



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ayana C.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2022003866

Hearing No. 570-2019-00289X

Agency No. 0705-0006-2017105278

DECISION

Complainant filed an appeal alleging that the Agency was not in compliance with its January 26, 2022 final order implementing an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge's (AJ) decision and order of remedial relief.

Complainant, an Equal Employment Opportunity (EEO) Specialist, GS-0260-11, filed a formal EEO complaint alleging that the Agency discriminated against her on the bases of disability and in reprisal for prior protected EEO activity in connection with nine incidents comprising a claim of failure to provide reasonable accommodations at training events. The AJ issued a summary judgment decision in favor of Complainant with respect to eight of the incidents. To remedy the discrimination, the AJ ordered the Agency to, among other things, restore 88.50 hours of sick leave; to make updates to the Agency's handbook regarding individuals with disabilities and reasonable accommodations; to create and implement a policy requiring the Agency to provide at least three weeks advance notice for any online training; and to post a notice. The Agency subsequently issued a final order fully implementing the AJ's decision and the relief ordered.

Complainant asserted that on April 27, 2022, she emailed the Senior Compliance Officer with the Office of Resolution Management, Diversity & Inclusion (ORMDI) regarding concerns she had with the Agency's compliance with its final order.

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.

Complainant stated that on May 6, 2022, she notified the Senior Compliance Officer of its failure to comply with the final order regarding the above-mentioned remedies. Complainant was advised on June 30, 2022, that she could file an appeal with the Commission if she believed the Agency had not fully complied.

Complainant filed the instant appeal. Complainant contends that the Agency failed to restore her sick leave until the pay period beginning June 5, 2022. Further, Complainant states that the Agency failed to make the changes to its handbook, did not implement the advance notice of training policy, and failed to properly post the notice. The Agency did not respond to Complainant's appeal.

EEOC regulations provide that a final agency action that has not been the subject of an appeal shall be binding on the parties. 29 C.F.R. § 1614.504(a). The regulations further provide that if a complainant believes that an Agency has not complied with the terms of the final decision, that he or she shall so advise the Agency within 30 days of the date on which the complainant knew or should have known of the non-compliance. *Id.* If the complainant is not satisfied with the Agency's response, he or she may appeal to the Commission for determination as to whether the Agency is in compliance with the terms of its final decision. 29 C.F.R. § 1614.504(b).

We note that Complainant acknowledged that the Agency restored the ordered sick leave and provided documentation demonstrating the restoration. Thus, we find sufficient evidence that the Agency complied with that element of the relief ordered. Further, we note that Complainant has submitted email correspondence between her and the Senior Compliance Officer regarding the Agency's efforts to implement the other three challenged aspects of the relief ordered. The Agency, however, did not respond to the instant appeal. Thus, we find that the record is devoid of evidence that the Agency has fully complied with the remaining three elements of relief ordered by the AJ. Accordingly, we find that the Agency has not established that it has fully complied with its January 26, 2022 final order implementing the AJ's December 30, 2021 decision. Thus, we REMAND this matter to the Agency for further action in accordance with the Order below.

ORDER

To the extent that it has not already done so, the Agency is ordered to take the following remedial action within 60 calendar days of the date this decision is issued:

1. The Agency shall update the VA handbook 5975.1 to state that hosts/organizers are the Designated Management Officials (DMOs) responsible for making their hosted webinars, events, conferences, and conference calls accessible to people with disabilities and accommodation costs come out of their respective operating budget.
2. The Agency shall create and implement a policy for the Six [identified] Departments to provide at least three weeks advanced notice for any online training that it intends to host.

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 Minneapolis, Minnesota facility and EEO Office 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).

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.

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).

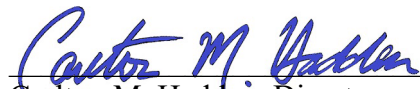
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

November 20, 2023
Date