



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

[REDACTED]
Jody L.,¹
Complainant,

v.

Dr. Heather A. Wilson,
Secretary,
Department of the Air Force,
Agency.

Appeal No. 0120151351

Agency No. 413413005

DECISION

On February 24, 2015, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's February 19, 2015, final decision concerning his 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. For the following reasons, the Commission REVERSES, in part, the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Engineering Technician (Drafting), GS-0802-05, in the Civil Engineering Technical Services Center (CETSC), Operations Division, Installations and Mission Support Directorate, National Guard Bureau (NGB), located in Minot, North Dakota. On May 3, 2013, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability (paralysis) and reprisal (prior EEO activity) when:

(1) on January 29, 2013 and three other occasions, his first-level supervisor (S1) denied his request to work on a situational work schedule due to inclement weather days or when the temperature is twenty-below zero or lower, and as a result he was forced to use 30 hours of leave;

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.

(2) on or about April 3, 2013, his second-level supervisor (S2) asked S1 to contact Human Resources Command (HRC) to remove the 109 Voluntary Leave Transfer Program hours that were donated to Complainant in case of a medical emergency.²

After the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

FACTUAL BACKGROUND

In November 2001 Complainant sustained a non-work related spinal cord injury which rendered him paralyzed from the chest line down. At that time, Complainant applied for, provided medical documentation to justify, and was accepted in the Volunteer Leave Transfer Program (VLTP) due to his “medical emergency.” Complainant returned to work sometime in July 2002. Work-space related accommodations were implemented based upon discussions with Complainant.

Claim 1 - Situational Telework

On March 14, 2003, Complainant provided the Agency with a letter from his physician stating that he should be permitted to telework from home several days per week to accommodate his medical restrictions and challenges. Complainant’s impairment is visually apparent because he is in a wheelchair. S2 became aware of his impairment in November 2001 and S1 became aware in June 2012 when he first became Complainant’s supervisor.

Complainant states that he was denied situational telework a total of four times (January 29, January 31, March 15, and March 18, 2013). He explains that even though situational telework is specifically not a part of his telework agreement, the Telework Handbook explains that an employee can work a situational work schedule as a result of inclement weather, doctor’s appointment, and special work assignments. Therefore, he argues that he should have been allowed situational telework under those conditions. Complainant asserts that prior to filing his EEO complaint in April 2012, he was permitted to telework during inclement weather under a former supervisor (FS). After he filed his complaint, he was not.³

² We affirm the Agency’s dismissal of an additional claim raised by Complainant (alleging that S2 consistently blocked ways for him to advance from his temporary position by refusing to open the Safety position that had been vacant for three years) on the basis that it fails to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1).

³ Complainant’s prior protected EEO activity occurred in April and June 2012 and on March 13, 2013, and involved a claim of S2 parking in Complainant’s disability parking space.

S1 and S2 testified that they were aware of Complainant's prior EEO activity and impairment. S1 states that he does not recall Complainant requesting telework on January 29, 2013 or January 31, 2013, and states that Complainant had no written telework agreement in place on those dates. S1 further states that on February 7, 2013, in accordance with NGB policy, he created an official written telework agreement for Complainant to follow with a regular and recurring telework schedule. According to S1, Complainant asked about working at home during inclement weather conditions, to which he stated that he would consider reasonable accommodations based on a physician's recommendation.⁴ S1 does not recall Complainant requesting any modification to his telework agreement on March 15 or March 18, 2013.

S2 states that the only involvement he had regarding Complainant's requests to telework on a situational basis was to discuss the policy with S1. S1 states that he did not deny Complainant's request for a situational work schedule but informed him that he needed medical documentation stating what conditions warranted Complainant working from home. According to S1, Complainant did not comply with S1's request and did not bring in any documentation.

Complainant's non-union employee representative, (Industrial Equipment Mechanic, WG-5301-11) (W1) testifies that Complainant complained to him about being denied telework during inclement weather and having to use his annual leave. According to W1, S2 and FS previously allowed Complainant to take days off based on safety.

Claim 2 – VLTP

Complainant asserts that on or about April 3, 2013, S1 asked him about the hours donated to him through VLTP. He informed S1 that people had donated the hours to him because his health is so unpredictable and as a result, he has always been in the VLTP. Complainant further states that about two months later, S1 sent him an email informing him that he had gotten VLTP hours removed. S2 was one of the recipients of the email. No explanation was provided as to why his donated hours had been removed.

S1 states that he did not contact HRC regarding Complainant's donated leave hours. Rather, S1 asserts that HRC initially sent an email to S2, requesting verification that Complainant's medical emergency was still present. S1 also explained that S2 forwarded the email to him because he is Complainant's first-level supervisor. He informed Complainant that HRC was auditing the books and had asked if Complainant's medical emergency was still valid.

S2 asserts that on April 30, 2013, he received an email from a Human Resources Specialist (HR) requesting he complete a letter to terminate Complainant's VLTP. S2 explains that he forwarded the letter to S1 and asked him to look at Complainant's folder to see if there was any information he could find on the program. S2 further explains that S1 filled out the form to terminate Complainant's VLTP at the request of HR.

⁴ It is not clear from S1's testimony the exact date this occurred.

HR testifies that the VLTP is a program where leave is donated to an individual that has a medical emergency and has exhausted their leave. After the emergency has ended, the unused leave is returned to those that donated the leave. HR further states that Complainant was removed from the program because he had been in the program since 2001 and had not submitted any medical documentation stating that he was still in need of the emergency leave. HR further states that she initially contacted Complainant's supervisors to complete the paperwork to remove Complainant from the program.

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").

Claim 1 – Denial of Accommodation of Situational Telework

Coverage

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual with a disability and is required to provide reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). To establish that he was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) he was a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide him with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Accommodation Guidance).

The Agency does not dispute that Complainant is an individual with a disability as he is completely paralyzed from the chest down and requires a wheelchair for mobility. A qualified individual with a disability is an "individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment positions such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position." 29 C.F.R. § 1630.2(m). We also agree with the Agency that Complainant is a qualified individual with a disability. Complainant states that

because of his disability, he requires both scheduled and situational telework. He adds that without it, he would not be able to make it to work on a consistent basis and perform the essential functions of his job. For years, under his prior supervisor, FS, Complainant teleworked both on a scheduled and recurring basis and on a situational basis when inclement weather made his commute to work prohibitively difficult. The record shows that Complainant had performed his duties in a satisfactory manner for years with these accommodations.

Request for Reasonable Accommodation

A federal agency must “make reasonable accommodation for the known physical or mental limitations” of qualified disabled applicants or employees unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program. 29 C.F.R. § 1614.203(c). Reasonable accommodation may include making facilities accessible, job restructuring, modified work schedules, and other similar actions. 29 C.F.R. § 1614.203(c)(2). An agency further has an affirmative obligation to make an individualized assessment of each employee’s disability, qualifications, and possible accommodations before taking a significant adverse action. See School Board of Nassau County v. Arline, 480 U.S. 273, 287-89 (1987); Bowers v. U.S. Postal Serv., EEOC Appeal No. 01933155 (September 7, 1994).

A reasonable accommodation is a modification or adjustment to the work environment or to the manner or circumstances under which a position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position. See Accommodation Guidance. An accommodation must be effective in meeting the needs of the individual. Id. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Id. An agency must consider each request for reasonable accommodation and determine: (1) whether the accommodation is needed; (2) if needed, whether the accommodation would be effective; and (3) if effective, whether providing the accommodation would impose an undue hardship. Id. at Question 32.

Complainant states that he requested situational telework because it is too dangerous during extremely cold temperatures to be out because his wheelchair lift freezes and he often cannot get into his vehicle. He also explains that it is very difficult and exhausting for him to transfer from wheelchair to vehicle, then drive 50 miles, transfer from vehicle to wheelchair, push through the snow or severe cold to get into the building, and then repeat this process to go home. In addition, it is prohibitively dangerous to commute in extreme cold weather because he could develop frostbite without knowing it as he cannot feel anything below his chest.

W1 and an information technology representative (IT) corroborate Complainant’s claim that his previous supervisor permitted him to work from home on inclement weather days. In addition, Complainant testified that he told S1 how the inclement weather made it prohibitively difficult to commute to work. According to Complainant, S1, nevertheless, denied his request and forced him to take accrued leave instead. Complainant also asserts that S1 never requested documentation to support his request to telework on a situational basis.

S1 became Complainant's first-level supervisor on June 18, 2012. S1 declared that he did not recall Complainant "officially" asking to telework on January 29 and 31, 2013. In addition, S1 asserts that on January 29, 2013, he called Complainant at home because Complainant had not reported to work, and Complainant stated that he was not coming in. S1 notes that there was no "written" telework agreement in place for Complainant at that time; however, S1 understood that Complainant's previous first-level supervisor had allowed him to work from home if he called in, so S1 prepared a formal telework agreement that he and Complainant signed on February 7, 2013.

S1 asserts that Complainant asked about working at home during inclement weather conditions, and S1 responded that he would consider reasonable accommodations based on a physician's recommendations, but the only documentation he had at that time was the medical letter dated March 14, 2003. S1 states that he did not recall Complainant specifically asking to modify his telework agreement on March 15 or 18, 2013, and asserts that no "formal request" for situational telework was made prior to March 27, 2013.

S2 also asserts that Complainant never "officially" requested to telework on a situational basis. According to S2, there were several informal discussions and e-mails between S1 and Complainant but not an "actual" request to work a situational work schedule. S2 further testified that:

I believe that [S1] did not deny [Complainant's] request for a different telework schedule, but informed [Complainant] that he needed medical documentation stating what weather conditions warranted [Complainant] working from home. I also believe that [S1] wanted to establish some tangible bad weather conditions that the doctor said would make it hard for [Complainant] to come to work because of his physical disabilities, not because of the condition of [Complainant's] equipment. I believe [S1] relayed this to [Complainant] in late 2012/early 2013. [Complainant] did not comply with his request and did not bring in any documentation from the doctor that described what actual weather conditions would make it difficult for [Complainant] to come to work because of his physical disabilities.

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use 'plain English' and need not mention the ADA or use the phrase "reasonable accommodation." See Accommodation Guidance, Question 1. Complainant did not need to "officially" request an accommodation, it was enough that he asked for a modification to his usual schedule due to the hazardous conditions and the risk to his health.

The evidence in the record supports the finding that Complainant, in fact, requested an accommodation to telework on a situational basis during inclement weather (which he had defined as any temperature below -20 degrees). We find S1 and S2's explanations for not

granting Complainant's request lack credibility. First, we find it unlikely that after years of teleworking during inclement weather that Complainant would not have raised it with his new supervisor when he called him on that first below-twenty-degree day in January 2013 when Complainant stayed at home. Based upon the evidence in the record, it seems likely that this discussion was the reason S1 felt the need to create a written telework agreement shortly thereafter. The record shows that on February 7, 2013, shortly after January 29, 2013 (i.e. the first event/denial at issue), a written telework agreement was created and executed by both S1 and Complainant officially permitting Complainant to work at home on Tuesdays and Thursdays on a recurring basis. However, the telework agreement did not address the issue of situational telecommuting options, and Complainant objected to this omission in an email to S1 on February 13, 2013.

S1's testimony is unclear as to when he asserts that Complainant requested a situational telework arrangement. However, based upon the totality of the evidence, it is not credible that Complainant failed to request an accommodation in late January 2013 or early February 2013. In addition, assuming S2's testimony is accurate that S1 requested a clearer definition of the type of inclement weather that would trigger the option to work from home, we find that Complainant provided a workable definition. Complainant consistently affirmed that he requested flexibility when the temperatures were below negative 20 degrees. In addition, the documentary evidence shows that S1 acknowledged the weather conditions in which Complainant was seeking more flexibility as being "below -20 degrees."⁵ Based on this evidence and various inconsistencies in S1's testimony,⁶ we find that it is unlikely that S1 required additional medical documentation to support Complainant's need for the requested accommodation.

As part of the interactive process, an employer may ask an individual for reasonable documentation about that person's disability and functional limitations when the disability or need for accommodation is not obvious. Accommodation Guidance pp. 12-13 (October 17, 2002). While the record is devoid of documentary evidence that S1, in fact, requested medical documentation, such a request would have been improper as the need for the accommodation in this case was obvious. See Iliana S. v. Dep't of Justice, EEOC Appeal No. 0120081848 (Oct. 13, 2015) (finding that the complainant's need to use the elevator during a fire drill was obvious since her disability made it difficult to walk). We find that the 2003 letter from Complainant's physician establishes that Complainant faced difficult challenges in commuting because of his disability and was the basis for establishing the need to telecommute on a regular basis. Since the record supports the fact that Complainant's disability causes significant difficulty in commuting during the best of circumstances, it is certainly obvious that extreme weather would increase the level of difficulty in Complainant's commute, which Complainant explained to S1. Specifically, the record supports the finding that Complainant explained to S1 that the lift on his

⁵ S1 noted this fact in a Memorandum for the Record dated March 27, 2013.

⁶ S1's testimony appears intentionally vague as to when Complainant requested to telework during inclement weather. Also, the fact that neither S1 or S2 possess any written correspondence with Complainant regarding their efforts to address his accommodation requests raises serious questions regarding the credibility that such discussions took place.

motor vehicle freezes in temperatures below -20 degrees. When this occurs, Complainant is unable to get into his vehicle. Complainant also explained to S1 that there is a substantial risk of frostbite in having to commute in such extreme cold temperatures, since he is unable to detect the warning signs of frostbite (e.g., extreme cold, prickling, and/or numbness in extremities).

The Commission recognizes that disability accommodations related to commuting can be required under the Rehabilitation Act in appropriate circumstances. See Hackney v. U.S. Postal Serv., EEOC Appeal No. 01984048 (Aug. 23, 2001); Hupka v. Dep't of Defense, EEOC Appeal No. 02960003 (Aug. 15, 1997) (agency violated the Rehabilitation Act when it refused to allow complainant with a disability that was exacerbated by his long commute to work at home or at a local alternative work site, but did not prove that doing so would be an undue hardship); see also, Saner v. U.S. Postal Serv., EEOC Appeal No. 01A13291, footnote 1 (Oct. 11, 2002) (noting that agencies may be responsible for accommodating employees with disabilities with respect to their daily commute to work such as by modifying a work schedule, applying a work-at-home policy where it would be an effective accommodation and would not be an undue hardship); Lavern B. v. Dep't of Housing and Urban Dev., EEOC Appeal No. 0720130029 (Feb. 12, 2015) (agency denied complainant reasonable accommodation when it, among other things, did not grant his request to telecommute 100 percent of the time); Harvey G. v. Dep't of the Interior, EEOC Appeal No. 0120132052 (Feb. 4, 2016); Jones v. Dep't of Agriculture, EEOC Appeal No. 0120080833 (July 18, 2012).

The undisputed record shows that the situational telework accommodation was an effective accommodation and that such an accommodation did not present an undue burden on the Agency as the record shows that Complainant had been provided this accommodation for years prior to the time-frame at issue herein and Complainant had been performing the duties of his position in a satisfactory manner throughout his tenure with the Agency. Finally, we remind the Agency that the federal government is charged with the goal of being a “model employer” of individuals with disabilities, which may require it to consider innovation, fresh approaches, and technology as effective methods of providing reasonable accommodations. Rowlette v. Social Security Administration, EEOC Appeal No. 01A10816 (Aug. 1, 2003); 29 C.F.R. §1614.203(a). We believe that providing Complainant with this reasonable accommodation furthers this goal.

In addition to the assertion that Complainant failed to provide medical documentation, the Agency argues that it accommodated Complainant by permitting him the use of his accrued leave on the dates at issue. While an employer may choose between effective accommodation, forcing an employee to take leave when another accommodation would permit an employee to continue working is not an effective accommodation. See Denese v. Dep't of the Treasury, EEOC Appeal No. 0120141118 (Dec. 29, 2016) citing, Mamola v. Group Mfg. Serv., Inc., 2010 WL 1433491 (D. Ariz., Apr. 9, 2010) (unpaid leave may not be a reasonable accommodation when an employee specifically requests another accommodation that would allow him or her to perform the essential functions of the position without missing work); and Woodson v. Int'l Bus. Machines, Inc., 2007 WL 4170560 at 5 (N.D. Cal., Nov. 19, 2007) (leave is sufficient as a reasonable accommodation only if other accommodations in a job would be ineffective). In this case, the Agency failed to provide Complainant with the effective accommodation that would

have allowed him to continue working. Accordingly, we agree that permitting Complainant the option of using accumulated leave instead of the option of teleworking during inclement weather was not an effective accommodation.

Accordingly, based upon the record, we find that the Agency violated the Rehabilitation Act when it denied Complainant the option of working from home on days when the temperature is below negative twenty degrees.⁷ We also note that where a finding of discrimination involves a failure to provide reasonable accommodation to a disability, damages are awarded if the Agency fails to demonstrate it made a good faith effort to provide the complainant with a reasonable accommodation. See Accommodation Guidance at 11, footnote 24, (Oct. 17, 2002). Complainant v. Dep't of Justice, EEOC Appeal No. 0120122924 (Sept. 11, 2015). We find the record devoid of evidence that the Agency engaged in the interactive process. Aside from S1 and S2's statements indicating that S1 requested medical documentation, there is no documentary evidence to support this fact or that they otherwise engaged in the interactive process. In addition, there is a lack of good faith established by the fact that Complainant's new supervisor essentially removed the effective accommodation that FS and S2 had previously provided to him. Faustino M. v. U.S. Postal Serv., EEOC Appeal No. 0120160319 (Feb. 25, 2016). Accordingly, we find that compensatory damages are available to the extent that Complainant can prove such damages.

Claim 2 – Removal of VLTP Hours

With respect to Claim 2, the preponderance of the evidence (based upon testimonial and documentary evidence) supports the conclusion that HRC initiated the query into the legitimacy of Complainant retaining the unused VLTP hours assigned to him several years prior because the donated leave should only be retained on an emergency basis. However, even assuming the truth of Complainant's assertion that S1 approached him about the VLTP program on April 3, 2013 (weeks prior to HRC's initial inquiry), the record does not support the conclusion that management was motivated by discriminatory or retaliatory animus in the effort to remove the VLTP hours.

CONCLUSION

Accordingly, the Commission AFFIRMS the Agency's finding of no discrimination regarding VLTP hours, and REVERSES the Agency's finding that Complainant was not denied a reasonable accommodation for his disability and REMANDS this matter to the Agency to take corrective action in accordance with this decision and the ORDER below.

⁷ We find insufficient evidence in the record to support the conclusion that S1 was motivated by Complainant's EEO activity in denying Complainant's request for an accommodation. The record is devoid of evidence that Complainant had requested this accommodation from S1 prior to January 29, 2013, or that S1 denied any such requests within a short period after Complainant engaged in protected EEO activity. In addition, the record is devoid of evidence that S1 or S2 held animus toward Complainant because of his participation in protected EEO activity.

ORDER

The Agency is ordered to take the following remedial action:

1. Within sixty (60) days from the date this decision is issued, the Agency shall restore any leave (including unpaid leave) that Complainant used because he was denied the accommodation of situational inclement weather telework⁸ beginning on January 29, 2013, until the date Complainant is provided with the ordered effective accommodation;
2. Within ninety (90) calendar days from the date that this decision is issued, the Agency shall complete a supplemental investigation in order to determine Complainant's entitlement to compensatory damages. The Agency shall afford Complainant the opportunity to submit evidence in support of his claim for damages within the 90-day time frame, and Complainant shall cooperate with any additional evidentiary requests made by the Agency. Within thirty (30) calendar days of the date that the Agency determines the amount of compensatory damages owed Complainant, the Agency shall pay that amount;
3. Effective immediately, the Agency shall permit Complainant to telework on days where the temperatures are below negative twenty degrees, or when other extreme and hazardous commuting conditions exist, as a reasonable accommodation for his disability;
4. Within ninety (90) days from the date this decision is issued, the Agency shall provide a minimum of eight (8) hours in-person or interactive EEO training to S1 and S2, with an emphasis on the Agency's responsibility to provide employees with a reasonable accommodation for disabilities as well as its general obligations under the Rehabilitation Act. The training shall also emphasize management's obligations to prevent retaliation under EEO regulations;
5. Within sixty (60) days from the date this decision is issued, the Agency shall consider taking disciplinary action against the S1 and/or S2. The Agency shall report its decision. 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.

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.

⁸ Inclement weather is defined as any temperatures below twenty degrees.

POSTING ORDER (G0914)

The Agency is ordered to post at its Minot, North Dakota facilities 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 30 calendar days of the date this decision becomes final, and shall remain posted for 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 10 calendar days of the expiration of the posting period.

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 (K0617)

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 in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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 (M0617)

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. 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. Complainant'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).

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:



Carlton M. Hadden, Director
Office of Federal Operations

January 17, 2018

Date