



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

[REDACTED]  
Dayle H.,<sup>1</sup>  
Petitioner,

v.

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

Petition No. 2021003153

Appeal No. 2019002201

Agency No. 200H-0642-2014101785

**DECISION ON A PETITION FOR ENFORCEMENT**

On May 5, 2021, the Equal Employment Opportunity Commission (EEOC or Commission) docketed a petition for enforcement to examine the enforcement of an Order set forth in EEOC Appeal No. 2019002201 (September 22, 2020). The Commission accepts this petition for enforcement pursuant to 29 C.F.R. § 1614.503. Petitioner alleged that the Agency failed to fully comply with the Commission's order.

**BACKGROUND**

At the time of events giving rise to this complaint, Petitioner worked as a Registered Nurse, Grade 2, Step 7, at the Agency's Philadelphia Medical Center in Philadelphia, Pennsylvania. Petitioner filed two complaints, which were consolidated by an EEOC Administrative Judge (AJ), in which she alleged that the Agency discriminated against her on the bases of sex (female, pregnancy) and reprisal for prior protected EEO activity in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

The assigned AJ issued a default judgment in favor of Petitioner after finding that the Agency failed to exercise reasonable effort in the discovery process; failed to comply with the AJ's orders; failed to show good cause for a delay of more than 16 months in responding to a request

---

<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

for production of documents; and delayed the hearing process overall. The AJ ordered the Agency to take remedial action. Among other things, the AJ ordered the Agency to pay Petitioner \$190,000.00 in non-pecuniary damages, \$131,724.60 in attorney's fees, and \$1,335.31 in costs. The AJ also ordered the Agency to pay back pay, pay applicable benefits and interest, and compensate Petitioner for all adverse tax consequences resulting from a lump sum back pay award. Finally, the AJ ordered the Agency to expunge all adverse actions referred to in the consolidated complaint.

The Agency issued a final order adopting and implementing the AJ's findings and conclusions. However, on September 29, 2018, Petitioner alleged that the Agency was in noncompliance with its final order and requested that the Agency fully implement its terms. Specifically, Petitioner alleged that the Agency failed to pay Petitioner full and complete back pay, failed to pay Petitioner offset for tax consequences associated with back pay, failed to pay Petitioner pre- and post-judgment interest associated with back pay, and failed to provide Petitioner a full and complete accounting of back pay and tax-deferred contributions to Petitioner's Thrift Savings Plan (TSP) account. When the Agency did not respond, Petitioner filed an appeal with the Commission.

In Appeal No. 2019002201, the Commission was unable to determine if the Agency provided the appropriate amount for back pay because the Agency failed to provide any computational analysis for the basis of Petitioner's back pay and tax consequences. As such, the Commission ordered the Agency to comply with the AJ's order.

The Commission ordered the Agency to:

1. Pay to Petitioner all remaining additional back pay and payments to offset tax consequences associated with back pay including full and complete back pay; offset for tax consequences associated with back pay; and pre- and post-judgment interest associated with back pay. The Agency shall also provide to Petitioner a full and complete accounting of all back pay and associated tax consequences so awarded; as well as tax-deferred contributions to Petitioner's Thrift Savings Plan (TSP) account. Petitioner shall assist management in calculating the back pay award, and attendant benefits, by providing any information reasonably requested by management, including evidence of interim earnings, as necessary to implement the relief ordered in the AJ's decision. If there is a dispute regarding the exact amount of remaining back pay and/or benefits, the Agency shall issue a check to Petitioner for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. Petitioner may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
2. As part of its stated remedy in the FAD, pursuant to 29 C.F.R. Section 1614.501(a)(5), the agency will commit to Petitioner, in writing, that it will cease from engaging in the

unlawful employment practice found in this case, namely, sex (pregnancy) discrimination and reprisal, that it will not engage in similar unlawful employment practices, that it will provide Petitioner a work place free from hostility, offensive conduct or abuse, and that no reprisal will be taken against Petitioner for filing and pursuing this or any other complaint under federal EEO law.

3. The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of all remaining back pay and other benefits due Petitioner, including evidence that the corrective action has been implemented.

The matter was assigned to a Compliance Officer and docketed as Compliance No. 2021000418 on October 22, 2020.

On November 23, 2020, Petitioner submitted the petition for enforcement at issue. Petitioner contended that the Agency failed to pay Petitioner remaining additional back pay and the tax consequences associated with the back pay. Additionally, Petitioner alleged that the Agency failed to produce a full and complete accounting of all back pay and associated tax consequences awarded, as well as tax-deferred contributions to Petitioner's TSP account. On January 5, 2021, Petitioner filed a second petition for enforcement. Within this petition, Petitioner stated that the Agency also failed to comply with the portion of the order regarding Attorney's Fees. Specifically, the Agency failed to respond to the Petitioner's petition for attorney fees, dated October 19, 2020.

On November 17, 2021, the Agency informed the Compliance Officer that the parties entered into a settlement agreement involving four other complaints filed by Petitioner. While the settlement agreement did not apply to the instant matter, the Agency averred that a provision in the settlement agreement regarding Petitioner's promotion from Nurse II to Nurse III was invalid and void based on a mutual mistake of the parties. Specifically, the Agency asserted that it is illegal to promote a nurse from Nurse II to Nurse III without boarding and meeting specific criteria. As such, the Agency stated that it was recalculating Petitioner's back pay based on the Nurse II salary.

### ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.503(a) provides that an aggrieved person may petition for enforcement of an order issued by the Commission under its appellate jurisdiction. In this case, Petitioner alleges that the Agency is not in compliance with the Commission's order in EEOC Appeal No. 2019002201.

Upon review, we find that the Agency has failed to comply with ordered remedial actions 1 and 3. Specifically, in response to compliance efforts, the Agency acknowledged that it started to

comply with the provisions related to back pay, but compliance remained incomplete due to a discrepancy in whether back pay should be calculated at the Nurse II or Nurse III level.

In the Order requiring the Agency to pay Petitioner back pay, the AJ specifically ordered back pay and benefits consistent with Petitioner's promotion to a Nurse III, Step 1 level. However, as of the date of the issuance of the instant Petition for Enforcement, the Agency has still failed to show that it has complied with our order in Appeal No. 2019002201 related to this provision. Likewise, the Agency has not produced documentation showing that it has properly calculated or paid Petitioner any amounts related to her TSP contributions or pre- and post-judgment interest. While the Agency reported that it processed a lump sum payment based on tax consequences associated with back pay for \$3,106.75, the Agency indicated that the tax liability was based on an estimation of back pay. Considering the Agency's failure to calculate the ordered back pay and benefits, it is unclear how the Agency arrived at its estimation when the amounts owed rely on the back pay determination. As such, we find that the Agency has failed to comply with the ordered remedies with respect to its calculations as it pertains to back pay, back pay interest, and taxes.

With respect to ordered remedial action 2, the record indicates that the Agency provided Petitioner with a letter stating that it would not engage in similar unlawful employment practices and that no acts of reprisal would be taken against Petitioner for filing and pursuing a complaint under federal EEO law. Therefore, we find that the Agency has complied with the order, which required it to provide a written commitment. In her brief in support of the instant matter, Petitioner agreed that the Agency had "technically satisfied" its obligation. However, Petitioner added that the Agency had engaged in subsequent discrimination and retaliation. Regarding subsequent allegations of discrimination, Petitioner is advised that she may file a new EEO complaint against the Agency should further unlawful discrimination occur outside the instant matter. Any such filing must be made within 45 days of the date of the discriminatory action(s). See 29 C.F.R. § 1614.105(a)(1).

As for attorney's fees, the Agency produced evidence that it paid \$131,724.60, as ordered by the AJ. However, because Petitioner was the prevailing party in EEOC Appeal No. 2019002201, our appellate decision ordered the Agency to consider Petitioner's entitlement to additional attorney's fees related to the processing of that appeal. In addition, we find that Petitioner is also the prevailing party in this petition for enforcement. As such, we also order the Agency to calculate Petitioner's entitlement to additional attorney's fees incurred as a result of the need to file this petition for enforcement.

Finally, we note that the instant petition for enforcement encompasses the issues raised and adjudicated in Appeal No. 2019002201 and to date, the Agency has still not provided the ordered relief. We remind the Agency that failure 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.

The Agency is further advised that ongoing non-compliance with Commission orders will result in the requirement to issue a written report to the Director, Federal Sector Programs, Office of Federal Operations regarding deficiencies in compliance and a detailed action plan for maintaining compliance with Commission orders. See Iesha G. v. Dep't of the Army, EEOC Appeal No. 2019004319 (Jan. 31, 2020).

### CONCLUSION

Accordingly, based on a thorough review of the record, the Commission GRANTS Petitioner's Petition for Enforcement and REMANDS this matter to the Agency for further processing consistent with this decision and the ORDER below.

### ORDER

The Agency is ordered to:

1. Within sixty (60) calendar days from the date this decision is issued, determine the amount of all remaining additional back pay and pre- and post-judgment interest associated with back pay. The Agency shall also provide to Petitioner a full and complete accounting of all back pay, as well as tax-deferred contributions to Petitioner's Thrift Savings Plan (TSP) account. Petitioner shall assist management in calculating the back pay award, and attendant benefits, by providing any information reasonably requested by management, including evidence of interim earnings, as necessary to implement the relief ordered in the AJ's decision. If there is a dispute regarding the exact amount of remaining back pay and/or benefits, the Agency shall issue a check to Petitioner for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. Thereafter, the Agency shall determine Petitioner's entitlement to payment to offset tax consequences associated with back pay including full and complete back pay and offset for tax consequences associated with back pay, and shall provide Petitioner with payment of the associated tax consequences. Petitioner may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
2. Address Petitioner's entitlement to an award of reasonable attorney's fees incurred in the processing of EEOC Appeal No. 2019002201 as well as the instant petition as outlined before. 29 C.F.R. § 1614.501(e).

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of all remaining back pay and other benefits due Petitioner, including evidence that the corrective action has been implemented.

### ATTORNEY'S FEES (H1019)

If Petitioner 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 Petitioner and his/her representative.

If the Agency does not comply with the Commission's order, the Petitioner may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Petitioner 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 Petitioner 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 Petitioner 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.

### PETITIONER'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 Petitioner’s Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



---

Carlton M. Hadden, Director  
Office of Federal Operations

September 14, 2022

Date