3) the consequences resulting from the delay in justice, if any; and (4) the effect on the integrity of the EEO process. Id.; see also Gray, EEOC Appeal No. 07A50030; Vovsest v. Soc. Sec. Admin., EEOC Appeal No. 01A35340 (Jan. 18, 2005).

Here, Complainant displayed a pattern of failed compliance when: (1) he did not complete the PCI form as instructed, (2) he did not confer with Agency counsel as instructed, and (3) he did not appear for the scheduled teleconference. Complainant's repeated non-compliance caused a negative effect on the integrity of the EEO process because Complainant failed to fully participate in that process. In sum, we find that the AJ did not exceed her authority by dismissing Complainant's hearing request.

Because we find that the dismissal of the hearing request was proper, the Agency's final decision on the merits of the claims is affirmed as Complainant did not dispute the merits of the Agency's decision on appeal.

CONCLUSION

Accordingly, the Commission AFFIRMS the Agency's final decision finding no discrimination.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish 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.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted together with the request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. If you file a request to reconsider and also file a civil action, **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

June 6, 2022
Date