



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

[REDACTED]
Everette C.,¹
Complainant,

v.

Kilolo Kijakazi,
Acting Commissioner,
Social Security Administration,
Agency.

Request No. 2022004905

Appeal No. 2021000753

Hearing No. 531-2011-00100X

Agency No. HQ-10-033

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Everette C. v. Social Security Administration, EEOC Appeal No. 2021000753 (Aug. 16, 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).

Complainant filed an EEO complaint alleging discrimination on the bases of race (Caucasian), color (White), disability, and in reprisal for prior protected EEO activity when:

1. From October 7, 2009, to August 2010, the Agency failed to provide Complainant a reasonable accommodation; and

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.

2. On April 23, 2010, the Agency requested detailed information regarding Complainant's medications and repeatedly asked Complainant to provide objective medical documentation indicating his need to work from home.

The record reflects that an EEOC Administrative Judge (AJ) found the Agency discriminated against Complainant with respect to Claim 1 but found no discrimination with respect to Claim 2. The AJ held a hearing regarding Complainant's entitlement to damages and issued a decision on September 29, 2020, awarding Complainant \$100,000.00 in non-pecuniary compensatory damages; \$281,866.18 in attorney's fees; and \$6,165.21 in costs. The AJ further awarded Complainant back wages offset by Federal Insurance Contributions Act (FICA) payments between June 14, 2010, and August 4, 2014, and then again from August 7, 2017, until September 29, 2020. Additionally, the AJ ordered the Agency to cancel any debt Complainant owed the United States Government resulting from Complainant taking advanced leave and ordered restoration of sick leave and annual leave between October 7, 2009, and August 12, 2010, except for leave taken between January 22, 2010, and June 15, 2010. Finally, the AJ awarded Complainant prepayment interest and lost accrued leave commensurate with Complainant's back pay award; ordered the Agency to offer reinstatement to Complainant; and ordered the Agency to post a notice.

The Agency issued a final order in which it declined to implement the AJ's findings as to liability and damages and filed an immediate appeal with the EEOC. In Everette C. v. Social Security Administration, EEOC Appeal No. 2021000753 (Aug. 16, 2022), we reversed the Agency's final order. With respect to damages, we rejected the Agency's argument that Complainant failed to establish a connection between the Agency's failure to accommodate him and the damages that he suffered. We were not persuaded by the Agency's argument that Complainant's harm arose from unrelated workplace injuries or that Complainant's entitlement to back pay should terminate following Complainant's termination from the agency.²

The Agency now files this request for reconsideration and focuses its request on the relief awarded to Complainant. The Agency reiterated that Complainant should not be entitled to back pay for any time after August 4, 2014, the date he was terminated from employment. The Agency also argued, as it did in its initial appeal, that Complainant cannot recover back pay because he was not ready, willing, or able to work for any of the period in question. Additionally, the Agency maintained that Complainant cannot be reinstated because he was removed for lawful reasons.

In opposition, Complainant argued that the Agency has not demonstrated that the prior decision was clearly erroneous. In a later filing, Complainant's Estate notified the Commission that Complainant passed away, and requests that his Estate be permitted to substitute in as the complainant.

² The record demonstrates that Complainant filed a separate EEO complaint contesting his removal from the Agency for failure to report to work. While the instant complaint was pending, an EEOC Administrative Judge found the Agency did not discriminate against Complainant when it removed him from employment.

After reviewing the previous decision and the entire record, the Commission finds that the 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 Commission emphasizes that 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). A request for reconsideration is not the time for the Agency to raise new evidence or new arguments. 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. The Agency has not done so here. Instead, the Agency is attempting to relitigate the appeal raising contentions that were either already considered and rejected or could have been raised below. The Agency has not presented any persuasive evidence to support reconsideration of the Commission's decision.

The decision in EEOC Appeal No. 2021000753 remains the Commission's decision. However, in light of Complainant passing away, reinstatement as a remedy is now moot. We therefore modify our previous order to reflect this change. 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 slightly modified below.

ORDER

The Agency is ORDERED to take the following actions within one-hundred and twenty (120) calendar days from the date this decision is issued:

1. The Agency shall pay Complainant's Estate \$100,000 in non-pecuniary compensatory damages, pay Complainant's Estate \$6,165.21 in related costs.
2. The Agency shall pay Complainant's Estate back wages, offset if appropriate by FICA payments, from June 14, 2010, until August 4, 2014, and again from August 7, 2017 to September 29, 2020. The Agency shall provide Complainant's Estate lost accrued leave for the periods of back wages.
3. The Agency shall restore Complainant's sick leave and annual leave from October 7, 2009, to August 12, 2010, excluding any leave taken on January 22, 2010 and on June 15, 2010.
4. The Agency shall cancel Complainant's debt with the United States Government resulting from Complainant's taking advanced leave.
5. The Agency shall award Complainant's Estate \$281,866.18 in attorney's fees and costs if it has not already done so.
6. The Agency shall provide at least four (4) hours of training to the employee from the Agency's Office of General Counsel who advised supervisors and managers involved in

the instant matter. The training shall address the current state of EEO laws on disability accommodation, on prohibitions against disability discrimination, on prohibitions against retaliation, and the intersectionality of such categories in employment discrimination.

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 Office of Applications and Supplemental Security Income Systems (OASIS) 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 CFR § 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

August 10, 2023
Date