



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

████████████████████
Wanita Z.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs
(Veterans Benefits Administration),
Agency.

Appeal No. 0120171549

Agency Nos. 200H-0310-2015100252
200H-0310-2015105502

DECISION

Complainant timely 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 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., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision (FAD).

ISSUES PRESENTED

The issues presented are: (1) whether Complainant established that the Agency delayed and/or failed to grant her request for reasonable accommodation; (2) whether Complainant established that she was subjected to reprisal for requesting reasonable accommodation; and (3) whether Complainant established that she was subjected to a hostile work environment, as alleged.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Assistant Coach at the Agency's Regional Office, Pension Management Center, in Philadelphia, Pennsylvania. Report of Investigation Agency No. 200H-0310-2015100252 (ROI-1), at 80.² As an Assistant Coach, Complainant worked in a supervisory capacity, making sure members of her team were processing veterans' claims in a timely fashion. Id. at 82.

Complainant had been diagnosed with End Stage Renal Disease with no kidney function and was continuously prescribed dialysis by her physician. Id. at 80. Complainant's medical conditions also included Carpal Tunnel Syndrome, Bone Disease, and a Herniated Disc. Id. at 84. Complainant was unable to perform any heavy lifting and was unable to walk distances due to being in excruciating pain. Id. at 82, 84 88. As result, the Agency had provided Complainant with a scooter, so she could move about the office without walking. Id. at 83.

According to Complainant, on May 9, 2014, she approached the Program Analyst (who served as her supervisor), explaining that she was experiencing a scheduling conflict with her dialysis appointments and asked what options were available to her. Id. at 84. Complainant thereafter initiated a written request for accommodation, requesting to work from home four days per week. Id. at 86, 143. Complainant stated that she withdrew her telework request in June 2014 because she was anticipating having Carpal Tunnel surgery in July. Id. at 85. Complainant then ended up having the surgery in July 2014, and was out on leave through the Office of Workers' Compensation Programs (OWCP) from July 2014 through March 2015. Id. at 105. Before she went out on the extended leave, Complainant maintained that the Program Analyst stated to her, "I don't know why you just don't retire" and "You should go out on disability retirement because that would be a better fit for you." Id. at 88. The Program Analyst however denied making the comments and denied trying to force Complainant into retirement. Id. at 107. Complainant also averred that the Program Analyst further told her to "beep her horn" before she goes around the corner with her scooter so that people know she's coming. The Program Analyst explained that he may have made the statement because some areas of the office were "very tight" and contained a "blind corner," such that Complainant's scooter might come into contact with someone if Complainant or others in the office were not careful. Id. at 108.

While Complainant was out on leave through OWCP from July 2014 through March 2015, the Program Analyst offered Complainant telework up to three days per week (every other day) on September 17, 2014. Id. at 86. Thereafter, on October 16, 2014, Complainant contacted an EEO Counselor and filed an EEO complaint in January 2015, alleging that the Agency denied her reasonable accommodation by not allowing her to work from home on a full-time basis.

² The page numbers refer to the "bates" numbers in the bottom center of the page.

On February 23, 2015, the parties entered into a settlement agreement, and Complainant withdrew her complaint. As result, upon Complainant's return to work from OWCP leave on March 11, 2015, the Agency agreed to allow Complainant to work from home five days per week on a 60-day trial period, and to revisit the accommodation after the trial period pursuant to the settlement agreement. Id. at 109.³

Complainant nevertheless averred that when she started to work from home, the Agency provided her with a computer that did not allow her to perform her full duties. Report of Investigation Agency No. 200H-0310-2015105502 (ROI-2) at 110. Complainant stated that even though she was supposed to have been teleworking, she either could not log-in to her computer or would not be able to open necessary spreadsheets on her computer. Id. 111. On August 10, 2015, Complainant was unable to log-in to her computer, so the Help Desk advised Complainant to bring her computer in for an evaluation. Id. Complainant therefore was not able to work from home that day, but the Management Center Director reportedly advised Complainant that she nevertheless needed to take leave for the hours that she could not work that day due to her computer issues. Id. at 111. Notwithstanding, Complainant was not docked with leave for that day, and her computer issues were resolved the same day, on August 10, 2015, as well. On August 17, 2015, management denied Complainant's request to work credit time. Complainant wanted the credit time so she could save any extra hours she worked for any upcoming medical appointments. Complainant further averred that on August 28, 2015, management failed to respond to her concerns over changes in flex-time procedures.

Thereafter, on September 11, 2015, Complainant received an unsatisfactory monthly progress review for August 1, through August 31, 2015. Id. at 329-330. Therein, Complainant received a "Less than Fully Successful" rating on four out of six performance elements. Id. Complainant was rated unsatisfactory with respect to the performance elements of Delivery of Benefits; Workplan; Interpersonal Skills; and Organizational Support. Id. With regard to the Delivery of Benefits element, Complainant's first-level supervisor (S1) wrote that although production numbers were high for August, Complainant failed to assign her subordinates with any backlog cases. Id. In addressing the Workplan element, S1 noted that Complainant did not adequately address backlog claims, among other work supervisory related functions. Id. S1 also wrote, with respect to the Interpersonal Skills element, that Complainant needed to distinguish when a phone conversation with an employee would be more appropriate than sending an email. Id. S1 additionally wrote that Complainant needed a better "understanding [of] why assigned work was not completed before assuming employees are failing to follow instructions." Id. As for the Organizational Support element, S1 noted that Complainant needed to follow-up on daily assigned claims to ensure completion without reminders, identify opportunities for improvement in work processes, take time to review emails, and take the initiative to assist employees. Id.

³ On November 19, 2015, in response to Complainant's claim of settlement breach, the Agency issued a Letter of Determination finding that the settlement agreement was void and unenforceable. The Agency therefore reinstated Complainant's EEO complaint (Agency No. No. 200H-0310-2015100252) at the point where processing ceased.

Complainant believed, however, that she instead deserved an overall fully successful rating because her team, among other things, had the highest production rate for the period. Complainant also sent an email to S1 specifically responding to each element of the August performance review. In responding to her Interpersonal Skills rating, Complainant wrote, in pertinent part, that since she worked remotely it was impossible for her to directly reach out to employees in the manner management wanted her to. Id. at 335. Complainant stated that she was cited for not reaching out to an employee by phone, but that she had attempted to reach the employee by phone but he never answered. Id. Complainant noted that she therefore had no choice but to send the employee an email over the matter. Id.

Subsequently, on September 18, 2015, Complainant received a memorandum from the Center Director, notifying Complainant her Reasonable Accommodation was under review due to the issues identified in the August monthly progress review. Id. at 342-343. The memorandum to Complainant specifically stated:

Based on the position description of an Assistant Coach, the incumbent is the full alter ego of the Team Coach, performing the duties of that position in the absence of the Coach or sharing those responsibilities on a daily basis. You have demonstrated that you are unable to fully perform the duties of the Team Coach or share the responsibilities of the Team Coach on a daily basis. Based on the review of your performance, you have not been effective in your current position and this accommodation has not been appropriate, effective and poses an undue hardship upon the Agency.

Id.

The memorandum advised Complainant that it was necessary to reengage in a discussion regarding Complainant's request for reasonable accommodation. Id. However, at some point in the few months following this memorandum, a new supervisor took over and re-evaluated Complainant's request for accommodation. The new supervisor decided to keep Complainant's existing accommodation in place and continued to allow Complainant to work from home on a full-time basis.

Complainant filed EEO complaints on November 3, 2015 (Agency No. 200H0310-2015105502), and December 17, 2015 (Agency No. 200H-0310-2015100252), respectively, alleging that the Agency discriminated against her on the bases of disability, age (58), and in reprisal for prior protected EEO activity when:

1. Between May 2014 and September 17, 2014, management delayed granting and ultimately denied her request to telework as a reasonable accommodation;
2. On August 10, 2015, the former Acting Pension Management Center Director, threatened her that she had to use her annual leave when she could not log into her computer;

3. On August 17, 2015, the Acting Assistant Pension Management Center Director, denied her request to work credit time;
4. On August 28, 2015, the former Facility Director failed to respond to her emailed concerns over changes in the flex-time procedures and referred her back to the Center Director;
5. On September 11, 2015, she received an unsatisfactory monthly progress review for the period of August 1 to August 31, 2015; and
6. On September 18, 2015, the former Acting Pension Management Center Director issued her a notice that her telework agreement was under review and could be revoked due to her unsatisfactory monthly progress review for the period August 1 to August 31, 2015.

Following the investigations, the Agency provided Complainant with copies of the reports 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.

The Agency initially found that it took reasonable actions to accommodate Complainant. In so finding, the Agency noted that Complainant was given the option to flex her schedule; she was provided with a closer parking space, the use of a scooter, and leave to attend appointments; and she was ultimately allowed to telework on a full-time basis. The Agency further found that its actions did not constitute an unreasonable delay so as to constitute a violation of the Rehabilitation Act. The Agency observed that Complainant took leave to recover from surgery and did not return to work until March 2015. The Agency noted that it could not have provided Complainant with accommodation, as she went out on medical leave from July 2014 through March 2015. But after she returned, she was nevertheless allowed to telework on a full-time basis. With respect to claims 3, 5, and 6, the Agency found that it articulated legitimate, nondiscriminatory reasons for its actions, which Complainant did not establish were pretext for discrimination. The Agency further found that Complainant did not establish that she was subjected to a hostile work environment, as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant states that she first requested the accommodation to work from home on March 9, 2014, and did not go out on extended leave until July 25, 2014. Complainant believes that the Agency should have granted her request to telework at least four days per week before she went out on the extended leave. Complainant states that the accommodations of allowing her to flex her schedule and to use a scooter were accommodations that had already been previously put in place by management.

Complainant maintains that S1 only informally offered her the ability to telework three-days per week, and therefore she had no choice but to file an EEO complaint that resulted in an agreement allowing her to telework five days per week. She maintains that she had never been provided with an unsatisfactory rating in her 25 years with the Agency, and believes that the Agency wrongly threatened to revoke her telework agreement that was given to her as a reasonable accommodation. Complainant additionally maintains that the Agency's actions towards her constituted a hostile work environment, which included instructing her to take leave for computer repair and denying her the ability to use "flex time" and accrue "credit time."

In response, the Agency requests that we affirm its final decision.

STANDARD OF REVIEW

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").

ANALYSIS AND FINDINGS

Reasonable Accommodation (Claim 1)

The Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with disabilities. See 29 C.F.R. § 1630. In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a qualified individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation). Under the Commission's regulations, an Agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o) and (p).

An employer should respond expeditiously to a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation, at question 10. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Id. Similarly, the employer should act promptly to provide the reasonable accommodation. Id.

Unnecessary delays can result in a violation of the ADA or the Rehabilitation Act. *Id.* In determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation, relevant factors would include: (1) the reason(s) for delay, (2) the length of the delay, (3) how much the individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide. *Id.* at n. 38. Villanueva v. Dep't of Homeland Security, EEOC No. 01A34968 (Aug. 10, 2006).

A reasonable accommodation must be effective. See U.S. Airways v. Barnett, 535 U.S. 391, 400 (2002) (“the word ‘accommodation . . . conveys the need for effectiveness”). If more than one accommodation will enable an individual to perform the essential functions of his or her position, “the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.” 29 C.F.R. pt. 6130 app. § 1630.9; see also Enforcement Guidance on Reasonable Accommodation at Question 9.

Upon review, we find that Complainant did not establish that she was denied a reasonable accommodation for her disability. Moreover, we find that Complainant did not show that the Agency unnecessarily delayed in granting her request for accommodation. In so finding, we note that Complainant first verbally requested to work from home as an accommodation on May 9, 2014, and she followed-up her verbal request with a formal written request on May 27, 2014. However, there is no dispute that shortly after her request, Complainant had carpal tunnel surgery in July 2014, and therefore was out on leave through the OWCP until she returned to work in March 2015. During Complainant’s extended leave, S1 offered Complainant the opportunity to work from home three-days per week.

Although Complainant may have wanted to work from home at least four days per week, we find she has not shown that the accommodation for her to work from home three days per week was not an effective accommodation. We note that the record reflects that the Agency had also been providing Complainant with a scooter, allowed her to take leave liberally, and gave her the opportunity to “flex” her schedule to attend dialysis appointments. After Complainant returned to work, the Agency continuously implemented its agreement allowing Complainant to work from home on a full-time basis. While the processing of Complainant’s request for accommodation may not have been ideal, we find that Complainant did not show the Agency’s actions violated the Rehabilitation Act with regard to claim 1.

Reprisal for Requesting Accommodation (Claims 5 and 6)

Here, 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 must initially establish 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 Construction 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). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 519 (1993).

Complainant can establish a prima facie case of reprisal discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Security Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas Corp.). 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) he or she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he or 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 (Sep. 25, 2000).

A request for reasonable accommodation constitutes protected activity. A request for an adjustment or change at work, including a request for leave, is a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation; see also id., n.19 (citing McGinnis v. Wonder Chemical Co., 5 AD Cas. (BNA) 219 (E.D. Pa. 1995) (employer on notice that accommodation had been requested because: (1) employee told supervisor that his pain prevented him from working and (2) employee had requested leave under the Family and Medical Leave Act)). An employer may not penalize an employee who missed work during leave taken as a reasonable accommodation. To do so would constitute retaliation for the employee's use of a reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 19.

In the instant case, there is no dispute that Complainant was working from home five days per week per her request for accommodation and pursuant to the Agency's settlement of her EEO complaint. While Complainant was working from home, the Agency issued her the unsatisfactory monthly progress review for August 2015, assessing her performance as being unsatisfactory in her interpersonal skills, among other performance elements. We find that Complainant has established a prima facie case of reprisal, and the Agency has articulated legitimate nondiscriminatory reasons for the progress review.

The burden now shifts to Complainant to establish that the Agency's nondiscriminatory reasons were pretext for discrimination. Burdine, at 254.

Upon review, we find that Complainant has established that the Agency's reasons were pretext for discrimination based on reprisal. In so finding, the record clearly reflects that the performance review for August 2015 did not directly relate to Complainant's performance.

Rather, the record shows that it related to how her telework affected the operations of the Agency. Specifically, Complainant was provided with an unsatisfactory rating for her interpersonal skills (among other elements), which clearly penalizes Complainant for not being in the office. Complainant was not able to be in the office due to her disability, and it is clearly a given that teleworking affects interpersonal social interaction. We note that the Agency argues that Complainant should have instead spoken to an employee about his performance over the phone. But there is no dispute that Complainant only emailed the employee after he did not answer his phone.

There further is no dispute that the Agency issued Complainant the unsatisfactory review during a period when her team production numbers were high. Complainant also had never received an unsatisfactory rating until she began to telework, and by providing her with the rating, the Agency was essentially penalizing Complainant for receiving accommodation. As noted above, an employer may not penalize an employee for receiving a reasonable accommodation. To do so, constitutes retaliation for the employee's use of a reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 19. The record clearly reflects that management issued Complainant the unsatisfactory performance review because they were dismayed with her performing her supervisory work functions from home. Therefore, the unsatisfactory rating was clearly motivated by Complainant's telework agreement, which was given to her as an accommodation. Moreover, management threatened to end her telework due to the dubious performance review. In sum, we find that Complainant has established that her performance review was pretext for retaliation based on her prior protected EEO activity with respect to claims 5 and 6.

Hostile Work Environment (Claims 2-4)

Harassment of an employee that would not occur but for the employee's race, color, sex, national origin, age, disability, religion or prior EEO activity is unlawful, if it is sufficiently patterned or pervasive. Wibstad v. U.S. Postal Serv., EEOC Appeal No. 01972699 (Aug. 14, 1998) (citing McKinney v. Dole, 765 F.2d 1129, 1138-39 (D.C. Cir. 1985)); EEOC Enforcement Guidance on Harris v. Forklift Systems, Inc., at 3, 9 (Mar. 8, 1994). A single incident or group of isolated incidents will not be regarded as discriminatory harassment unless the conduct is severe. Walker v. Ford Motor Co., 684 F.2d 1355, 1358 (11th Cir. 1982). Whether the harassment is sufficiently severe to trigger a violation of Title VII must be determined by looking at all the circumstances, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. Harris v. Forklift Systems, 510 U.S. 17 (1993).

To establish a claim of hostile environment harassment, Complainant must show that: (1) she is a member of a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5)

there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).

In the instant case, Complainant contends that she was subjected to a hostile work environment when the Program Analyst commented to her that she should retire and that she should beep the horn of her scooter. The Program Analyst denied making the comments as described and said that he simply stated she might “retire” in addressing her request for accommodation. Upon review, we find that the Program Analyst’s alleged comments to Complainant were not severe or pervasive enough to rise to the level of a hostile work environment. As noted above, the Program Analyst provided Complainant with several accommodations, including liberal leave and the option to telework three days per week. We note that Title VII is not a civility code. Rather, it forbids “only behavior so objectively offensive as to alter the conditions of the victim’s employment.” Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998). We further find that Complainant also did not establish that she was subjected to a hostile work environment with respect her allegations that she was threatened that she had to use annual leave when she could not log into her computer; she was denied credit time; and when management failed to respond to her about flex-time procedures. There is no dispute that Complainant was nevertheless allowed to take leave on August 10, 2015, and we note that not every unpleasant or undesirable action which occurs in the workplace constitutes an EEO violation. See Shealey v. EEOC, EEOC Appeal No. 0120070356 (Apr. 18, 2011) (citing Epps v. Dep’t of Transp., EEOC Appeal No. 0120093688 (Dec. 19, 2009).

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 FAD.

ORDER

Within one hundred twenty (120) days of the issuance of this decision, the Agency shall take the following remedial actions:

1. The Agency shall remove any reference to the August 2015 unsatisfactory monthly progress review from all personnel records, including from Complainant’s official personal files.
2. 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 sixty (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.

3. The Agency shall provide appropriate remedial EEO training to S1, the rating official, and the former Acting Pension Management Center Director. 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).
4. 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).
5. The Agency shall post the notice as directed below.

POSTING ORDER (G0617)

The Agency is ordered to post at its Regional Office, Pension Management Center in Philadelphia, Pennsylvania 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:



Carlton M. Hadden, Director
Office of Federal Operations

May 17, 2019

Date