



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

[REDACTED]  
Jane S.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Southern Area),  
Agency.

Appeal No. 2021000960

Hearing No. 451-2014-00183X

Agency No. 4G-780-0239-13

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 21, 2020, final decision concerning her equal employment opportunity (EEO) complaint alleging 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 the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons set forth below, the Agency's final decision is VACATED, and the complaint is REMANDED for a hearing.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Harlingen Post Office in Harlingen, Texas. Complainant filed a complaint alleging that the Agency discriminated against her based on race (White), sex (female), age (over 40), and retaliation (prior EEO activity) in that beginning April 19, 2013, and continuing, she has been called names, bullied, threatened and intimidated with discharge and/or discipline, including, but not limited to when:

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<sup>1</sup> 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. On August 5, 2013, she was told that if she got off the Overtime Desired list, she would be sorry;
2. In approximately the end of April or first of May 2013, she was stopped and provoked during route inspection;
3. In September 2013, she was forced to take her vacation on Leave Without Pay (LWOP);
4. In approximately the end of April or first of May 2013, she was denied a route adjustment;
5. On unspecified dates, she was denied assistance in fixing problems with her route, and management did not take appropriate action to prevent customers on her route from abusing her;
6. While she was out due to her injury on October 21, 2013, she was forced to come in for an investigative interview;
7. On November 7, 2013, she was issued a 7-Day Suspension;
8. On January 6, 2014, she was denied access to her local personnel folder;
9. On January 7, 2014, she was told that if she did not come in on January 10, 2014, for her job offer, she would be reported to the Office of Workers' Compensation Programs (OWCP); and
10. On January 9, 2014, management threatened to deny her job offer.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing, but on September 30, 2020, the AJ remanded the complaint to the Agency for the issuance of a final decision because Complainant “[f]ailed to fully and sufficiently respond to the Agency’s Discovery Requests.” In compliance with the AJ’s order, the Agency issued its October 21, 2020, final decision finding no discrimination.

In her Order dismissing the hearing request, the AJ noted that, on June 16, 2014, the parties were informed of their right to engage in discovery, and that they must cooperate with each other in honoring discovery requests. The parties were also told that they were expected to initiate and complete needed discovery with a minimum of intervention by the AJ. Finally, the AJ noted that the parties were further advised that responses to discovery requests were required to be made within 30 days from receipt of those requests.

The Agency initiated discovery on June 26, 2014, by serving Complainant and her representative with “Interrogatories and a Request for Production of Documents” (Discovery Requests). Accordingly, Complainant’s responses were due no later than July 26, 2014. On July 25, 2014, Complainant’s representative requested a 30-day extension of time to respond to the Discovery Requests, and the Agency consented. Complainant’s deadline to respond therefore became August 25, 2014.

On August 21, 2014, Complainant’s representative requested an additional two-week extension of time to respond to the Discovery Requests, but the Agency denied the request. On August 27, 2014, the Agency’s representative sent Complainant a copy of its Motion to Compel, advising that Complainant’s discovery responses were due, and requesting that she immediately provide full responses. The Agency’s representative added that if they were not received, the Agency would file the Motion to Compel. Complainant did not respond and on September 3, 2014, the Agency filed a Motion to Compel in which it asked that Complainant be compelled to provide complete responses to the Agency’s Discovery Requests and that, should she fail to do so, she be sanctioned by the dismissal of her complaint. On September 3, 2014, the AJ granted the Agency’s Motion to Compel.

On November 18, 2014, the Agency filed a Motion to Dismiss, noting that almost five months had elapsed since it had served Complainant with its Discovery Requests, and almost three months since the AJ had granted Agency’s Motion to Compel. The Agency asked that Complainant be sanctioned by the dismissal of her complaint.

On December 22, 2014, the Agency filed a Supplement to its Motion to Dismiss, indicating that on December 19, 2014, Complainant had provided the Agency with a document entitled “Complainant’s Response to Agency’s Discovery.” The document was six pages of typed notes, wherein the AJ noted that it appeared Complainant had gone through the Report of Investigation (ROI) and “commented, clarified, or supplemented what was written therein.” Complainant opposed the Agency’s Motion to Dismiss, claiming that she had sent the Agency’s representative over 200 pages of documents, which were divided by “bright yellow paper,” marked to identify that section’s contents.

On January 8, 2015, the Agency filed a Second Supplement to its Motion to Dismiss alleging that Complainant’s response to its Discovery Requests was deficient. On January 23, 2015, Complainant opposed the Agency’s motion, arguing that responses to some interrogatories could be found in the Report of Investigation, and that she had properly identified comparators by alleging that “all of the male employees were treated more favorably than Complainant in every aspect of their day-to-day work.”

On March 26, 2016, the AJ issued an Order denying the Agency’s Motion to Dismiss, in which she noted that when she had previously granted the Agency’s Motion to Compel, Complainant was represented by a non-attorney. When Complainant opposed the Agency’s Second Supplement to the Motion to Dismiss, she was represented by an attorney who, in her opposition to the Agency’s motion, described a litany of personal problems that Complainant had been

having which had prevented her from being more involved in her case. The AJ stated that she agreed that Complainant's responses to the Agency's Discovery Requests were deficient, and she ordered Complainant to fully respond to the Agency's Discovery Requests within 30 days of her receipt of the order, and advised that the failure to comply with the Order could result in sanctions pursuant to 29 C.F.R. §1614.109(f)(3). On May 5, 2016, the Agency filed a Third Supplement to its Motion to Dismiss indicating that Complainant had not provided it with any additional responses to its Discovery Requests since the AJ issued her March 26, 2016, Order. On May 24, 2016, Complainant responded to the Agency's Third Supplement to the Motion to Dismiss.

The AJ found that:

Complainant's continued insistence on responding to the Agency's Discovery Requests by referring to [her] Informal Complaint (42 pages), Formal Complaint (seven pages), and her Report of Investigation [ROI] affidavit (34 pages) is deficient. Not all the information contained in those documents is responsive to the Agency's Discovery Requests, and the Agency is not required to go through scores of pages and tease out what might be responsive to its requests. Nor was it sufficient for Complainant to continue to identify all similarly situated co-workers whom she alleged were treated more favorably than she, as "all of the male employees," which, as the Agency pointed out, numbered in the hundreds.

As noted above, the AJ found that Complainant failed to fully and sufficiently respond to the Agency's Discovery Requests, and that a sanction was appropriate; therefore, she denied Complainant's request for a hearing on the merits of her case, and remanded her complaint to the Agency for issuance of a final decision.

On appeal, Complainant argues that "[m]ost of the [A]gency discovery requests had already been answered in full by [Complainant] and contained in the ROI." Complainant also maintains that she "[a]nswered each interrogatory fully, stating exactly where in the record it existed. The responding party is not required to give a narrative answer to an interrogatory, but may instead produce records/documents, whereby the burden of deriving or ascertaining the answer is substantially the same for the requesting party as it is for the producing party." Complainant further notes the four-year delay between the AJ's March 26, 2016, Order, and her September 30, 2020, dismissal of the hearing request. According to Complainant, "If the judge had wanted to demand more from [Complainant] than what the law requires, then the Judge should have clearly stated so in her order and allowed [Complainant] an opportunity to cure."

The Agency argued on appeal that, "[i]t is clear from the record that Complainant failed to fully respond to the Agency's discovery, thereby depriving the Agency of information relevant to the case and to which the Agency is entitled in order to fully defend itself in the case." Furthermore, the Agency noted that even though Complainant was notified by the AJ that the failure to comply with her March 26, 2016 Order could result in sanctions pursuant to 29 C.F.R. §1614.109(f)(3), Complainant "continued in her failure to fully respond and her failure caused the Agency to

expend significant attorney time and resources in preparing and submitting pleadings addressing that failure.”

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency’s decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

The Commission’s regulations confer upon its AJs very broad responsibility for adjudicating an EEO complaint once a complainant’s hearing request has been granted, and that responsibility gives the AJs wide latitude in directing the terms, conduct, or course of EEO administrative hearings. Chere S. v. Gen. Serv. Admin., EEOC Appeal No. 0720180012 (Nov. 30, 2018). The AJ’s discretionary authority includes the power to impose sanctions upon a party that fails to comply with the AJ’s orders. Id. When the a party fails without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances: (i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information; (ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party; (iii) Exclude other evidence offered by the party failing to produce the requested information or witness; (iv) Issue a decision fully or partially in favor of the opposing party; or (v) Take such other actions as appropriate. 29 C.F.R. § 1614.109(f)(3).

Sanctions serve a dual purpose. On the one hand, they aim to deter the underlying conduct of the non-complying party and to prevent similar misconduct in the future. Barbour v. U.S. Postal Serv., EEOC Appeal No. 07A30133 (June 16, 2005). On the other hand, they are corrective and provide equitable remedies to the opposing party. Given these dual purposes, sanctions must be tailored to each situation by applying the least severe sanction necessary to respond to a party’s failure to show good cause for its actions and to equitably remedy the opposing party. Royal v. Dep’t of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009). Factors pertinent to “tailoring” a sanction, or determining whether a sanction is even warranted, include: (1) the extent and nature of the non-compliance, including the justification presented by the non-complying party; (2) the prejudicial effect of the non-compliance on the opposing party; (3) the consequences resulting from the delay in justice, if any; (4) the number of times the party has engaged in such conduct; and (5) the effect on the integrity of the EEO process as a whole. Id.

The AJ found that the dismissal of Complainant's hearing request was the appropriate sanction; however, we have consistently held in our more recent decisions that the dismissal of a hearing request as a sanction is only appropriate in *extreme* circumstances. One such circumstance is when the complainant engages in contumacious conduct, not merely negligence. See Wilma B. v. Dept. of Veterans Affairs, EEOC Appeal No. 2020003672 (Dec. 2, 2021); Cassey B. v. Dept. of Veterans Affairs, EEOC Appeal No. 2019004838 (Sept. 24, 2020), request for reconsideration denied, EEOC Request No. 2021000172 (June 9, 2021); Cecile T. v. Dept. of the Treasury, EEOC Appeal No. 2019002373 (Sept. 22, 2020); Carolyn M. v. U.S. Postal Serv., EEOC Appeal No. 2019004843 (Mar. 10, 2020). Examples of contumacious conduct warranting dismissal of hearing requests include: Charlie K. v. Dep't of Veteran Affairs, EEOC Appeal No. 2019002293 (Sept. 22, 2020) (failure to provide investigative affidavit during agency investigation and failure to provide answers to interrogatories during discovery despite being granted multiple extensions in both phases of the proceedings, as well as failure to appear at pre-hearing conference); and Cleo S. v. U.S. Postal Serv., EEOC Appeal No. 0120181406 (Feb. 28, 2020) (failure to participate in email communications being sought by the agency and to produce documentation ordered by AJ in a manner demonstrating disregard for the administrative process and unwillingness to comply with AJ's orders despite warning of consequences).

These recent cases demonstrate that there must be a showing that a complainant either willfully disobeyed the AJ's orders or unjustifiably failed to respond to those orders to justify dismissal of the hearing request as a sanction. When a lesser sanction would normally suffice to deter the conduct and to equitably remedy the opposing party, an AJ may be abusing his discretion by dismissing the complaint. See Georgianne B. v. Dept. of Agric., EEOC Appeal Nos. 0120181591 & 0120181592 (Feb. 27, 2020) (dismissal of hearing request rejected on appeal where AJ dismissed hearing request outright rather than grant agency's motion to compel discovery or limiting complainant's discovery when complainant failed to appear at the initial conference and failed to respond to a discovery request despite the fact that the parties and the AJ remained in continuous email correspondence in an effort to litigate the case); Drucilla Y. v. Dep't of the Treasury, EEOC Appeal No. 0120182728 (Feb. 27, 2020)(dismissal of hearing request rejected on appeal where complainant made earnest but unsuccessful effort to comply with an onerous acknowledgement and scheduling order), request for reconsideration denied, EEOC Request No. 2020002964 (December 29, 2020).

With the foregoing considerations in mind, we find no indication that Complainant engaged in the kind of willful or obstinate refusal to comply with the AJ's orders that typifies contumacious conduct. On the contrary, there appears to be a genuine dispute between the parties as to whether Complainant sufficiently complied with the Agency's discovery requests. Moreover, we note the more than four-year passage of time between Complainant's May 24, 2016, submission, and the AJ's September 30, 2020, dismissal of her hearing request. During this period, we believe the AJ could not only have allowed Complainant further opportunity to cure any deficiencies by providing specific guidance, or crafted a less severe sanction that was specifically tailored to address a situation where an employee's responses to an agency's discovery requests are not "full and sufficient."

In the absence of a showing of either willfully disobedience or an unjustifiable failure to respond, we cannot find that the integrity of the process has been so compromised as to warrant the severe sanction of a hearing request dismissal. As such, we conclude that the circumstances in this case do not justify the particular sanction imposed by the AJ.

### CONCLUSION

The Commission VACATES the Agency's final decision and REMANDS the complaint to the Agency for further action in accordance with this decision and the Order herein.

### ORDER

The Agency is directed to submit a copy of the complaint file to the EEOC Hearings Unit in San Antonio, Texas within 15 days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth herein that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall hold a hearing and issue a decision on the complaint in accordance with 29 C.F.R. §1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

### 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.

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 (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:



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Carlton M. Hadden, Director  
Office of Federal Operations

July 14, 2022  
Date