



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

[REDACTED]
Dalton E.,¹
Petitioner,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Petition No. 2022001808

Appeal No. 2020001456

Agency No. BOP-2018-0511

DECISION ON A PETITION FOR ENFORCEMENT

On February 16, 2022, 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. 2020001456 (Aug. 17, 2021). The Commission accepts this petition for enforcement pursuant to 29 C.F.R. § 1614.503.

BACKGROUND

At the time of events giving rise to this complaint, Petitioner worked as a Correctional Officer (CO), GS-0007-08, at the Agency's Federal Correctional Complex (FCC) in Pollock, Louisiana. Petitioner filed a complaint in which he alleged that the Agency discriminated against him in violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq., on the bases of age (53) and reprisal (prior EEO activity), when: (1) on March 9, 2018, he became aware that he was not selected for the Maintenance Worker Supervisor position under Vacancy Announcement No. POL-2018-0013; and (2) in June and September 2018, his first and second quarter evaluations dropped.

¹ 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.

In Dalton E. v. Dep't. of Justice, EEOC Appeal No. 2020001456 (Aug. 17, 2021), the Commission reversed the Agency's decision with respect to Claim 1 and found that Petitioner was subjected to age discrimination when he was not selected for the position at issue. To remedy the discrimination, among other things, the Commission ordered:

The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due the Complainant, pursuant to 29 C.F.R. § 1614.501, no later than 60 calendar days from the date this decision is issued. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to the Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. Complainant 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."

The matter was assigned to a Compliance Officer and docketed as Compliance No. 2021004743 on August 25, 2021. On February 16, 2022, Petitioner submitted the petition for enforcement at issue. Petitioner contends that the Agency has not complied with the Commission's order as it relates to the back pay and benefits. Specifically, Petitioner asserts that the Agency failed to pay Complainant the additional earnings his Thrift Savings Plan (TSP) account would have accrued had he not been discriminated against.

The record shows that on December 6, 2021, the Agency submitted an interim compliance report. Within the report the Agency submitted documentation showing Petitioner was paid \$12,521.22 in back pay (gross) and \$1,717.31 in interest on November 4, 2021. The Agency also included an email sent December 6, 2021, which states, in part that the "Agency is working on this matter to rectify the back pay for the TSP".

On December 21, 2021, the petition was held in abeyance for 30 days. During that time the Agency agreed to research the issue and communicate with Petitioner what the results were. As of January 24, 2022, the Agency stated that experts were still working on the issue. However, the Agency has not communicated with Petitioner nor his attorney.

We find that the undisputed record shows that the Agency failed to fully comply with the order in EEOC Appeal No. 2020001456 (Aug. 17, 2021). Accordingly, we GRANT Petitioner's petition and ORDER the Agency to pay Petitioner the remaining backpay owed with a clear detailed explanation of how the Agency calculated this portion of Petitioner's backpay.

ORDER

Within 60 days of the date of this decision is issued, the Agency shall recalculate the TSP portion of the back pay and interest owed to Petitioner in accordance with 29 C.F.R. § 1614.501 and this decision. The Agency shall also produce a detailed statement clarifying how Petitioner's TSP backpay award was calculated and include supporting documentation. The statement shall consist of a clear and concise, "plain language" statement of the assumptions made, relevant Agency and labor policies and practices, calculations used for the instant matter, and actual calculations applying said formulas and methods. If there is still a dispute regarding the exact amount of back pay, the Agency shall issue a check to Petitioner (to the extent it has not done so already) for the undisputed amount within 30 days of the date the Agency determines the amount it believes to be due. Petitioner shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. 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.

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

October 19, 2022
Date