



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

[REDACTED]  
Clarine L.,<sup>1</sup>  
Complainant,

v.

Pete Buttigieg,  
Secretary,  
Department of Transportation  
(Federal Aviation Administration),  
Agency.

Request No. 2022005084

Appeal No. 2020005402

Hearing No. 570-2015-00166X

Agency No. 2014-25511-FAA-02

**DECISION ON REQUEST FOR RECONSIDERATION**

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2020005402 (July 28, 2022). 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).

At the time of events giving rise to this complaint, Complainant worked as a Manager, FV801-J, for the Agency's Spectrum Engineering Services (Eastern Service Area), Spectrum Engineering Group, Southern Regional Office in College Park, Georgia. On May 23, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American) and sex (female) when, on December 18, 2013, Complainant learned that

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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.

she was not selected for the position of Supervisory Aviation Technical Systems Specialist (SATSS), advertised under vacancy announcement AWA-AJW-13=PR57236-30920.

Following an investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ). After holding a hearing, the AJ found that the Agency's articulated reasons for the selection at issue were pretext for discrimination. The AJ determined that the Agency had preselected the Selectee for the position in question and that Complainant's objective qualifications were vastly superior to those of the Selectee. Further, the AJ held that the Agency's interview process was suspicious and subjective when the Agency failed to explain why Complainant's interview performance was inferior to that of the Selectee. Noting the absence of the score sheets and interview notes of the Interview Panelists, the AJ found the Agency's reliance on the subjective interview as the sole basis for Complainant's nonselection was pretextual. Following the decision finding discrimination, the AJ issued a separate decision ordering the Agency to: retroactively promote Complainant to a SATTS position; pay back pay and benefits, plus interest; and pay \$93,414 in attorney's fees and \$1606.08 in costs.

The Agency issued a final order rejecting the AJ's findings and remedies and concurrently filed an appeal with the Commission. In EEOC Appeal No. 2020005402, the Commission reversed the Agency's final order. The prior decision found that substantial evidence of record supported the AJ's findings that Selectee was preselected for the position in question and that Complainant's qualifications were "vastly superior" to those of Selectee. The Commission noted that evidence of preselection is also evidence that the selection process was a sham, and that Selectee would have been awarded the position irrespective of Complainant's interview performance. Also, the Commission reiterated that the absence from the record of the score sheets and interview notes of the Interview Panelists and that these panelists did not provide "a clear and detailed description of the specific responses Complainant and [Selectee] provided for each interview question," was a factor in establishing that the Agency's articulated reasons were pretext for discrimination. Therefore, the prior decision concluded that the AJ's decision was supported by substantial evidence in the record.

In its request for reconsideration, the Agency argues that the prior decision involved an erroneous interpretation of material fact and application of the law. The Agency reargues that Complainant failed to establish that her race or sex were behind the actions of the selection of the Selectee. Further, the Agency contends that there was no evidence that the Selectee was preselected based on race or sex, or that the interview panelists harbored any discriminatory animus towards Complainant.

In the instant request for reconsideration, nothing that the Agency has submitted supports a determination that the prior decision reversing the Agency final order was in error. 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. Upon a thorough review of the record and the arguments raised, we find that the AJ's decision finding discrimination is supported by substantial evidence of record.

After reviewing the previous decision and the entire record, the Commission finds that the Agency's 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. 2022000247 remains the Commission's decision. **There is no further right of administrative appeal on the decision of the Commission on this request.**

### ORDER

The Agency, to the extent it has not already done so, is ORDERED to undertake the following remedial actions:

1. Within ninety (90) days from the date this decision is issued, the Agency shall promote Complainant to the position of SATSS retroactive to the date the position was filled during 2013 and provide the appropriate step increases, if any, Complainant would have earned between the selection date and the date she is placed in the position. Complainant shall have 15 days from receipt of the written offer to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless Complainant can show that circumstances beyond her control prevented a response within the time limit.
2. Within sixty (60) days from the date this decision is issued, the Agency shall determine the appropriate amount of back-pay, including benefits and interest, due to Complainant. Complainant shall cooperate with the Agency in determining back pay, including providing responding to Agency request for documentation or complaint Agency forms. Complainant shall reply to any Agency requests for information within thirty (30) days. If Complainant declines the retroactive promotion, the Agency shall award Complainant a sum equal to the back pay she would have received, computed in the manner prescribed by 5 CFR § 550.805, from the date she would have been appointed until the date the offer was declined. Interest on back pay shall be included in the back-pay computation. The Agency shall inform Complainant in its offer of employment of the right to this award in the event the offer is declined. Payment of backpay to Complainant shall be completed in no more than 120 days from the date this decision is issued.
3. Within sixty (60) days of receipt of the back pay award, Complainant may submit detailed calculations showing the tax liability incurred for each year of the back-pay period, the tax liability that she would have incurred in each of those years if she had received the back pay in the form of a regular salary, and the tax liability that she incurred solely as a result of her receipt of the lump-sum back-pay award. Following receipt of Complainant's claim and supporting documents, within sixty (60) days, the

Agency shall issue a decision on the tax-liability matter and reimburse Complainant accordingly.

4. Within sixty (60) days from the date this decision is issued, the Agency shall pay Complainant's attorney \$93,414.00 in attorney's fees and \$1606.08 in costs.
5. Within thirty (30) days of the date this decision is issued, the Agency shall post a notice in accordance with the statement below entitled "Posting Order."
6. Within ninety (90) days of the date this decision is issued, the Agency is ordered to provide eight (8) hours of training addressing the current state of the law on employment discrimination, in particular race and sex based disparate treatment discrimination, to the Agency officials identified as IP1, IP2, IP3, SO and MPA. If any of these officials have left the Agency's employment, the Agency shall provide an affidavit attesting to that fact.
7. Within one hundred and twenty (120) days of the date this decision is issued, the Agency shall consider discipline against IP1, IP2, IP3, SO and MPA. The Commission does not consider training to be a disciplinary action. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline

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 back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Spectrum Engineering Services (Eastern Service Area), Spectrum Engineering Group, Southern Regional Office, College Park, Georgia, facility 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. 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

February 23, 2023  
Date