



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

[REDACTED]  
Demarcus I.,<sup>1</sup>  
Complainant,

v.

James N. Mattis,  
Secretary,  
Department of Defense  
(Defense Logistics Agency),  
Agency.

Appeal No. 0120150529

Agency No. DLAR-10-0117

**DECISION**

On November 20, 2014, Complainant filed an appeal from the Agency's October 20, 2014, final decision concerning the award of compensatory damages and attorney's fees following a finding of discrimination (harassment) in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant was assigned to the Agency's Defense Supply Center Richmond Rotational Program (DSCR) and worked in the Lean Program Management Office from February 2009 through October 2009. While Complainant worked in the Lean Office, his supervisor was the DSCR Lean Program Manager (Supervisor). Beginning in January 2010, Complainant worked as an Integrated Supplier Team Lead in the Original Equipment Manufacturer Directorate, Northrup Grumman and Parker Hannifin Section.

Complainant filed an EEO complaint dated April 22, 2010, alleging that the Agency discriminated against him and subjected him to a hostile work environment on the basis of disability (confined to a wheelchair). The Agency defined the complaint as involving the following incidents: (1) his supervisor (S1) repeatedly made insensitive remarks to him

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<sup>1</sup> 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.

concerning his disability despite his requests for S1 to stop; and (2) on March 9, 2010, Complainant was removed from a Lean Program event he was involved with after S1 accused him of trying to take over the event and made disparaging and incorrect comments about Complainant.

Following an EEO investigation, the Agency issued its final decision (FAD) finding that Complainant had failed to prove that the Agency subjected him to discrimination as alleged. Complainant appealed this decision. In EEOC Appeal No. 0120121062 (May 1, 2014), the Commission reversed the Agency's FAD, holding that the Agency discriminated against Complainant based on his disability when the Agency failed to prevent and promptly correct any harassing behavior. In June 2014, pursuant to our decision, the Agency provided Complainant notice of his right to submit objective evidence in support of his claim for relief.

Complainant requested \$185,139.00 in future pecuniary monetary damages and \$100,000.00 in non-pecuniary monetary damages. The former amount covered prescription medications and other future medical expenditures associated with Post Traumatic Stress Disorder (PTSD), and the latter concerned claims of emotional harm. Further, Complainant requested equitable relief in the form of a retroactive promotion to GS-14, effective February 2010, and restoration of 108 hours of annual leave and 64 hours of sick leave used between February 2009 and March 2010 (i.e., the time during which he was subjected to a hostile work environment). Complainant also requested \$5,500 in attorney's fees. On July 2, 2014, Complainant's attorney (A1) submitted evidence of compensatory damages, including the following:

#### *Complainant's Statement*

Complainant's statement described significant emotional distress directly caused by the harassment he suffered for 14 months. Specifically, Complainant asserted that he suffered marital stress verging on divorce; loss of consortium; loss of relationship with his children; loss of professional reputation; loss of ability to perform his duties at work; loss of pride and enjoyment in his work; anxiety and stress that would be unbearable without medication; a feeling of being trapped; extreme humiliation and embarrassment; dread; insomnia; inability to study and work on his Master's degree; a feeling of isolation; overwork in the form of late hours; and anxiety about job security and his future. In addition, he noted that he was diagnosed with PTSD as a direct result of the harassment at issue herein.

#### *Health Care Providers' Statements*

Complainant's evidence of compensatory damages included letters from Complainant's physician (MD) and his psychologist (PHD) which confirmed that Complainant suffered from PTSD, anxiety, stress, and sleeplessness directly and proximately caused by the discrimination and harassment he endured. PHD's letter was dated June 13, 2014, and stated that Complainant's symptoms of PTSD had endured for five years and were expected to last an "indefinite" period. PHD also explained that he had been seeing Complainant on a weekly basis (which continued) and that MD prescribed him daily medication for his distress. MD's letter,

dated June 9, 2014, confirmed PHD's diagnosis of PTSD and the prescribed daily medications for extreme anxiety. However, the record does not identify the precise medication prescribed.<sup>2</sup> MD also confirmed that Complainant was expected to be under his care "indefinitely."

#### *Friends and Family Statements*

Complainant provided a statement from a long-time friend of Complainant (W1) who has known him for more than 40 years and interacts with him frequently. W1 confirmed that the harassing treatment caused a significant change in Complainant's emotional state. Specifically, W1 stated that Complainant became frustrated and trapped; his attitude about his office, management and job changed; he became apprehensive; he suffered a dramatic loss of faith in the integrity of his upper management; he felt deprived of an opportunity for upward mobility; he suffered a loss of enjoyment of life and work; he dreaded going to work; and his relationship with his wife had suffered greatly.

Complainant also provided a statement from another friend of 35 years (W2) who confirmed that Complainant was "happy and positive" until he went to work for [Supervisor]. W2 also confirmed that Complainant suffered insomnia. W2 noted that Complainant felt that he also lost out on promotional opportunities when he changed positions to avoid the harassment. W2 described Complainant as being "incredibly down" when the harassment continued and upper-level management offered him no protection, and that the harassment caused Complainant to become anxious and mistrustful.

Complainant's father (W3) provided a statement confirming that Complainant was proud, excited, and happy when he was selected for the rotation program; that the rotation program was an opportunity for promotion; that Complainant was happy in his job before he began working for Supervisor; that Complainant was "incredibly upset" about the "incredibly offensive" remarks Supervisor made about him; that Complainant was humiliated by Supervisor's "urine" comments; how demeaned Complainant felt when he was compelled to explain to a female co-worker that he had been instructed, by his physician, to drink Gatorade because of a kidney issue; that Complainant was "upbeat and positive" even after the accident that confined him to a wheelchair; that Complainant was bothered by the lost opportunity for promotion; and that he lost trust in management. W3 also confirmed that he witnessed, first hand, the "terrible strain" that the harassment at work placed on Complainant's marriage.

Another statement was submitted by another long-time friend of Complainant's (W4). W4 has known Complainant since 1987. W4 stated that he and Complainant see each other frequently. W4 stated that prior to the harassment, Complainant was independent, optimistic, productive,

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<sup>2</sup> A1 asserted that her client estimates the cost of his future treatment for PTSD to be \$185,139.00, which includes the cost of his daily medication. Broken out, this cost is \$100 weekly for PHD and \$34.19 monthly for MD's daily medication over Complainant's life expectancy of an additional 33 years.

and took great pride in his work. W4 stated that Complainant contemporaneously shared with him that Supervisor “belittled and berated” him “by making humiliating remarks about [his] disability.” W4 also stated that Complainant told him that he feared that his career was in jeopardy. According to W4, after the harassment started, Complainant became extremely anxious, unhappy, and for the first time in his life, showed signs of pessimism. W4 further stated that Complainant’s work situation “took a toll on his family life” and “created a huge strain on his marriage.” W4 also noted that Complainant had to put off the final project for his Master’s degree as a result of all of the stress caused by the harassment. In addition, W4 stated that Complainant lost too much weight and looked haggard during the relevant time-frame and was often unable to participate in family and social events because of the stress he was under. W4 characterized Complainant as tragically transformed.

Another friend who has known Complainant since 2008 or 2009 (W5) confirmed that prior to working for Supervisor, Complainant was “a very upbeat and positive person” who never complained about the challenges he faced as the result of being confined to a wheelchair. He also described him as being “very excited about taking on a new position at work.” However, shortly after Complainant took his new position working under Supervisor, he began to tell W5 about the offensive remarks Supervisor made about his disability. According to W5, the discrimination had “a severe impact on [Complainant’s] mental state” and he was no longer the positive, enthusiastic, and confident person he had been.

A co-worker and friend of Complainant (W6) confirmed that the harassment had a severe and negative impact on Complainant and that he was exhausted and tired all the time. W6 also stated that Complainant’s professional and home life were negatively impacted and that even though he was forced to leave his job because of the harassment, it continued after he left.

#### AGENCY’S DECISION

On October 20, 2014, the Agency issued its decision (FAD2) with respect to compensatory damages, equitable relief, and attorney’s fees. Specifically, the Agency: (1) awarded \$25,000.00 in non-pecuniary damages; (2) restored 40 hours of annual leave and 24 hours of sick leave; and (3) awarded \$3,762.50 in attorney’s fees. The Agency failed to award pecuniary damages because it found that Complainant failed to present sufficient evidence to support this claim. The Agency also found insufficient evidence to support his claim that the harassment caused him to suffer the loss of a promotional opportunity. With respect to Complainant’s claim for leave restoration, the Agency found limited evidence of causation with respect to the leave usage during the relevant time period. The Agency noted that while Complainant stated that he used 108 hours of annual leave and 64 hours of sick leave as a result of the harassment, he had not identified the particular dates he took leave, or provided timesheets showing as much. However, the Agency asserted that while the claim for leave restoration was fairly speculative, it conceded that Complainant did suffer some stress as a result of the Agency’s actions, which may have required him to take some leave. Accordingly, it agreed to restore 40 hours of annual leave and 24 hours of sick leave.

The Agency argued that while the statements provided by Complainant described various ways the harassment affected his life it was not clear how severe these claimed effects were, and to what extent the effects were attributable to the Agency's discriminatory actions. Nevertheless, the Agency concluded that, as a whole, the statements were sufficient to show that Complainant did suffer some stress and was upset by the Agency's discriminatory actions. The Agency concluded that Complainant's claim for \$100,000.00 in non-pecuniary damages was monstrously excessive when compared to cases with similar facts, finding that an award of \$25,000.00 in non-pecuniary damages was supported by case law.

Lastly, the Agency reduced Complainant's attorney's fee claim finding that A1 failed to support her hourly rate and number of hours of work performed. The Agency reduced the hourly rate to \$150 because A1 showed no expertise in employment discrimination law and reduced the number of hours to what it determined was a more reasonable amount of time to have spent on the work listed on the fee petition.

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

When discrimination is found, the agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore him as nearly as possible to the position he would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Brown v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994).

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes his or her claim of unlawful intentional discrimination under Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this "make whole" relief. 42 U.S.C. § 1981a(b)(3). In this regard, the Commission has authority to award such damages in the administrative process. See e.g. Stokes v. Dep't. of Homeland Security, EEOC Appeal No. 0120071802 (December 10, 2008).

Compensatory damages are awarded for losses and suffering due to the discriminatory act or conduct of the agency and include past pecuniary losses, future pecuniary losses, and non-pecuniary losses that are directly or proximately caused by the agency's discriminatory conduct.

See Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. N915.002 (July 14, 1992) (EEOC Notice) at 8. Pecuniary losses are out-of-pocket expenses, including medical expenses and other quantifiable costs. Id. Past pecuniary losses are those losses that are likely to occur before resolution of a complaint and future pecuniary losses are losses that are likely to occur after resolution of a complaint. Id. at 8-9. Finally, non-pecuniary losses are those intangible losses, not subject to precise quantification, *e.g.*, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. Id. at 10.

In order to recover compensatory damages, the complainant must provide evidence in support of his or her claim and proof linking the damages to the alleged discrimination. See Papas v. U.S. Postal Serv., EEOC Appeal No. 01930547 (March 17, 1994); Mims v. Dep't. of the Navy, EEOC Appeal No. 01933956 (November 24, 1993). The evidence must demonstrate that he has been harmed as a result of the agency's discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't. of the Navy, EEOC Appeal No. 01934157 (July 25, 1994); see EEOC Notice, supra, at 11-12, 14. Evidence may include, *inter alia*, documents, accompanied by an explanation showing actual out-of-pocket expenses for all medical treatment, psychological counseling, and any other cost associated with the injury caused by the agency's actions. EEOC Notice, supra at 9. A claim for non-pecuniary damages may be proved through evidence such as statements from the complainant, from others, including family members and coworkers, and from medical professionals. See Carle v. Dep't. of the Navy, EEOC Appeal No. 01922369 (January 5, 1993).

#### *Pecuniary Damages and Equitable Relief*

The Commission requires objective evidence in support of pecuniary damages, typically in the form of receipts, bills, physicians' statements, or other proof of actual loss and expenses. Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 at 4. The evidence in the record clearly establishes a nexus between Complainant's medical bills (*i.e.*, office/therapy visits to MD/PHD and medication cost) and the discriminatory actions. Specifically, Complainant's health care providers confirm that he suffers from PTSD, anxiety, stress, and sleeplessness directly and proximately caused by the discrimination and harassment he endured. Complainant also asserts that his medical expenses are \$400 per month for PHD and \$34.19 per month for MD. Both PHD and MD describe Complainant's condition as expected to last an indefinite period of time, which Complainant views as being permanent. Accordingly, Complainant seeks 33 years of future pecuniary damages (*i.e.*, \$185,139.00) which is his life expectancy according to the Social Security Administration's actuarial tables.

The Agency argues that there is insufficient evidence in the record to support pecuniary damages. We disagree. The term "indefinite" used by PHD and MD to describe Complainant's PTSD indicates that while it is impossible to determine with certainty when or if Complainant's condition will resolve, it is apparent that he is currently suffering with a substantial psychological harm that is ongoing and requires treatment. While it is clear that Complainant's

need for treatment will continue into the future, we find the assertion that it will continue for the rest of his life too speculative for various reasons, including the fact that it fails to account for possible improvement in Complainant's condition. Based upon the record before us, we find that it is reasonable for Complainant to require an additional five years of treatment. See Patel v. Dep't of the Army, EEOC Appeal No. 01980279 (Sept. 26, 2001) (indefinite medical condition awarded five years of future pecuniary damages); Brinkley v. United States Postal Serv., EEOC Appeal No. 01953977 (Jan. 23, 1998) (Complainant awarded three years of future pecuniary damages despite psychologist being unable to determine when complainant's condition would resolve).

We find that while the evidence in the record is sufficient to establish a causal nexus, it does not in and of itself constitute the necessary objective evidence of Complainant's medical expenses. However, since the record clearly shows that Complainant incurred expenses for therapy and for the cost of medication and will continue to incur such costs into the foreseeable future, to the extent that Complainant is able to submit objective evidence of these past pecuniary expenses, as explained in the order below, we will permit him to recover those damages starting at the earliest in April 2009 until the date of this decision. Complainant will also be entitled to five years of future pecuniary damages so long as he is able to produce objective evidence of his ongoing medical expenses incurred contemporaneous to the time this decision is issued.<sup>3</sup>

In addition, we find insufficient evidence to support Complainant's lost opportunity for promotion claim. The evidence in the record does not show that Complainant would have been promoted had he not been subjected to harassment. Lastly, we agree with the Agency that Complainant has failed to present sufficient evidence showing that his use of annual and sick leave during the relevant time-frame was caused by the harassment he endured, rather than some other purpose. Accordingly, we affirm the Agency's decision to restore 40 hours of annual leave and 24 hours of sick leave, and not the full amount requested by Complainant.

#### *Non-Pecuniary Damages*

We disagree with the Agency's view of the evidence pertaining to Complainant's claim for non-pecuniary compensatory damages and find that he is entitled to an award of \$100,000. Specifically, we find sufficient evidence in the record to support the conclusion that the unlawful harassment caused Complainant to suffer extreme emotional turmoil in the workplace for 14 months (January 2009 through March 2010) and that such emotional turmoil continued for at least four years and three months beyond that (i.e., totaling at least five years and seven months of marital and familial strain, severe anxiety and stress; extreme humiliation and embarrassment; feelings of dread; insomnia; feelings of isolation and other PTSD symptoms necessitating weekly

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<sup>3</sup> We note that the Commission has previously held that, under the collateral source rule, payments made by a health insurer for treatment on a complainant's behalf cannot be used to reduce a compensatory damages award. Wallis v. United States Postal Serv., EEOC Appeal No. 01950510 (Nov. 13, 1995); Johnson v. Dep't of the Interior, EEOC Appeal No. 01961812 (June 18, 1998).

therapy sessions and medication). We also note that the record supports the conclusion that Complainant was a happy, upbeat person, prior to and after the accident that confined him to a wheelchair and the record is devoid of evidence of any pre-existing condition that would justify reducing his non-pecuniary damages award.

Consequently, we modify the Agency's non-pecuniary damages award because the higher award is supported by the evidence. Our award of \$100,000 is based on the actual harm experienced which was the result of the Agency's actions, and it takes into account both the nature of the Agency's discriminatory actions, as well as the nature, duration, and severity of the harm Complainant experienced as a result of those actions. We further determine that our award is consistent with amounts awarded in similar cases. See Mohar v. U.S. Postal Serv., EEOC Appeal No. 0720100019 (August 29, 2011) (Award of \$100,000 in non-pecuniary compensatory damages where the harassment resulted in complainant suffering major depression and PTSD which was triggered by the work environment which the Agency took no action to address); Fivecoat v. Dep't of the Air Force, EEOC Appeal No. 0720110035 (May 15, 2012) (\$100,000 awarded as result of a discriminatory hostile work environment where complainant experienced depression, digestive problems, sleep disturbances, crying spells, and episodic high blood pressure); Morrison v. U.S. Postal Serv., EEOC Appeal No. 07A50003 (Apr. 18, 2006) (\$90,000 awarded in one-year harassment case where complainant experienced depression, anxiety, sleeplessness, post-traumatic stress disorder, and where complainant's psychological trauma continued well past the date she resigned from the agency); Joannie V. v. Dep't of Homeland Sec., EEOC Appeal No. 0720130010 (Oct. 31, 2013) (\$100,000 awarded in harassment case where complainant, for over four years, experienced stress, loss of confidence, high blood pressure, chest pains, anxiety, depression, loss of reputation, and disruption of life and social relationships). Accordingly, we conclude that an award of \$100,000 will adequately compensate Complainant for the emotional harm he suffered as a result of the workplace harassment. We note that this amount meets the goals of not being motivated by passion or prejudice, not being "monstrously excessive" standing alone, and being consistent with the amounts awarded in similar cases. See Cygnar v. City of Chicago, 865 F.2d 827, 848 (7<sup>th</sup> Cir, 1989).

#### *Attorney's Fees Award*

By federal regulation, an agency is required to award attorney's fees and costs for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(ii). To determine the proper amount of the fee, a lodestar amount is reached by calculating the number of hours reasonably expended by the attorney on the complaint multiplied by a reasonable hourly rate. Blum v. Stenson, 465 U.S. 336 (1934); Hensley v. Eckerhart, 461 U.S. 424 (1983). The reasonable hourly rate is generally determined by the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skill, experience and reputation. Blum, 465 U.S. at 895.

By letter dated September 23, 2014, Complainant's attorney submitted an affidavit from a local lawyer (A2) stating that A1's normal billing rate is \$200 per hour, which is the prevailing rate for attorneys of comparable experience to that of A1 in the Lynchburg, Virginia community. A1



also submitted a verified statement that her fees are \$200 per hour. A1 also submitted her billing records which document 27.5 hours of work on Complainant's remedy claim.

We find sufficient evidence in the record to support A1's claim for \$5,500 in fees. The record supports the finding that A1's hourly rate is the prevailing market rate for similar services. We also find the billing records provided by A1 to be sufficiently detailed and the time spent on the documented tasks to be reasonable, especially given the numerous witness statements in the record. Moreover, the Agency has not shown that the hourly rate or the hours billed were excessive. As such we modify the Agency's decision by awarding \$5,500 in attorney's fees.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's decision awarding relief and attorney's fees as set forth below.

### ORDER

Within sixty (60) days from the date this decision is issued, to the extent it has not already done so, the Agency shall take the following actions:

1. The Agency shall pay Complainant \$100,000 in non-pecuniary, compensatory damages.
2. The Agency shall, within 10 days of the date this decision is issued, afford Complainant 45 days to submit objective documentation in support of his past medical expenses. Within 30 days of its receipt of the subject documentation, the Agency shall recalculate Complainant's entitlement to past medical expenses, and pay Complainant the past medical expenses for which documentation has been submitted. In addition, the Agency shall compute Complainant's future pecuniary award by using Complainant's most recent documented monthly medical expenses to compute five years of future medical expenses.
3. The Agency shall restore to Complainant's leave balance, 40 hours of annual leave and 24 hours of sick leave.
4. The Agency shall pay Complainant's attorney \$5,500 in fees.

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.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), 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 the date this decision was issued. 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 (K0610)

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 77960, Washington, DC 20013. 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.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0416)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant 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 or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. 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. The requests 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 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).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

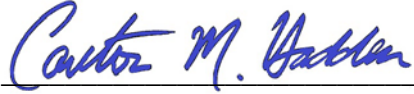
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, **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:



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Carlton M. Hadden, Director  
Office of Federal Operations

May 4, 2017

Date