



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

Gerald A. Lewis, a/k/a
Huey B.,¹
Complainant/Class Agent,

v.

Sean Duffy,
Secretary,
Department of Transportation,
Agency.

Request No. 2025001490

Appeal No. 2020000382

Hearing No. 560-2006-00235X

Agency No. 5-98-5097

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in 2020000382.

During the period at issue, the Class Agent worked for the Agency as a Procurement Analyst at the Mike Maroney Aeronautical Center (MMAC) in Oklahoma City, Oklahoma.

In 1996, the Agency implemented its own internal guidance on hiring and promotion identified as "the FAA Personnel Management System" (FPMS).

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 17, 1998, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him based on race (African American) and in reprisal for prior protected activity when, on January 28, 1998, certain other positions at the MMAC were upgraded but Complainant's position was not.

Following an investigation by the Agency, Complainant requested a hearing before an EEOC Administrative Judge (AJ). Complainant moved to file a class complaint before the hearing was held. The AJ denied class certification. Class Agent appealed the AJ's denial. The Commission reversed the AJ and granted class certification. The matter was remanded to the Dallas District Office where, on January 4, 2007, the class was expanded and redefined as two subclasses under a disparate impact theory. One subclass was African American applicants who were denied employment because of alleged subjectivity in the Agency's FPMS. This hiring subclass was represented by a second named Class Agent (Class Agent 2). The other subclass was comprised of African American employees (represented by Complainant as Class Agent) who were denied promotion because of subjectivity in the FPMS.

From 2006 to 2017, discovery was conducted to include expert witnesses. In 2011, the Agency moved to decertify both subclasses. The AJ found the Agency's motion premature, pending expert testimony. In 2018, the initial AJ retired and the matter was assigned to a second AJ (AJ2). Also in 2018, the Agency renewed its motion to decertify. The Class Agents opposed the motion. On May 31, 2019, AJ2 granted the Agency's decertification motion. AJ2 held that the promotion subclass lacked commonality because the subclass included not only non-supervisory employees who were denied promotion but also included supervisors and managers who made those promotion decisions. Moreover, AJ2 determined that the hiring subclass lacked numerosity because only two members had been identified.

In Appeal No. 2020000382, the Commission affirmed AJ2's decertification order. The instant request for reconsideration from Class Agent of the promotion subclass followed. On reconsideration, Class Agent argues that the decertification of the promotion subclass improperly relied on inherent conflicts of interest among class members, as opposed to actual ones. Class Agent further maintained that the Commission's order within the appellate decision was insufficient because it required only the Class Agent's individual complaint to be processed.

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).

We have reviewed the submissions by the Class Agent in support of the instant request for reconsideration. However, we determine there is no reason to disturb the Commission's prior decision. We determine that AJ2 properly concluded that expert evidence overall showed, at most, a very limited statistical racial disparity in promotions. Moreover, the record revealed that there were actual conflicts of interest which undermined commonality in the promotions subclass. The promotions subclass included African Americans who *had* successfully been promoted, those who had competed with *other* African Americans for the same promotion, in addition to African Americans who had *made* the promotion decisions at issue.

We also considered, and rejected, Class Agent's position that the relief ordered in Appeal No. 2020000382 was not adequate. We concur with the Agency in that the AJ2's order following decertification remains in effect and it requires the Agency to "contact any and all potential class members and advise them of their right to file individual EEO complaints."

A request for reconsideration 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. Class Agent 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. 2020000382 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

ORDER

To the extent it has not already done so, within thirty (30) calendar days of the date this decision is issued, the Agency is directed to provide Complainant written notification that it will (or has already begun to) process his complaint in accordance with 29 C.F.R. § 1614.108 et seq.

The Agency shall issue Complainant a copy of the investigative file with a notification of the appropriate rights within one hundred fifty (150) calendar days of the date this decision is issued, unless the matter is otherwise resolved prior to that time. If Complainant requests a final decision without a hearing, the Agency shall issue a final decision within sixty (60) days of receipt of Complainant's request.

A copy of the Agency's written notification of processing to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

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.

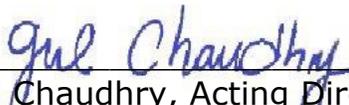
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0124)

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 their 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:



Gul Chaudhry, Acting Director
Office of Federal Operations

August 12, 2025
Date