



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

Sandra M. McConnell, et al., a/k/a
Velva B.,¹
Class Agent,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service,
Agency.

Appeal No. 0120182505

Request Nos. 0520180094 & 0520180095

Previous Appeal Nos. 0720160006 & 0720160007
0720080054

Hearing No. 520-2010-00280X

Agency No. 4B-140-0062-06

DECISION

On July 12, 2018, the Class Agent filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from an Agency final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.² For the following reasons, the Commission VACATES the Agency's final decisions, and REMANDS the matter to the Agency for further action consistent with this Decision and the ORDER set forth below.

¹ This case has been randomly assigned a pseudonym which will replace Class Agent's name when the decision is published to non-parties and the Commission's website.

² The Class Agent states that this appeal is timely filed within 30 days of any Class Member's receipt of any Agency final decision regarding a claim for individual relief.

ISSUES PRESENTED

- (1) Whether the Agency properly issued final decisions on disputed claims for individual relief from Class Members.
- (2) Whether the Commission should appoint Special Masters to assist in the adjudication of disputed claims for individual relief.

BACKGROUND

From May 5, 2006, through July 1, 2011, the Agency conducted the National Reassessment Program (NRP). The Agency estimated that approximately 15,000 employees received new work assignments as a result of their NRP assessments; 10,000 employees received determinations of total or partial "No Work Available" assessments; and 34,000 employees separated from the Agency while the NRP was in effect.

On August 7, 2007, the Class Agent initiated the instant class action complaint, and an EEOC Administrative Judge (AJ) certified the class on May 30, 2008. The Agency rejected and appealed the AJ's decision to certify the class. The Commission reversed the Agency's final order, remanding the matter back to the Agency to notify potential class members of the Commission's decision and to request the appointment of an AJ to hear the certified class complaint. EEOC Appeal No. 0720080054 (Jan. 14, 2010).

On June 4, 2015, the AJ issued an initial Report of Finding (without a hearing), subsequently issuing a Final Report of Findings and Recommendations on September 21, 2015. The AJ found that rehabilitation and limited-duty employees were discriminated against based on disability when they were subjected to: (1) withdrawals of their reasonable accommodations; (2) hostile work environments; and (3) disclosures of confidential medical information. On February 8, 2016, the Agency issued a final order rejecting the AJ's findings, and appealed the decision. The Commission reversed the Agency's final order rejecting the AJ's findings. EEOC Appeal Nos. 0720160006 & 0720160007 (Sept. 25, 2017).

The Agency then requested reconsideration and clarification on October 30, 2017, which was denied on March 9, 2018. Regarding its request for clarification, the Agency noted that the Commission's earlier orders did not reference EEOC Management Directive 110 (MD-110), Chapter 8 §XII(C); the Agency proposed to process individual claims for relief according to MD-110. In response, the Class Agent argued that the regulations were "clear on how to manage the individual claim relief process," and that the AJ is the appropriate person to manage the individual claim relief process for class members. The Commission agreed with the Class Agent, and ordered the Agency to notify class members of the Commission's decision, along with the provisions for class members to file a claim for individual relief. The Commission also ordered the Agency to issue a final decision on an individual claim within 90 calendar days of receipt. EEOC Appeal Nos. 0520180094 & 0520180095 (Mar. 9, 2018).

On June 26, 2018, the Class Agent submitted an Emergency Petition for Enforcement of Final Order. The Class Agent argued that the Agency issued premature final decisions on individual claims before class members had their disputed claims reviewed by an AJ. On July 11, 2018, the Agency submitted a response, requesting that the Commission deny the Class Agent's petition, and stating that it has complied with the Commission's March 9, 2018, order by issuing timely final decisions.

On July 12, 2018, the Class Agent filed an appeal on all Agency final decisions issued on Class Members' claims for individual relief, alleging that these final decisions were issued in error, and in violation of the Commission's process for relief claims. On October 1, 2018, the Agency submitted a reply brief.

CONTENTIONS ON APPEAL

In support of both her petition for enforcement and appeal, the Class Agent argues that the Agency's final decisions are premature because the Agency improperly skipped the Administrative Judge's role for disputed claims for individual relief. The Class Agent requests that the Commission vacate all of the Agency's final decisions, and allow for an AJ to issue a decision. The Class Agent claims that Class Members submitted initial claim forms, and are entitled to full processing of their disputed claims for individual relief. Due to the volume of the final decisions, the Class Agent also requests the appointment of a Special Master(s) to assist the AJ, at the Agency's expense.

The Agency argues that the Class Agent's requests should be denied because: (1) the Agency is in compliance with the Commission's final order; (2) the Class Agent's "check-the-box" claim submission form does not meet the burden established to state a claim for relief; (3) there is no support for the Class Agent's allegations that the Agency manipulated the individual claims process; (4) it would be prejudicial to individual claimants to withdraw all final decisions now; and (5) the Commission lacks authority to appoint Special Masters.

The Agency argues that no AJ issued an order tolling its 90-day deadline to issue decisions on individual claims for relief, and that it has complied with the Commission's order in EEOC Request Nos. 0520180094 & 0520180095 by issuing timely final decisions. The Agency states that, as of October 1, 2018, it has issued 28,931 final decisions on individual claims for relief. The Agency also states that it has already awarded millions of dollars in compensatory damages, back pay, and other relief. For the appealed claims, the Agency is implementing procedures to negotiate a settlement of those claims.³

The Agency also argues that the Class Agent's single appeal is improper because some Class Members affirmatively designated other counsel; there is no authority to allow a single appeal to be filed for every claim.

³ The Agency stated that over 600 claimants have filed appeals, as of October 1, 2018.

ANALYSIS AND FINDINGS

As an initial matter, we note that the arguments in the Class Agent's petition for enforcement and appeal are identical. Accordingly, this appellate decision will render the Class Agent's petition for enforcement moot. Additionally, the parties raise various additional issues in this appeal.⁴ However, this decision will only address the disputed claims for individual relief, and the Class Agent's request for the appointment of a Special Master(s).

Disputed claims for individual relief

In this case, discrimination was found. Therefore, a class member who believes that he or she is entitled to individual relief may file a claim. The Commission previously ordered the Agency to notify class members on how to file an individual claim; and to issue a decision on an individual claim within ninety (90) days. The current matter before the Commission relates to the Agency's issuance of final decisions on *disputed* claims for individual relief. To the extent that the Agency needed additional clarification on how to process disputed claims, it should have referred to the EEOC's regulations and guidance. Specifically, 29 C.F.R. § 1614.204(l)(3) states:

Administrative Judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members.

Additionally, Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chapter 8 (August 5, 2015) further details the process to obtain relief for a class. EEO MD-110 at Chapter 8 § XII (A) and (C)(1) states:

[A] class member who believes that s/he is entitled to individual relief must file a written claim with the head of the agency, or with the agency's EEO director.

[A] class member must file a claim with the agency within thirty (30) days of his/her receipt of notification from the agency of its final order and the agency must issue a final order within ninety (90) days of its receipt of the claim. ... Administrative Judges retain jurisdiction over the complaint in order to resolve any disputed claims of class members and may hold hearings or otherwise supplement the record on a claim filed by a class member.

The Class Agent argues that the Agency improperly issued premature final decisions on disputed claims for individual relief because it has done so prior to an AJ issuing a decision on the disputes. We find that the Agency's final decisions on disputed claims for individual relief are premature.

⁴ The Class Agent also filed an appeal on the Agency's final decision regarding attorneys' fees and costs, which is separate from the instant appeal. A decision on that appeal is forthcoming.

As noted above, the AJ retains jurisdiction, and is responsible for resolving disputed claims for individual relief. The Agency needs to wait for the AJ to issue a decision on the dispute before issuing a final decision on the disputed claim.

The Agency argued that no AJ issued an order tolling its 90-day deadline to issue a final decision,⁵ and that it fulfilled its obligation to issue final decisions within ninety (90) days of receipt of the individual claims. However, we find that the need to issue timely decisions does not take precedence over issuing decisions where the disputes have not been resolved. While the Agency argues that it would be prejudicial to withdraw almost 29,000 final decisions at this point in the process, we are not ordering the Agency to withdraw all 28,931 final decisions, only those with claims that the Agency has disputed.⁶ Accordingly, we will order the Agency to vacate all final decisions issued on disputed claims for individual relief where an AJ has not issued a decision resolving the dispute, and to process the disputed claims in accordance with the Order of the Commission, below.

Pursuant to the Commission's Order, the Agency will notify the AJ of its intent to dispute an individual claim for relief. The AJ will issue an order tolling the 90-day period within which the Agency is required to issue a decision on an individual claim. The AJ will also issue an order advising the Agency to provide a statement in support of its decision to dispute a class member's claim, with any supporting evidence, within fifteen (15) days of receiving the AJ's order, providing a copy to the individual. The class member will then have fifteen (15) days from the date of service of the Agency's submission to submit to the AJ a statement, and any documents, in support of his or her claim, providing a copy to the Agency. We note that the AJ has discretion to enlarge the 15-day period at the written request of either party, or on her own motion. The AJ also has the discretion to obtain additional information or hold a hearing to further develop the record regarding an individual's claim. At the conclusion of the fact-finding, the AJ will issue a decision concerning the class member's claim to the Agency and the class member. The AJ's decision will advise the Agency that the 90-day period for issuing a final order on the claim will resume upon receipt of the AJ's decision. If the Agency does not issue a final order within the 90-day period, the AJ's decision becomes the final order of the Agency. See EEO MD-110, Chapter 8 § XII(C)(2)-(4).

With regard to the processing of claims for individual relief, the claim must include a specific detailed showing that the claimant is a class member who was affected by the Agency's discriminatory policy or practice, and that this discrimination took place during the time period for which class-wide discrimination was found.

⁵ The Agency filed a Motion for Entry of Order Tolling FAD Deadline on June 21, 2018.

⁶ It is not clear how many individual claims for relief the Agency has disputed. The Class Agent contends that the Agency has disputed all the claims for individual relief. The Agency stated that it has not disputed all the claims, but did not specify how many claims they have disputed.

Because discrimination was found in this case, there is a presumption of discrimination as to each class member, and the Agency must show by clear and convincing evidence that a class member is not entitled to relief. See 29 C.F.R. § 1614.204(l)(3).

Special Masters

The Class Agent requests the appointment of a Special Master based on the presumption that the Agency has disputed all the claims for individual relief, almost 29,000 claims. However, we find that neither party has provided an accurate number of disputed claims for individual relief. As such, we do not find a need to go beyond the scope of 29 C.F.R. § 1614.204(l) or EEO MD-110 Chapter 8 § XII to appoint a Special Master to assist in the adjudication of the disputed claims for individual relief.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we ORDER the Agency to VACATE all final decisions on disputed claims for individual relief where an AJ has not issued a decision resolving the dispute, and REMAND the matter for further processing, in accordance with the Order below.

ORDER

The Agency is ORDERED to take the following remedial action:

- I. Within thirty (30) days of this Order, vacate all Agency final decisions on disputed claims for individual relief that were issued without an AJ's decision resolving the dispute.
- II. Within sixty (60) days of this Order, for those affected, inform EEOC Administrative Judge Monique Roberts-Draper in the EEOC's New York District Office, and the individual that the Agency intends to dispute his or her claim for individual relief. With its notification of intent to dispute a claim for individual relief, the Agency must include a copy of the administrative file for the disputed claim.

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).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

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 Class Agent and her representative.

If the Agency does not comply with the Commission's order, Class Agent may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). Class Agent 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, Class Agent 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 Class Agent 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.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if Class Agent or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Class Agent's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507.

In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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).

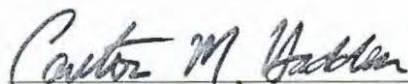
CLASS AGENT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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 Class Agent's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

November 7, 2018