



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

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

v.

Debra A. Haaland,  
Secretary,  
Department of the Interior,  
Agency.

Request No. 2022003078

Appeal No. 2021003582

Hearing No. 570-2018-00280X

Agency No. DOI-OS-17-0098

**DECISION ON REQUEST FOR RECONSIDERATION**

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Doyle S. v. Dep't of the Interior, EEOC Appeal No. 2021003582 (April 12, 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). For the reasons that follow, the Agency's request is DENIED.

Complainant, a GS-14 Financial Specialist in the Office of Financial Management, Office of the Secretary, at the Agency's Headquarters in Washington, D.C., filed a formal EEO complaint alleging that the Agency discriminated against him on the bases of disability (mental) and in reprisal for prior protected EEO activity when, inter alia:

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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 October 7, 2016, he was issued a "Letter of Warning" for excessive absences and placed in an "absent without leave status" in order to prevent him from participating in the Agency's leave share program;
2. On December 9, 2016, Complainant's request to be reassigned to a position outside the Office of Financial Management was denied;
3. On unspecified dates, management intentionally delayed processing and responding to his reasonable accommodation request; and
4. On August 7, 2017, he received a Notice of Termination terminating his employment.

Following a hearing, the EEOC Administrative Judge (AJ) issued a bench decision concluding that the Agency had denied Complainant reasonable accommodation in violation of the Rehabilitation Act, retaliated against Complainant, and subjected him to a hostile work environment. The Agency was ordered by the AJ to take several remedial actions. Relevant here, the AJ ordered:

The Agency shall provide at least forty (40) hours of training on the Rehabilitation Act and the reasonable accommodation process to all Agency employees charged with reviewing, assessing, advising, and granting accommodation requests, which includes but is not limited to managers, Human Resources personnel, Employee and Labor Relations personnel, and attorney-advisors involved in the legal sufficiency review of reasonable accommodation requests. This training must be taught by non-Agency personnel (i.e. non-Department of Interior employees or contractors). The Agency shall consider obtaining external training directly from the EEOC or another provider, such as the National Employment Law Institute.

The Agency subsequently issued a final order implementing the AJ's decision regarding liability but rejecting the AJ's order with respect to non-pecuniary damages and training. In the appellate decision, the Commission affirmed the AJ's non-pecuniary damages award. The Commission, however, modified the AJ's order on training. Specifically, the Commission ordered:

The Agency shall provide at least forty (40) hours of in-person or interactive training on the Rehabilitation Act and the reasonable accommodation process to the following employees:

- a. All Agency employees, irrespective of the location of their Agency office, who were specifically involved in any aspect of Complainant's reasonable accommodation requests;
- b. All Agency employees within the Office of the Secretary and the Office of the Solicitor at the Agency's Headquarters in Washington, D.C. who are charged with reviewing, assessing, advising, and granting accommodation requests, regardless of whether they were specifically involved in the instant case; and
- c. All Agency employees in the BSEE Human Resources Division and the Employee and Labor Relations Branch in any Agency facility who are involved

with the reasonable accommodation process, regardless of whether they were specifically involved in the instant case.

This training must be taught by non-Agency personnel (i.e. non-Department of Interior employees or contractors). The Agency shall consider obtaining external training directly from the EEOC or another provider, such as the National Employment Law Institute. This ordered training does not alter the Agency's other requirements under the No FEAR Act or any other law or regulation but is in supplement thereto. Moreover, this ordered training must be in addition to any mandatory Rehabilitation Act, reasonable accommodation, or EEO training that is already required of these employees.

In doing so, the Commission noted that the highly troubling circumstances of this case indicated a widespread and systemic ignorance of, or indifference to, the requirements of the Rehabilitation Act and the reasonable accommodation process, which contributed to the egregious nature of the Agency's unlawful actions. Further, the Commission found that the Agency did not exercise good faith during the interactive process in order to identify an effective accommodation that would have permitted Complainant to return to work. Finally, the Commission stressed that the misconduct in this case involved Agency employees from at least three different Agency facilities, and was not limited to Complainant's work facility at Agency Headquarters in Washington, D.C.

In its request for reconsideration, the Agency largely reiterates arguments that were considered and rejected on appeal. Specifically, the Agency argues that the training order in the appellate decision will have a substantial negative impact on the policies, practices, and operations of the Agency because it will be excessively costly to arrange for an external training. The Agency estimates that there would be over 780 individuals who would fall under the categories of employees described in the appellate decision and the vast majority of these individuals were not involved with the claims at issue nor worked in the same office or division as the Complainant or the servicing Human Resources Specialist who was relevant to Complainant's case. The Agency claims that the ordered external training would cost the Agency at least \$400,000. The Agency argues that training should only be mandated for the individuals specifically involved with processing Complainant's reasonable accommodation requests and be conducted by the Agency's employees or its contractors as there is no law or legal precedent supporting an order for an Agency to conduct mandatory external training for a large number of Agency employees who were not involved in a specific case.

In response, Complainant, through counsel, argues that the Agency provided no explanation as to what policy, practice, or operations would be impacted by the cost of the training ordered. Complainant notes that the cost of the Agency's failure in this one case alone is multiple times the cost of the training ordered and the prevention of another case such as this one results in financial savings for the Agency. Further, Complainant contends that external training is warranted because the facts of this case demonstrated that any prior training given was either not correct, complete, or effective, as numerous Agency officials failed to follow or enforce EEO regulations and practices.

Complainant stresses that the number of people and offices involved in the discrimination and failure to prevent the discrimination demonstrates a systemic failure within the Agency and the cost of the additional training is a miniscule portion of the Agency's budget. As a result, Complainant requests that the Commission deny the Agency's request for reconsideration.

The Commission emphasizes that a request for reconsideration is not a second appeal. 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.

The Commission is not persuaded by the Agency's argument that the ordered training will have a substantial impact on its policies, practices, or procedures. The ordered training is a corrective action tailored to prevent the recurrence of discriminatory conduct and address systemic failures that were revealed in this case. Further, the Agency has not shown that the appellate decision involved a clearly erroneous interpretation of material fact or law on this issue. We note that, when appropriate, the Commission has ordered training of all employees at a facility including employees "having no demonstrated involvement" with discriminatory acts. Wild v. Dep't of Def., EEOC Request No. 05A10058 (Mar. 16, 2001). The purpose of such training is not to punish individuals but a means "to educate employees concerning the requirements of the law in order to avoid future violations." Id.; Horkan v. U.S. Postal Serv. EEOC Appeal No. 01976837 (Apr. 6, 2000) (directing training for all employees at facility on agency's anti-harassment policy). In this case, the employees involved in the widespread failure to adhere to the anti-discriminatory laws and regulations spanned multiple offices and locations and the broad training order seeks to prevent similar misconduct from recurring. Thus, based on these circumstances, the Commission finds that its prior decision with respect to the issue of training was proper. However, the Commission will slightly modify the training order to clarify the scope and subject matter of the required training.

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 decision in EEOC Appeal No. 2021003582 remains the Commission's decision. 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

To the extent that it has not already done so, the Agency is ORDERED to take the following actions within 60 calendar days of the date this decision is issued, unless otherwise specified:

1. The Agency shall pay Complainant \$200,000 in non-pecuniary compensatory damages.

2. The Agency shall correct Complainant's time and attendance records to remove all charges of AWOL between July 29, 2016 and August 7, 2017.
3. The Agency shall restore any accrued annual and sick leave used by Complainant between July 29, 2016 and August 7, 2017 and pay Complainant the sum of the restored annual and sick leave.
4. The Agency shall calculate and pay to Complainant back pay and all associated benefits plus applicable interest in accordance with 5 C.F.R. § 550.0805. 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 sixty (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 Agency shall also pay compensation for the adverse tax consequences of receiving back pay as a lump sum. Complainant has the burden of establishing the amount of increased tax liability, if any. Once the Agency has calculated the proper amount of back pay, Complainant shall be given the opportunity to present the Agency with evidence regarding the adverse tax consequences, if any, for which Complainant shall then be compensated.
5. The Agency shall provide at least forty (40) hours of in-person or interactive EEO training with a special emphasis on the Rehabilitation Act and the reasonable accommodation process to the following employees:
  - a. All Agency employees, irrespective of the location of their Agency office, who were specifically involved in any aspect of Complainant's reasonable accommodation requests;
  - b. All Agency employees within the Office of the Secretary and the Office of the Solicitor at the Agency's Headquarters in Washington, D.C. who are charged with reviewing, assessing, advising, and granting accommodation requests, regardless of whether they were specifically involved in the instant case; and
  - c. All Agency employees in the BSEE Human Resources Division and the Employee and Labor Relations Branch in any Agency facility involved with the reasonable accommodation process, regardless of whether they were specifically involved in the instant case.

This training must be taught by non-Agency personnel (i.e. non-Department of Interior employees or contractors). The Agency shall consider obtaining external training directly from the EEOC or another provider, such as the National Employment Law Institute. This ordered training does not alter the Agency's other

requirements under the No FEAR Act or any other law or regulation but is in supplement thereto. Moreover, this ordered training must be in addition to any mandatory Rehabilitation Act, reasonable accommodation, or EEO training that is already required of these employees.

6. The Agency shall expunge from Agency records and Complainant's Official Personnel file the Letter of Warning (October 17, 2016), as well as any reference thereto in any other document.
7. Within thirty (30) calendar days of the date this decision is issued, the Agency shall post the attached Notice to Applicants and Employees ("Notice), signed by the Agency's duly authorized representative (e.g., chief EEO official) in the Office of Financial Management, Office of the Secretary in Washington, D.C., in accordance with the statement entitled "Posting Order."

The Agency is directed to submit a report of compliance, as provided in the paragraph entitled "Implementation of the Commission's Decision." The report must include evidence that the corrective actions have been implemented. The Agency shall send a copy of the report and all its enclosures to Complainant.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Office of Financial Management, Office of the Secretary in Washington, D.C. 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.

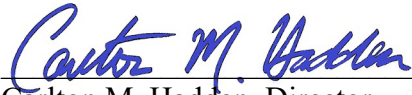
Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (Q0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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.**

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

September 28, 2023

Date