



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Sharon C.,¹
Complainant,

v.

Thomas J. Vilsack,
Secretary,
Department of Agriculture
(Forest Service),
Agency.

Appeal No. 2022003671

Hearing Nos. 540-2017-00051X
540-2017-00176X
540-2017-00339X
540-2018-00100X

Agency Nos. FS-2016-00411
FS-2016-00695
FS-2017-00076
FS-2017-00316

DECISION

On June 23, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.504(b), concerning the Agency's noncompliance with its August 4, 2020 final order, which implemented an EEOC Administrative Judge (AJ)'s finding of discrimination and award of remedies under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Assistant Superintendent, GS-0462-08, at the Agency's Tonto National Forest, Mesa Ranger District, in Mesa, Arizona.

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.

On April 27, 2016, Complainant filed the first of four EEO complaints alleging that the Agency discriminated against her on the bases of sex (female) and reprisal for prior protected EEO activity under Title VII. She ultimately raised a total of 29 claims, including, in relevant part, her allegation of discrimination when:

21. From 2015 to the present, June 2-3, 2016, management denied her the ability to function in her normal role with the Hot Shot Crew, including obtaining temporary assignments with other forest personnel, and subsequently accused her of not wanting to function in that role.

27. On January 19, 2017, she was issued a Letter of Reprimand.

At the conclusion of the investigations, the Agency provided Complainant with a copy of the reports of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. In accordance with the parties' request, the AJ consolidated the four EEO complaints and held a hearing into the matter on May 7-8, June 20, and June 26, 2019.

On May 14, 2020, the AJ issued a decision on the merits of the consolidated complaint. While the Agency prevailed on 25 out of the 27 claims, the AJ ruled in Complainant's favor on claims 21 and 27, as the AJ found that Complainant established by preponderant evidence that the Agency's articulated reasons were pretext for discrimination. To remedy the finding of discrimination, the AJ ordered the Agency to undertake the following remedial actions:

- A. Within 60 days from the date the decision becomes final, compensate Complainant for all back pay and applicable benefits she was denied from the date of June 6, 2016 to the date she assumed a new position in another district in February 2017.
- B. Pay Complainant prejudgment interest associated with the back pay and benefits within 60 days of this decision becoming final.
- C. Within 60 days from the date the decision becomes final, provide Complainant with a detailed statement of calculations associated with the back pay, benefits, and interest.
- D. Compensate Complainant for any increased tax burden upon receipt of detailed documentation establishing the increased tax burden from Complainant within 60 days of receipt of Complainant's documentation proving the increased burden.
- E. Within 60 days from the date the decision becomes final, pay \$20,000.00 in nonpecuniary compensatory damages and \$53,778.00 in attorney's fees.
- F. Forbid reprisal against Complainant for engaging in EEO activity and inform the responsible management officials about the consequences for engaging in reprisal.

G. Within 60 days from the date the decision becomes final, consider counseling or disciplining the responsible management officials and provide EEO training to them.

H. Post notices of the finding of discrimination.

On August 4, 2020, the Agency issued a final order, adopting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged. Complainant ultimately did not appeal the Agency's final order to the Commission.

At the Agency's direction, the U.S. Department of Treasury (Treasury) paid Complainant the ordered \$20,000.00 in nonpecuniary compensatory damages and \$53,778.00 in attorney's fees via direct deposit on August 28, 2020. The Treasury also processed the Agency's request to pay Complainant a total of \$1,213.53 in net backpay. On October 20, 2020, the Treasury mailed the backpay check to Complainant's address of record in Nevada. However, due to Complainant's relocation to Colorado, she did not receive the check, and it was returned to the Treasury on November 6, 2020. In early 2021, the Agency also made attempts to obtain information about Complainant's tax burden from Complainant's attorney. As the Agency did not receive notification from the Treasury that the check had been returned or information about Complainant's tax burden, the Agency issued Complainant and her attorney a compliance report on May 5, 2021, informing them that it had fully implemented all of the ordered remedial actions.

On March 16, 2022, Complainant emailed the AJ and asked for assistance, as she had not received backpay or reimbursement for travel during the hearing. The AJ responded to Complainant's email the following day. While the AJ informed Complainant that she no longer had jurisdiction, she assured Complainant that she would forward Complainant's email to the Supervisory AJ for further review. In responding to Complainant, the AJ carbon copied the Agency representative so that the Agency would be aware of Complainant's concerns. However, the Agency representative never received the AJ's email, as he had resigned from the Agency.

On April 12, 2022, Complainant sent an email to the National Civil Rights Director (CR Director) and the Deputy Assistant Secretary (DAS) for Civil Rights and informed them that during the week of March 14, 2022, she discovered that she had not "received the backpay and applicable benefits awarded to [her] and agreed upon in the [final order]." She also claimed that the Agency failed to fully reimburse her travel to and from the EEOC hearing. Complainant ultimately did not receive a response from either the CR Director or the DAS.²

On June 23, 2022, Complainant filed the instant appeal. After receiving Complainant's appeal, the Agency contacted Complainant on September 12, 2022, seeking an updated mailing address to which the backpay check could be mailed.

² We note that the CR Director retired from federal service on December 31, 2021. The record does not contain any information as to why the DAS did not respond.

Though Complainant initially referred the Agency to the form that she previously submitted containing her address in Nevada, she eventually provided the Agency with her correct mailing address. On September 16, 2022, the Treasury mailed the backpay check to Complainant for the second time. Later that month, the backpay check was returned to the Treasury.

On October 3, 2022, the Agency sent Complainant an email requesting updated bank account information so that the Agency could transfer the backpay amount and interest to her via direct deposit. When Complainant failed to respond, the Agency resent Complainant the email on October 18, 2022, and physically mailed Complainant a letter to her address of record, requesting updated bank information. That same day, Complainant responded to the Agency's email asking why the Agency was asking for updated bank information. As Complainant refused to provide the requested information, the Agency processed the payment using Complainant's direct deposit information from 2020. The backpay amount and interest posted to Complainant's account on October 25, 2022 and October 27, 2022, respectively.

On October 27, 2022, Complainant's bank returned both payments, citing a return reason of "Customer Advises Not Authorized." Later that day, Complainant contacted the Agency to inquire as to why the Agency did not respond to her October 18, 2022, email. To date, the Agency has been unable to pay Complainant the requisite backpay and interest to Complainant.

CONTENTIONS ON APPEAL

On appeal, Complainant reiterates that she is owed not only everything that the AJ awarded to her but also reimbursement for travel to the EEOC hearing. She emphasizes that she has contacted the Agency no less than 20 times since August 2020 to request compliance. Complainant also requests that we order the Agency to immediately remove the reprimand that she received in 2017 from all of her files, including "the wrongful termination paperwork made against Complainant in November and December 2019." Finally, Complainant requests that we award her financial compensation as a sanction for the Agency's failure to comply with the AJ's order.

The Agency responds by arguing that Complainant's appeal is time barred, as she did not raise her allegations of noncompliance within 30 days of the date when she should have known of the Agency's noncompliance. Furthermore, the Agency argues that even if Complainant had made timely allegations of noncompliance, the record clearly shows that it substantially complied with the ordered remedial relief.

ANALYSIS AND FINDINGS

EEOC regulation at 29 C.F.R. § 1614.504(a) provides that a final agency action that has not been the subject of an appeal or a civil action shall be binding on the agency. The regulation further provides that if a complainant believes that the agency has not complied with the terms of the final decision, that the complainant shall notify the Agency EEO Director, in writing, within 30 days of the date on which the complainant knew or should have known of the noncompliance. 29

C.F.R. § 1614.504. If the complainant does not receive a response or is not satisfied with said response, the complainant may appeal to the Commission for a determination as to whether the agency is in compliance. 29 C.F.R. § 1614.504(b).

In this case, while we are mindful of Complainant's allegations of noncompliance, we ultimately find that the Agency substantially complied with the ordered remedial relief. As outlined above, the record shows that the Agency made repeated good faith efforts to pay Complainant the outstanding backpay balance and interest. However, due to Complainant's total failure to cooperate with the Agency, the Agency could not make the required payment to Complainant. Given these circumstances, we conclude that the Agency has substantially complied with the ordered remedial relief on backpay and interest to the extent possible. As for the AJ's order to compensate Complainant for any increase to her tax burden, we need not address this issue, as Complainant did not receive any backpay that would entitle her to this relief.

Lastly, we address Complainant's remaining arguments, namely her request for reimbursement for travel to the EEOC hearing, removal of adverse paperwork from her personnel file, and motion for sanctions against the Agency. We find that Complainant is not entitled to such relief because the AJ's order on remedial relief did not order the Agency to undertake these actions. See Linzay v. U.S. Postal Serv., EEOC Appeal No. 0120120477 (Dec. 27, 2012) (denying complainant's request for removal of adverse disciplinary actions from his personnel file, as the AJ did not order such relief and complainant did not appeal the agency's final order implementing the AJ's decision).

As for Complainant's motion for sanctions, we deny Complainant's motion due to our determination that: 1) the Agency substantially complied with the ordered remedial relief to the extent possible; and 2) even if the Agency had been noncompliant, our regulation at 29 C.F.R. § 1614.504(c) does not permit us to award financial compensation as a sanction for noncompliance. See Potter v. U.S. Postal Serv., EEOC Request No. 05A50693 (April 12, 2005) (denying complainant's motion for compensatory damages as a sanction for noncompliance, as § 1614.504(c) provides that if an agency is not in compliance with a decision, the Commission may, in relevant part, order such compliance with the decision).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's decision to reject Complainant's allegations of noncompliance.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish 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.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

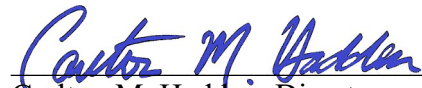
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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. If you file a request to reconsider and also file a civil action, **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

September 18, 2023

Date