



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

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Michelle N.,<sup>1</sup>  
Complainant,

v.

Peter O'Rourke,  
Acting Secretary,  
Department of Veterans Affairs  
(Veterans Health Administration),  
Agency.

Appeal No. 0120162415

Agency No. 200P-0612-2015100785

**DECISION**

On July 15, 2016, 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 June 15, 2016, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final decision, in part.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Medical Administrative Specialist/Administrator of the Day (AOD), GS-9, in the Emergency Department at the Veterans Affairs (VA) Northern California Healthcare System, in Mather, California. On January 22, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (aplastic anemia and migraine headaches) and reprisal (prior protected EEO activity) when: (1) from April 14, 2014 to the present, her supervisor (S1) failed to act upon her requested reasonable accommodation; and (2) on October 29, 2014, S1 lowered her annual performance evaluation from Exceptional to Fully Successful.

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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.

After the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, 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 her to discrimination as alleged.

### FACTUAL BACKGROUND<sup>2</sup>

S1 has been Complainant's direct supervisor since 2011. In February 2012, Complainant fainted during her shift and sometime thereafter was diagnosed with aplastic anemia, an autoimmune deficiency that can cause seizures or migraines. Complainant's physicians told her that her condition was likely produced by her irregular work schedule, which caused lack of sleep and lowered her hemoglobin count. AOD shifts rotated between daytime shift, evening shift, and nighttime shift.

On August 29, 2012, Complainant gave S1 a doctor's note explaining her medical condition and need for a set schedule. During the spring and summer of 2013, Complainant voluntarily agreed to a detail assignment as a Program Analyst in Performance Improvement (PI), which was a non-rotating day shift position. Complainant chose to return to her rotating AOD position in the fall of 2013 and advised management officials that she could work any shift so long as she did not bounce around day-to-day. S1 testified that Complainant requested to come back to the evening shift in full capacity.<sup>3</sup>

On April 22, 2014, Complainant submitted a request for a reasonable accommodation to the Agency. In support of her accommodation request, Complainant provided letters from various doctors, dated April 15, April 17, and April 29, 2014, each stating that Complainant required a non-rotating, set shift schedule due to her ongoing medical condition. The April 17, 2014 letter stated: "You are undergoing evaluation for a potentially serious medical disorder. During the evaluation and for the next month, I need to you [sic] work a stable schedule, preferably day shift. Certainly, you should not be alternating shift during this time."

A few weeks after submitting the accommodation request, the Chief of Employee and Labor Relations (RAC),<sup>4</sup> who was in charge of processing Complainant's accommodation request, sought an explanation from Complainant as to why her physician recommended a daytime shift rather than a bridge or evening shift. Complainant emailed RAC with a brief explanation. On June 3, 2014, a reasonable accommodation was granted by placing Complainant on the day shift for three months (from June 15, 2014 through September 21, 2014). Complainant was also

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<sup>2</sup> The facts set forth herein are undisputed unless otherwise noted.

<sup>3</sup> Complainant states that this EEO complaint pertains to the accommodation requested in April 2014, and that any prior accommodation requests are not at issue herein.

<sup>4</sup> RAC's work in processing the reasonable accommodation process fell within the Agency's human resources office.

instructed to produce additional medical documentation prior to September 7, 2014, to receive further accommodation.

On August 20, 2014, Complainant requested mediation regarding a dispute with S1. The written request indicates that the dispute was an “EEO issue” pertaining to “[h]ostile work environment after RA favored [CP].” On or about September 3, 2014, Complainant told S1 that her doctors wanted her to continue to work a set daytime shift and handed S1 a doctor’s note stating that Complainant required a set schedule due to her ongoing medical condition. On September 18, 2014, S1 completed Complainant’s performance appraisal with a Fully Successful rating and gave it to Complainant’s second-line supervisor (S2) for her signature as the approving official.

The requested mediation, between S1 and Complainant, occurred on October 7, 2014. On October 10, 2014, RAC contacted Complainant to discuss her reasonable accommodation request. Complainant told RAC that according to her doctors she needed to remain on the day shift. RAC sent a follow-up e-mail asking for clarification regarding the request. Thereafter, Complainant provided RAC with a note from her doctor dated October 14, 2014, stating that she required a set daytime shift due to her ongoing medical condition. The October 14, 2014 note did not provide an explanation as to why Complainant’s condition required a day shift accommodation.

On October 22, 2014, Complainant received notice that an accommodation was approved and she would be placed on the evening shift as an accommodation beginning on November 11, 2014. The October 22, 2014 notice specifically stated that if Complainant believed that there was a misunderstanding and the proposed accommodation was not suitable, she should contact HR immediately. On October 29, 2014, Complainant met with RAC, who explained that placing her on a non-rotating evening shift (as opposed to keeping her on the day shift) was a sufficient reasonable accommodation because the medical documentation she provided only supported the need for a non-rotating shift (i.e., the medical documentation provided did not provide any explanation as to why a day shift was more desirable). Complainant did not provide additional medical documentation, thereafter, in support of her assertion that the day shift was medically necessary.

On October 29, 2014, Complainant received her 2013-2014 yearly performance rating which dropped two levels from Outstanding<sup>5</sup> (the highest rating possible) to Fully Successful. The undisputed record shows that Complainant had received a rating of Outstanding for every rating period she had worked as an AOD, except the year she started in the AOD position, in which she received an Excellent rating. The record also shows that of the seven GS-9 AODs during the 2013-2014 rating period, Complainant received the only Fully Successful rating. The record shows that five of the remaining GS-9 AODs all received an Outstanding rating and one GS-9 AOD received an Excellent rating.

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<sup>5</sup> While Claim 2 states that Complainant went from Exceptional to Fully Successful, the documentary evidence shows that Complainant received the highest rating possible (i.e., Outstanding) for at least the two prior rating periods. According, Complainant’s yearly performance rating went from Outstanding to Fully Successful.

On November 11, 2014, Complainant began the evening shift for anticipated duration of six months. S1 states that after the initial reasonable accommodation period ended, an HR Specialist (HR) told her that there was no specific reason why Complainant had to be on the day shift and could be accommodated on the evening shift providing she did not rotate and had off three consecutive days in a row. S1 states that she chose to move Complainant to the evening shift to give other AODs an opportunity to be on the day shift and for coverage purposes. S1 also explains that she was short staffed and a new AOD came on who needed to be trained during the day shift.

### 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 - Reasonable Accommodation*

We assume for the purposes of this decision that Complainant is an individual with a disability, within the meaning of the Rehabilitation Act. Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9. A request for a modification or change at work because of a medical condition is a request for reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002, Question 1 (Oct. 17, 2002) ("Enforcement Guidance on Reasonable Accommodation"). After receiving a request for reasonable accommodation, an agency "must make a reasonable effort to determine the appropriate accommodation." 29 C.F.R. pt. 1630 app. § 1630.9. Thus, "it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. § 1630.2(o)(3); see also 29 C.F.R. pt. 1630 app. § 1630.9; Enforcement Guidance on Reasonable Accommodation at Question 5. Reasonable accommodation includes such modifications or adjustments as job restructuring, the acquisition or modification of equipment or devices, and reassignment to a vacant position. 29 C.F.R. § 1630.2(o)(2)(ii); see also, Alan F. v U.S. Postal Serv., EEOC Appeal No. 0120162635 (Feb. 22, 2018).

When the need for accommodation is not obvious, an agency may require that the individual with a disability provide documentation of the need for accommodation. 29 C.F.R. pt. 1630 app. § 1630.9. The agency may require only the documentation that is needed to establish that the individual has a disability and that the disability necessitates reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 6.

The undisputed record shows that Complainant was notified in writing on October 22, 2014, and verbally on October 29, 2014, of the Agency's need for medical documentation to support her request to remain on the day shift as opposed to a set schedule on any shift. We agree with the Agency's conclusion that Complainant did not submit sufficient documentation to support a medical basis for the daytime shift as opposed to any other shift. We conclude that the Agency initially accommodated Complainant from June 15, 2014 to November 11, 2014. Upon receiving additional documentation establishing a continual need for a non-rotating schedule, the Agency met its obligation to engage in an informal interactive process with Complainant. Since Complainant failed to meet her obligation to submit supportive medical documentation, we find that she has not established that the Agency violated the Rehabilitation Act when she was moved to a different shift. The record supports the finding that the Agency granted Complainant the reasonable accommodation to work on a non-rotating schedule. See Cassell v. Dep't of Veterans Affairs, EEOC Appeal No. 0120112654 (October 14, 2011) (declining to find failure to accommodate where complainant did not submit requested documentation).

The Commission finds that Complainant has not established that the Agency failed to provide her with a reasonable accommodation. The Commission notes that a protected individual is entitled to a reasonable accommodation; she is not necessarily entitled to the accommodation of choice. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994). Based upon the medical records provided to the Agency during the relevant time, the Commission finds that Complainant failed to prove that the Agency denied her reasonable accommodation in violation of the Rehabilitation Act. See Eugenia C. v. Environmental Protection Agency, EEOC Appeal No. 0120151806 (Sept. 7, 2017).

Additionally, with respect to Claim 1, we find insufficient evidence in the record that any responsible management official was motivated by retaliatory animus in failing to provide Complainant her preferred accommodation.

### *Claim 2 – Performance Evaluation*

In the absence of direct evidence of discrimination, the allocation of burdens of proof in a disparate-treatment claim follows the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant carries the initial burden of establishing a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n. 13.

The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, Complainant bears the ultimate responsibility to prove, by a preponderance of the evidence, that the reason proffered by the Agency was a pretext for discrimination. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

Specifically, in a reprisal claim, and in accordance with the burdens set forth in McDonnell Douglas, Hochstadt v. Worcester Foundation for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976), and Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997), a complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

### *Reprisal – Lowered Performance Rating*

#### *Prima Face Case*

We find sufficient evidence in the record to establish a prima facie case of reprisal. The record shows that Complainant engaged in protected EEO activity prior to S1's decision to lower her performance rating from Outstanding to Fully Successful. Starting in April 2014, Complainant formally requested a reasonable accommodation and engaged in the reasonable accommodation process, which is a protected EEO activity. On June 3, 2014, the Agency granted Complainant an accommodation to remain on the day shift from June 15, 2014 until September 21, 2014 when Complainant would have to resubmit additional medical documentation.

Complainant asserts that S1's behavior drastically changed after she requested an accommodation and that S1 downgraded her performance rating because she requested a reasonable accommodation to be placed on the day shift without rotation.<sup>6</sup> While Complainant's testimony indicates that she was confused as to the timing of various incidents, we find that the totality of the record supports the conclusion that S1's behavior toward Complainant changed sometime after June 2014.<sup>7</sup> The testimonial and documentary record supports Complainant's assertion that S1

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<sup>6</sup> We note that Complainant provides confusing testimony as to the basis for the alleged retaliation. She first states that S1 retaliated against her because of the accommodation request that she made in *August* 2014. We believe she meant to say April 2014. She also testified that S1 was retaliating against her for engaging in mediation which she believed occurred sometime around *July* 2014 (i.e., prior to receiving her performance review). We believe Complainant was confused about the dates, as the only mediation that is documented in the record took place on October 7, 2014.

<sup>7</sup> Several of Complainant's coworkers consistently testified that Complainant went from being S1's favorite "go to" person who S1 treated like a family member to S1's least favorite person. The record supports the conclusion that S1's animus toward Complainant was apparent even to

started to require that she use leave instead of permitting the voluntary switching of shifts with her co-workers.<sup>8</sup> The record also shows that on August 20, 2014, Complainant requested mediation regarding a dispute with S1 pertaining to an allegation of hostile work environment following her reasonable accommodation request. The record shows that S1 made the decision to lower Complainant's performance rating on or before September 18, 2014 (i.e., the date S1 sent Complainant's performance rating to S2 for approval). We note that S1 testified that she was aware of Complainant's prior EEO activity before making the performance rating decision without specifying the EEO activity.

#### *Legitimate Non-Retaliatory Reasons*

The record also establishes that S1 articulated legitimate, non-retaliatory reasons for lowering Complainant's performance rating. Specifically, the record shows that S1 gave the performance review to Complainant on October 29, 2014 and explained that the rating had been downgraded because Complainant had not gone "above and beyond" and did not perform the Gains and Losses (GL) Report which occurred on the night shift.

S1 testified that maintaining a rating higher than Fully Successful requires doing something outside of the service, such as being involved in an outreach program. S1 further states that "above and beyond," means stepping out of a normal routine and daily job. S1 notes by way of example, that an inpatient unit clerk went over and above her normal duties as assigned and wrote new standard operating procedures for the good of the service. S1 also states that everybody has an opportunity to "step out of the box." S1 explains that Complainant had, in years prior, been involved with Stand Down, a homeless project, and two years prior Complainant went through leadership training and completed Emerging Leaders. S1 also states that Complainant assisted with the New Patient Orientation Committee, and that is considered personal mastery in education, for which she was rated exceptional, and which is outside of her normal business and elements.

S1 added that Complainant needed to build a stronger rapport with her internal staff. S1 testified that she received complaints about Complainant from her co-workers. S1 describes one written complaint from a co-worker (C1) dated September 8, 2014, where she complains that Complainant had "interrogated" her about who reported to management that she was late to work. C1 also complained that Complainant left her alone on her shift for an extended period, which she has done previously.<sup>9</sup> S1 also testified that in May 2014, a unit clerk (C2), with less than a year experience, wrote to S1 that she was upset that she overheard a conversation that Complainant had with a

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people outside the unit. However, Complainant's co-workers did not provide a specific timeframe as to when S1's behavior changed and did not recall any specific event that could have explained the change in behavior. Complainant's co-workers all testified that Complainant's work performance had consistently remained outstanding. Moreover, the co-workers' testimony contradict S1's denials to having a falling-out with Complainant or that she treated her differently.

<sup>8</sup> The documentary evidence shows that on August 2, 2014, Complainant took leave after S1 did not permit her to switch her schedule with a co-worker.

<sup>9</sup> C1 indicates that Complainant has previously left her alone between 30 and 45 minutes.

Nurse Manager and an AOD where Complainant indicated that C2 did not have enough experience and was not qualified to assist the AODs yet.<sup>10</sup> Lastly, S1 noted that Complainant had a number of mistakes or inconsistencies in her GL Reports.

*Pretext*

We find that the record supports the conclusion that S1's decision to lower Complainant's annual performance rating was a pretext for retaliation. Complainant asserts that when she received her rating, S1 could not explain what changed in her work ethic or performance. We find that the record supports Complainant's assertion that she received no indication, written or otherwise, that her performance level was at risk of dropping at all, let alone so drastically. We do not find credible S1's uncorroborated testimony that she verbally advised Complainant at her mid-year rating that she needed to be more conscientious when registering patients and more mindful of how she talked with fellow colleagues. However, even if S1 did make this statement to Complainant at her mid-term review, there is no indication from such comments that Complainant's high performance rating from the prior year was at risk of dropping so drastically, if at all. It belies common sense that S1 would reduce Complainant's prior Outstanding rating by two levels to Fully Successful without prior notification which was documented in some form.

Complainant testifies that the main reason S1 gave for lowering her performance rating was the fact that she did not generate any GL Reports. Complainant concedes that she did not generate any GL Reports because she did not work the night shift during the relevant time-frame. However, Complainant asserts that the GL Reports are prepared on the evening shift. Specifically, Complainant asserts that during the evening shift, she regularly compiled information regarding all patients who were brought in, discharged, and/or passed away in the preceding 24-hour period. In addition, Complainant explains that the GL Report is then sent to the AOD on the night shift who reviews it and signs off on it. Complainant asserts that while she did not get credit for signing off on the GL Report, she essentially still performed the work of the GL Report.

With respect to S1's assertion that she needed to "go above and beyond," Complainant states that the way she performs her job has not changed at all from the years prior. Complainant asserts that she is constantly going the extra mile to perform tasks that go above and beyond the expectations of an AOD. Complainant also asserts that at every town hall meeting, she is the AOD who always receives patient comment card acknowledgments saying that she did a great job and went above and beyond. In addition, one of Complainant's co-workers (C3) testified that she was surprised that Complainant did not get an Outstanding on her 2013-2014 performance rating. C3 also recalled that Complainant was on a special project in October 2013 (i.e., the first month of the relevant rating period) through at least November of 2013, if not all of 2013.

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<sup>10</sup> C2 had less than one year of experience in her position.



According to another co-worker (C4):

I know that [S1] would single [Complainant] out for every little thing, i.e. not dotting an “i,” or not putting parentheses on the area code of a patient’s phone number. [S1] would not say anything to me or any of my other coworkers about something so petty, but with [Complainant], [S1] would make a big deal out of every little thing. It was as though [Complainant] could never do enough, although she worked her hardest. Most people cannot work evenings by themselves, because of the simultaneous multitasking that is required, and [Complainant] did it. [Complainant] still managed to have everything ready to roll, for the midnight shift to complete the nightly gains and losses and 24 hour reports. I know this because I came in at night behind [Complainant] and she would have the 24-hour report and G&L info as updated as possible. Part of [Complainant’s] appraisal was based on the G&L and 24-hour report which I understand was part of her down grade. Granted she did not work the midnight shift but she did and does know how to do the nightly reports, but [S1] would still pick [Complainant] apart and [Complainant] could never do enough.

A review of the similarly-situated AODs’ performance ratings (in the record)<sup>11</sup> shows that S1 did not consistently apply the “above and beyond” performance guidelines when completing the ratings during the relevant period. Among the performance ratings in the record, there were several Outstanding and Exceptional performance ratings without any reference to the performance of extracurricular (i.e. “above and beyond”) workplace activity by the employee during the relevant rating period. Accordingly, we do not find credible, S1’s assertion that she followed the “above and beyond” criteria.

We also find the evidence presented regarding two employee complaints insufficient to justify a reduction of Complainant’s performance rating by two levels to Fully Successful. The May 2014 complaint was not so much of a complaint as it was an employee sharing with S1 a conversation that was overheard regarding a difference of opinion among the staff pertaining to the best way to maintain a high quality of patient care and perhaps her feelings were hurt by the suggestion that she was not qualified to assist.<sup>12</sup> With respect to the September 2014 complaint, the record shows that Complainant denies that it occurred and the record is devoid of any action taken by S1 to investigate or question the individuals regarding the circumstances surrounding the alleged incident. There is no indication that Complainant was even informed of the complaint at the time it was made. Moreover, C1 did not provide a statement or testimony to explain the circumstances of her September 2014 complaint. Under these circumstances, especially given the fact that Complainant’s performance was considered outstanding by her co-workers, we do not find such a

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<sup>11</sup> The record contains the 2013-2014, 2012-2013, and 2011-2012 ratings for Complainant and six other GS-9 AODs.

<sup>12</sup> The question at issue was whether it’s better to have a reduced number of experienced staff to manage the patient load alone or whether the patients would be better served by providing the AODs with less experienced and qualified staff to assist.

Co-worker complaint is sufficient to form the basis for the reduction of Complainant's performance rating.

Lastly, S1 testified that there were numerous mistakes made by Complainant during the 2013-2014 rating period which she took into consideration when rating Complainant's performance. However, the documentary evidence does not support S1's testimony. As of the date S1 made the decision to rate Complainant at the Fully Successful level, there was a total of two minor "inconsistencies" discovered in the GL Report that Complainant was asked to rectify. We do not find two minor mistakes sufficient to form a credible basis for reducing an outstanding employee's rating two full levels.

Accordingly, we find the evidence establishes that S1's non-retaliatory reasons articulated for rating Complainant Fully Successful were a pretext for retaliatory animus based upon the following but not limited to, facts: (1) the inexplicable change in S1's behavior toward Complainant around the time of her prior EEO activity; (2) S1's lack of credibility with respect to the bases for the dramatic reduction of Complainant's performance rating; (3) the evidence establishing that Complainant is an outstanding employee who consistently performs well beyond what is expected; (4) the fact that S1's change in behavior occurred shortly after Complainant engaged in EEO protected activity; and (5) the fact that S1's performance rating decision occurred less than a month after Complainant complained about the EEO related "hostile work environment" by requesting mediation with S1.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE, the Agency's final decision, in part, and find that Complainant has shown that she was subjected to reprisal with respect to her lowered performance evaluation.

### ORDER

Within 120 days of the issuance of this decision, the Agency shall take the following remedial actions:

1. The Agency shall retroactively raise Complainant's yearly 2013-2014 performance rating, which Complainant received on October 29, 2014, to a rating of Outstanding;
2. The Agency shall issue any awards (monetary or otherwise) that she would have received had she been awarded an Outstanding rating for the 2013-2014 rating period;
3. The Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages incurred by the Agency's

retaliatory action. The Agency shall allow Complainant to present evidence in support of a compensatory damages claim. See Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issue of compensatory damages no later than 60 days after the Agency's receipt of all information. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein;

4. The Agency shall provide appropriate remedial EEO training to the S1, the rating official, and S2, the approval official, for the performance appraisal. The training must include at least four (4) hours of in-person or interactive training on an Agency's obligations under the Rehabilitation Act and the anti-retaliation provisions. 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 shall consider taking disciplinary action against the responsible management officials identified. 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); and
6. The Agency shall post the notice as directed below.

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.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Northern California Healthcare System, in Mather, California, 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 was issued, 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 as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to 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.

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)

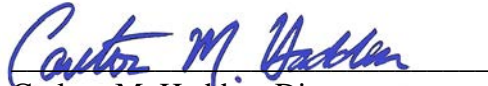
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the 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:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

August 9, 2018

Date