



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

[REDACTED]
Joshua F.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2021004850

Appeal No. 2020003749

Agency No. 200J06092017101967

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2020003749 (July 28, 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 was an applicant for the position of Motor Vehicle Operator (MVO), WG-07, at the VA Medical Center in Marion, Illinois.

Complainant filed a complaint, claiming discrimination based on perceived disability. Complainant alleged that the Agency rescinded a tentative offer of employment for the MVO position following Complainant's pre-employment medical examination.

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 final decision from the Agency. In accordance with Complainant's request, the Agency issued a final decision concluding that Complainant failed to prove that the Agency subjected him to discrimination as alleged. Complainant appealed.

In EEOC Appeal No. 0120181309, the Commission reversed the Agency's final decision and found the Agency violated the Rehabilitation Act. The Agency was ordered to reinstate its tentative offer to Complainant and to perform an individualized assessment to determine if hiring him into the MVO position would pose a significant risk of substantial harm to the health or safety of himself or others which cannot be eliminated or reduced to an acceptable level by reasonable accommodation. The Commission also awarded Complainant backpay if the Agency eventually hired him for the position and ordered the Agency to conduct an investigation to determine his entitlement to compensatory damages.

The Agency conducted a supplemental investigation on compensatory damages and determined the evidence did not warrant any pecuniary damages, but it did warrant an award of \$3,500 in nonpecuniary damages. Complainant appealed.

In EEOC Appeal No. 2020003749, the Commission found that Complainant had not shown that the Agency's discrimination caused any pecuniary loss and, Complainant, therefore, was not entitled to any pecuniary damages. However, the Commission found an award of \$10,000 in nonpecuniary damages was more appropriate than the Agency's award of \$3,500 and increased Complainant's award for nonpecuniary damages accordingly. Thus, the Commission modified the Agency's final decision on compensatory damages and remanded the matter to the Agency for further action.

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 note that during the original appeal from the Agency's final order, Complainant presented many of the same arguments that have been replicated in the instant request. 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. 2020003749 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 it has not already done so, the Agency shall, within 60 days of the date this decision is issued, pay Complainant \$10,000 in nonpecuniary, compensatory damages. If the Agency has paid some amount of these damages already, then it may subtract that amount from the \$10,000 award.

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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

January 26, 2022

Date