



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

[REDACTED]
Rebecca L.,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Request Nos. 2022000864 & 2022000888

Appeal No. 2021001759

Hearing No. 520-2019-00003X

Agency No. IRS-15-1143F

DECISION ON REQUEST FOR RECONSIDERATION

Both Complainant and the Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Rebecca L. v. Dep't of the Treasury, EEOC Appeal No. 2021001759 (Nov. 4, 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).

Complainant, a Contact Representative at the Brookhaven Accounts Management/Wage and Investment Service Center in Holtsville, New York, filed an equal employment opportunity (EEO) complaint alleging (as amended) that the Agency discriminated against her on the bases of disability (Occupational Asthma, Rhinitis, and Conjunctivitis) and reprisal (requesting reasonable accommodation) when:

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. it denied her reasonable accommodation by management failing to enact or enforce measures to limit allergens coworkers brought into Complainant's workspace;
2. beginning February 2015, colleagues subjected Complainant to hostile work environment harassment when she asked for measures to be taken to limit her exposure to allergens, and, since December 2015, management retaliated against Complainant for asking for reasonable accommodation; and
3. management treated her disparately as to Complainant's reviews, intentional exposure to allergens, threats and intimidation, failing to select Complainant for developmental and job opportunities, and lower-than-warranted performance appraisal ratings that contained negative comments.

Following an investigation and a hearing, an EEOC Administrative Judge (AJ) issued a decision finding that the record did not support a finding of discriminatory or retaliatory disparate treatment with regard to Complainant's developmental and job opportunities, as well as her performance appraisal ratings. However, the AJ determined the record supported a finding that the Agency violated the Rehabilitation Act by subjecting Complainant to a hostile work environment and denying her reasonable accommodation.

The Agency issued a final order in which it declined to fully implement the AJ's decision and the relief ordered and simultaneously appealed that decision. In Rebecca L. v. Dep't of the Treasury, EEOC Appeal No. 2021001759 (Nov. 4, 2021) the Commission reversed the Agency's final order in part. Specifically, the Commission agreed with the AJ's findings on Complainant's reasonable accommodation and hostile work environment claim. As remedial relief, the Commission ordered the Agency to pay Complainant \$75,000 in nonpecuniary compensatory damages, \$1,350 in past pecuniary damages, and \$25,650 in attorneys' fees. In addition, the Commission ordered training for the responsible management officials, consideration of disciplinary actions against those individuals, and other equitable relief. Finally, the Commission ordered the Agency to issue a policy statement making it clear that food allergies may constitute a disability and providing safeguards for employees with such allergies.

Both parties filed requests for reconsideration.

The Commission emphasizes that a request for reconsideration is not a second appeal. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (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.

Here, Complainant has made no such showing. Although she has presented a lengthy request for reconsideration in which she discusses every incident she experienced in meticulous detail, she does not identify errors in our previous decision's factual findings or legal conclusions with any degree of specificity. She merely relitigates her appeal on the merits, raising essentially the same contentions that we rejected in our previous decision. We therefore see no reason to disturb the

findings and conclusion in our previous decision regarding Complainant's disparate treatment claim.

With regard to the Agency's request for reconsideration, our previous decision determined that Complainant's food allergies were not reasonably accommodated and that she was subjected to a hostile work environment on account of her disabilities. The Agency has not presented evidence in its reconsideration request that would constitute a clearly erroneous interpretation of material fact or law. We will, however, slightly modify the language in our order to direct the Agency to develop procedures for dealing with the problem of airborne allergens in the workplace. We will also refer this matter to Federal Sector Programs so that technical assistance can be provided if needed.

After reviewing the previous decision and the entire record, the Commission finds that neither request meets the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to DENY both requests. The decision in EEOC Appeal No. 2021001759 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 (C0618)

To the extent it has not already done so, the Agency shall provide the following remedial relief **within sixty (60) calendar days of the date this decision is issued:**

1. The Agency shall pay Complainant \$75,000 in nonpecuniary compensatory damages.
2. The Agency shall pay Complainant \$1,350 in pecuniary damages.
3. The Agency shall develop internal procedures which address the issue of airborne allergens in the work area. These procedures are to contain: (1) specific safeguards for employees with such allergies; (2) specific, pro-active, enforcement mechanisms regarding those safeguards; and (3) assurances that requests from employees for protection against airborne allergens in the work area will be treated like any other request for reasonable accommodation.
4. The Agency shall provide at least four (4) hours of mandatory training on the provision of reasonable accommodation under Rehabilitation Act to the responsible management officials in this case. The training must have a general emphasis on determining coverage under the Rehabilitation Act and processing reasonable accommodation requests from employees, and have a specific emphasis on accommodating airborne irritant allergies (such as to food smell, odor, and fragrances) in the workplace.
5. The Agency shall consider disciplinary action against the responsible management officials involved in Complainant's denial of reasonable accommodation and discriminatory harassment. The Commission does not consider training to be a disciplinary action. If the Agency decides to take disciplinary action, it shall identify

- the actions taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of them has left the Agency's employ, the Agency shall furnish documentation of the departure date(s).
6. The Agency shall pay \$25,650 in attorney's fees, which includes \$18,150 in attorney's fees directly to Complainant's attorney and \$7,500 to Complainant for prepaid fees she remitted pursuant to a retainer agreement.
 7. The Agency shall provide a neutral reference (including dates of Agency employment, position held, and retirement as reason for end of employment) to those who inquire about Complainant's Agency employment.

POSTING ORDER (G0617)

The Agency is ordered to post at the Brookhaven Accounts Management/Wage and Investment Services Center, Holtsville, New York copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

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 in addition to those fees awarded pursuant to paragraph (6) of the order above. 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 (R0610)

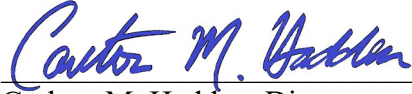
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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

July 25, 2022

Date