



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P. O. Box 19848

Washington, D.C. 20036

George De Los Santos,
Complainant,

v.

Stephen L. Johnson,
Administrator,
Environmental Protection Agency,
Agency.

Request No. 0520080325

Appeal No. 0120061139

Agency No. 20040065R6

DENIAL

The agency timely requested reconsideration of the decision in *George De Los Santos v. Environmental Protection Agency*, EEOC Appeal No. 0120061139 (January 11, 2008). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision 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(b).

In his underlying complaint, complainant alleged that the agency subjected him to unlawful discrimination, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, on the basis of his national origin (Hispanic) when: (1) between December 2001 and August 2004 he was subjected to a hostile work environment; and (2) on April 21, 2004, management issued him a Memorandum of Warning. In its final decision (FAD), the agency found no discrimination. Specifically, the FAD found that complainant was not subjected to a hostile work environment because the incidents alleged were not sufficiently severe or pervasive to rise to the level of actionable harassment. The FAD also found that complainant failed to show that the agency's articulated legitimate, nondiscriminatory reasons for issuing him a Memorandum of Warning were pretextual. On appeal, the Commission reversed the FAD. In our decision, we found that, taken as a whole, the incidents alleged were sufficiently severe and pervasive to support a finding of hostile work environment harassment. We further found that complainant demonstrated, by a preponderance of the evidence, that the agency's articulated

reasons for the issuance of the Memorandum of Warning were a pretext for unlawful national origin discrimination.

In its request for reconsideration, the agency restates many of the arguments made in its brief in opposition to complainant's appeal. We find, however, that these arguments were fully considered on appeal and after reconsidering 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(b), and it is the decision of the Commission to deny the request. The decision in EEOC Appeal No. 0120061139 remains the Commission's final 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 set forth below.

ORDER

1. The agency shall immediately cease and desist from all conduct directed at complainant and other members of his protected class, and ensure that complainant is no longer subjected to a hostile work environment because of his national origin and/or protected activity. Such action shall include assuring that S1 is not placed in a supervisory role over complainant. Further, the agency shall ensure that others at the facility are protected from a hostile work environment.
2. Within sixty (60) calendar days of the date that this decision becomes final, the agency shall provide management officials at its El Paso and Dallas District Offices, Texas, with at least forty (40) hours of EEO training regarding their obligations and responsibilities under the federal employment anti-discrimination laws, paying particular attention to harassment.
3. Within sixty (60) calendar days of the date that this decision becomes final, the agency shall provide all employees at its El Paso and Dallas District Offices, Texas, with at least forty (40) hours of EEO sensitivity training, designed to eliminate acts of harassment in the workplace.
4. The agency shall consider taking appropriate disciplinary action against the responsible management officials. 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 any of the responsible management officials have left the agency's employ, the agency shall furnish documentation of their departure date(s).
5. The agency will conduct a supplemental investigation on the issue of complainant's entitlement to compensatory damages and will afford him an opportunity to establish a causal relationship between the violations found in this case with his pecuniary or non-pecuniary losses, if any. Complainant will cooperate in the agency's efforts to compute the amount of compensatory damages, and will provide all relevant information requested

by the agency. The agency will issue a final decision on the issue of compensatory damages. 29 C.F.R. § 1614.110. The supplemental investigation and issuance of the final decision will be completed with sixty (60) calendar days of the date of this decision. A copy of the final decision must be submitted to the Compliance Officer, as referenced below.

6. The agency shall post the attached notice, as more fully set forth in the "Posting Order" below.
7. The agency shall pay complainant's reasonable attorney's fees and costs in accordance with the Attorney's Fees order herein.
8. The agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0900)

The agency is ordered to post at its El Paso, TX facility copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency within thirty (30) calendar days of the date this decision becomes final, 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 at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

ATTORNEY'S FEES (H0900)

If complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she 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 this decision becoming final. 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 (K0408)

Compliance with the Commission's corrective action is mandatory. The agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective

action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. The agency's report must contain supporting documentation, and the agency must send a copy of all submissions to the complainant. 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.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0408)

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 (Z0408)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your time in



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
An Agency of the United States Government

This Notice is posted pursuant to an order by the United States Equal Employment Opportunity Commission dated _____ which found that a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. has occurred at the Environmental Protection Agency's El Paso and Dallas, Texas facilities (hereinafter these facilities).

Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, or DISABILITY with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

These facilities were found to have discriminated against an employee because of his national origin. These facilities were ordered to pay reasonable attorney's fees and compensatory damages, if applicable. The agency was ordered to provide training, consider taking disciplinary action against the responsible official and post this notice. These facilities will ensure that officials responsible for personnel decisions and terms and conditions of employment will abide by the requirements of all federal equal employment opportunity laws and will not retaliate against employees who file EEO complaints.

These facilities will comply with federal law and will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, federal equal employment opportunity law.

Date Posted: _____

Posting Expires: _____

29 C.F.R. Part 1614

which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

Carlton M. Hadden

Carlton M. Hadden, Director
Office of Federal Operations

AUG 4 2008

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

George De Los Santos
2690 Nelson Wyatt Rd
Mansfield, TX 76063

Alice Rodriguez
P.O.B.300517
Arlington, TX 76007

Karen Higginbotham, Associate Director
Office of Civil Rights
Environmental Protection Agency
1200 Pennsylvania Ave., NW MC: 1201A
Washington, DC 20460

AUG 4 2008

Date



Equal Opportunity Assistant