



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

[REDACTED]
Linda A.,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Request No. 2023002848

Appeal No. 2022000831

Hearing No. 570-2021-00683X

Agency No. ARCEHECSA20FEB01152

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Linda A. v. Dep't of the Army, EEOC Appeal No. 2022000831 (Mar. 15, 2023). 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).

During the period at issue, Complainant worked as a Procurement Analyst, GS-1102-14, at the Agency's Directorate of Contracting in Washington, D.C. On May 4, 2020, Complainant filed a formal EEO complaint claiming that the Agency discriminated against her based on her race (African-American), color (Black), age (over 40), sex (female), and disability when, on February

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.

6, 2020, Complainant was denied a reasonable accommodation by her first and fourth level managers.

Following an investigation into the complaint, Complainant requested a hearing before an EEOC Administrative Judge (AJ). However, the AJ ultimately determined that there were no genuine issues of material fact in dispute and issued a decision by summary judgment in favor of the Agency. The Agency issued a final order implementing the AJ's conclusion that no discrimination had been established. Complainant appealed.

In EEOC Appeal No. 2022000831, we affirmed the AJ's finding that the denial of Complainant's reasonable accommodation was not based on her race, color, age, or sex as alleged. However, we determined that the AJ incorrectly applied a disparate treatment analysis in the adjudicating Complainant's claim of a denial of reasonable accommodation.

The record established that in June 2019 Complainant was hospitalized and had to take about six weeks of sick leave. When she first returned to work, management initially informally allowed her to telework full-time, but later told her she needed to go through the reasonable accommodation request process in order to continue teleworking full-time. Complainant timely submitted the request and provided medical documentation in support of her request, which indicated that Complainant could not drive or engage in prolonged standing due to frequent dizziness, chronic headaches, cervical radiculopathy, and impaired fasting glucose. However, this request was later denied by management "due to the existence of employee van pools commuting between [Complainant's] residential area and [her] work site, [which provided Complainant] alternatives to driving daily to work", as well as the offer of a scooter at work.

In EEOC Appeal No. 2022000831, we concluded that, based on the evidence developed during the investigation and in response to the AJ's notice of intent to issue a decision by summary judgement, the Agency failed to support its denial decision by demonstrating that granting the requested accommodation would have caused undue hardship on the Agency. We first noted that it was undisputed that Complainant had teleworked for several months during this period without issue. Additionally, we determined that the evidence showed the alternative accommodations (a scooter and access to employee van pools) were ineffective because they did not adequately address the full range of Complainant's documented medical needs. Therefore, we reversed the Agency's final order regarding Complainant's denial of reasonable accommodation and remanded the matter to the Agency for further processing, including a determination on Complainant's entitlement to compensatory damages.

On appeal, the Agency argues that further development of the record is warranted to determine when the Agency became aware that the van pool was an ineffective accommodation and whether full-time telework would have caused an undue hardship on the Agency. However, the Agency could have addressed all of these matters in its response to the AJ's notice of intent to issue a decision by summary judgment.

Instead, the Agency agreed with the AJ that there were no genuine issues of material fact in dispute, and further argued that it had effectively accommodated Complainant when it provided her the option to use a scooter which the Agency stated was a “reasonable suggestion.”

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). 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.

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. 2022000831 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 now comply with the Order in EEOC Appeal No. 2022000831 as set forth below.

ORDER

The Agency shall take the following actions:

1. The Agency shall **within thirty (30) calendar days**, if not immediately, take all steps necessary to provide Complainant with effective reasonable accommodation, to include allowing her to telework full time.
2. The Agency shall determine the amount of compensatory damages to which Complainant is entitled and pay Complainant that amount.
 - a. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages in connection with her claim that she was denied a reasonable accommodation as alleged in claim (2).
 - i. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993).
 - ii. Complainant shall cooperate with the Agency in this regard, including by responding to Agency requests for information and by completing any Agency forms. Complainant shall reply to any Agency requests for information within 30 calendar days.

- b. Within **thirty (30) calendar days** of the completion of the supplemental investigation, the Agency shall issue a final decision, with appeal rights to the Commission, addressing the issue of compensatory damages.
 - c. Within **sixty (60) calendar days** of determining the amount of compensatory damages due Complainant, the Agency shall issue a check to Complainant for the undisputed amount.
3. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide four hours of training to the Chief of Strategic Operations (Supervisory Procurement Analyst), and the Director who are identified on pages 120 and 127 of the ROI. The training shall address the Agency's obligations under the Rehabilitation Act with respect to reasonable accommodation requests. The required training shall address unlawful disability discrimination, with a special emphasis on management's obligation under Section 501 of the Rehabilitation Act to reasonably accommodate individuals with disabilities. The Commission does not consider training to constitute disciplinary action. For assistance in obtaining the necessary training, the Agency may contact the Commission's Training and Outreach Division via email, at FederalTrainingandOutreach@eeoc.gov.
4. Within **one hundred twenty (120) calendar days** from the date this decision is issued the Agency shall consider disciplining the Chief and the Director. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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. If the Chief has left the Agency's employ, the Agency shall furnish documentation of her departure date.
5. Within **thirty (30) calendar days** of the date this decision is issued, the Agency shall post a notice in accordance with the Statement entitled "Posting Order."

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 evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at the Agency's Directorate of Contracting (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 **thirty (30) calendar days** of the date this decision was issued, and shall remain posted for **sixty (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 **ten (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 (P0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. 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.

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