



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

████████████████████
Mark D.,¹
Petitioner,

v.

William P. Barr,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Petition No. 2019001549

Appeal No. 2019003361²

Appeal No. 0120162225³

Agency No. FBI201500088

DECISION ON A PETITION FOR ENFORCEMENT

On February 4, 2019, the Equal Employment Opportunity Commission (EEOC or Commission) docketed a petition for enforcement (PFE) to examine the enforcement of an Order set forth in Mark D. v. Dep't of Justice, EEOC Appeal No. 0120162225 (July 27, 2018) (OFO Decision and Order). On February 19, 2019, the EEOC also docketed an appeal (Appeal2) of the Agency's final decision on the issue of compensatory damages (FAD2) as ordered in the OFO Decision. We exercise our discretion to consolidate PFE and Appeal2 for a single decision. See EEOC Regulation 29 C.F.R. § 1614.606. As set forth below, the Commission GRANTS Complainant's PFE, in part, and VACATES FAD2.

¹ This case has been randomly assigned a pseudonym which will replace Petitioner's name when the decision is published to non-parties and the Commission's website.

² This is an appeal on the final decision pertaining to compensatory damages.

³ This appeal concerned the merits of the EEO complaint which was decided by the Commission on July 27, 2018.

BACKGROUND

On June 22, 2016, Complainant, an Automotive Mechanic with the Federal Bureau of Investigation (FBI or Agency), filed an EEO complaint alleging the Agency discriminated against him based on disability when the FBI rescinded its job offer for the Electronics Technician (ET) position and subsequently denied his appeal of that rescission. Following an investigation into Complainant's complaint, he requested a final agency decision. On June 6, 2016, the Agency issued a decision finding that Complainant had not been subjected to discrimination. On June 22, 2016, Complainant appealed the decision to the Commission. On July 27, 2018, the Commission reversed the Agency's decision and found discrimination based on disability. Mark D. v. Dep't of Justice, EEOC Appeal No. 0120162225 (July 27, 2018). The Commission ordered the Agency, in part: (1) to offer Complainant reinstatement into the position of ET in the St. Louis Field Office of the FBI located in St. Louis, Missouri;⁴ (2) reimburse back pay starting on December 11, 2014, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501; and (3) conduct a supplemental investigation with respect to Complainant's entitlement to compensatory damages.

The matter was assigned to a Compliance Officer and docketed as Compliance No. 0620180695 on July 27, 2018. On February 4, 2019, Complainant submitted the PFE and, on May 13, 2019, Complainant filed an appeal of FAD2. Complainant contends that he is entitled to the following: (1) reimbursement for the non-use of an Agency vehicle since December 2014; (2) reimbursement of 86 hours of restored Annual Leave (AL) and 126 hours of restored Sick Leave (SL); (3) a promotion to the GS-12, Step 3 grade level; (4) corrections to his Performance Appraisal Reports (PARs) to reflect "Excellent and Outstanding" ratings; and (5) a thorough investigation into his claim for compensatory damages. With respect to compensatory damages, Complainant claims that the Agency failed to fully investigate his entitlement to compensatory damages and thwarted his efforts to obtain affidavits from witnesses in support of his claim for damages. Complainant also asserts that the award of compensatory damages in the amount of \$10,000 fails to compensate him for the physical, emotional, and financial loss he sustained because of the Agency's discrimination.

ANALYSIS AND FINDINGS

Back Pay

The purpose of a backpay award is to restore a prevailing complainant to the position he/she would have occupied absent the discrimination. Albemarle Paper Co. v. Moody, 442 U.S. 405, 418-19 (1975); Davis v. U.S. Postal Serv., EEOC Petition No. 04900010 (November 29, 1990); Day v. Matthews, 530 F.2d 1083 (D.C. Cir. 1976).

⁴ Our decision noted that Complainant's grade-level should reflect the grade-level he likely would have risen to by now assuming he started his position on December 11, 2014.

Back pay should include all forms of compensation and must reflect fluctuations in working time, overtime rates, penalty overtime, Sunday premium and night work, changing rates of pay, transfers, promotions, and privileges of employment to which the petitioner would have been entitled but for the discrimination. Allen v. Dep't of the Air Force, Petition No. 04940006 (May 31, 1996) (citing Williams v. U.S. Postal Serv., EEOC Appeal No. 01933156 (May 4, 1994), req. for reconsid. den'd, EEOC Request No. 05940680 (Feb. 16, 1995)). The Commission construes "benefits" broadly to include, inter alia, annual leave, sick leave, health insurance, overtime and premium pay, night differentials, and retirement contributions. Vereb v. Dep't of Justice, Petition No. 04980008 (February 26, 1999).

While unrealistic exactitude is not required in backpay determinations, uncertainties involved in such determinations usually are resolved against the discriminating employer. Hairston v. McLean Trucking Co., 520 F.2d 226 (4th Cir. 1975); Smallwood v. United Air Lines, Inc., 728 F.2d 614, 616, n. 5 (4th Cir.), cert. denied, 469 U.S. 832 (1984); Harrington v. Tennessee Valley Auth., EEOC Petition No. 04900007 (Dec. 27, 1990).

Once a complainant has established a basic case for back pay, the burden of proof and persuasion falls to the agency to establish by 'clear and convincing evidence' that the award should not be made. Marks v. Prattco, 633 F.2d 1122, 1125 (5th Cir. 1981); Day v. Matthews, 530 F.2d 1083, 1885 (D.C. Cir. 1976); Mallard v. Clayton, 471 F. Supp. 16, 22 (D.D.C. 1978); see also Milder v. Dep't of Veterans' Affairs, EEOC DOC 01A11753, EEOC DOC 01971724 (Aug. 1, 2002); See Davis v. United States Postal Service, EEOC Petition No. 04900010 (November 29, 1990) (The agency has the burden of proof with respect to back pay).

Reimbursement for the Non-Use of Agency Vehicle

Complainant asserts that because ETs are assigned an agency vehicle for purposes of conducting agency business, he is entitled to be reimbursed mileage for travel to and from his home beginning in December 2014 to the present. The Agency rejects his contention and asserts that no other ETs have been paid mileage while using an Agency-owned vehicle. Rather, the Agency asserts that ETs charge gas expenditures to a government credit card. The Agency further asserts that while Complainant did not have the use of an Agency-owned vehicle during the relevant period, nothing in the OFO Decision and Order contemplates back pay of mileage for use of his own vehicle to get to and from work, which he would have had to accomplish in any regard. Accordingly, the Agency asserts that Complainant is seeking to expand the relief ordered and should be prevented from doing so.

We disagree with the Agency that the OFO Decision and Order does not contemplate back pay of mileage to reimburse commuting costs to and from work. Such reimbursement would be a benefit and/or privilege of employment which is contemplated in a backpay award. If the individual who was hired for the ET position in place of Complainant (Comparator) received a benefit that has a monetary value (e.g., the use of a car and/or reimbursement or direct payment for the cost of gas to drive to/from work) such benefit should be added to Complainant's backpay calculation.

However, upon review of the record, we cannot determine the critical question as to whether the Agency provided any such benefit to the Comparator or any other ET during the relevant time-frame. Accordingly, this matter is remanded for further processing as set forth below.

Restoration of Annual Leave (86 hours) and Sick Leave (126 hours)

Annual and sick leave are fringe benefits that are included in backpay awards. Wreford v. U.S. Postal Serv., EEOC No. 01881509 (Aug. 22, 1988). The record shows that Complainant was a WG-10 Automotive Mechanic with the Agency at the time the Agency rescinded the employment offer for the ET position and remained a federal employee during the backpay period. According to the U.S. Office of Personnel Management (OPM), there is no variation in Federal employees' sick leave rates as they remain constant at four hours every pay period. While annual leave accrual rates among Federal employees may vary, such variation is based on time-in-service. Accordingly, the failure to be promoted in December 2014 would have had no effect on Complainant's annual leave accrual since he continued his tenure as a Federal employee.⁵ We note that the record is devoid of evidence that contradicts the OPM regulations pertaining to leave. Furthermore, Complainant has presented no evidence connecting his usage of the leave in question to the Agency's discrimination. Accordingly, Complainant is not entitled to leave as part of his backpay award.

Corrections to Complainant's Performance Appraisal Reports (PARS)

Complainant asserts that he is entitled to have his Performance Appraisal Reports (PARs) changed to reflect "Excellent and Outstanding" ratings during the backpay period, instead of the "Successful" and "Excellent" PAR ratings he received during this time-frame. Complainant asserts that absent discrimination he would have received the higher PAR ratings.

The Agency asserts that the OFO Decision and Order does not mention or contemplate Complainant's PARs in any respect. However, even if such remedy was contemplated under the OFO Decision and Order, the Agency asserts that the record is devoid of evidence to support the assertion that the discrimination caused Complainant to receive lower PARs during the backpay period.

While the OFO Decision and Order does not explicitly require the Agency to increase Complainant's PARs ratings during the backpay period when Complainant remained an Automation Mechanic, such relief conceivably could be awarded as part of "make whole" relief.⁶

⁵ See www.federalpay.org/article/paid-leave

⁶ A complainant is entitled to "make whole" relief which restores her/him to the position she/he would have been in absent the unlawful discrimination. Albemarle Paper Co. v. Moody, 422 U.S. 405, 419-20 (1975).

However, the record is devoid of evidence to suggest that absent discrimination, Complainant would have received higher PARs ratings. Accordingly, we do not find that the Agency failed to comply with our Order with respect to this issue.

Promotion to GS-12, Step 3

Complainant also asserts he is entitled to a promotion to the GS-12, Step 3 grade level, because absent the discrimination, he would have risen to this grade level on December 9, 2018. The Agency asserts that it complied with the OFO Decision and Order and placed Complainant in the grade level that he would have risen to had he been placed into the ET position on December 11, 2014 (i.e., GS-11, Step 7). The Agency also asserts that a promotion to the GS-12 ET position is competitive and requires specific skills as well as time-in-grade experience.

The record contains an affidavit from the Unit Chief (UC), Electronic Technicians Operations and Development Unit, Agency Headquarters. UC specifically states that she has oversight over Complainant's position and the promotion process. UC explains that prior to Complainant's promotion to the ET position, he had no experience in the position. As a result, UC asserts that Complainant does not have the training courses and/or on-the-job training required for the next grade level, nor has he had any prior experience in the ET position at any grade level. UC also asserts that to be promoted to a GS-12 grade-level, journeyman position as an ET, the following is required:

The Telecommunications Manager (TM) submits the FD-1122 form with the justification for promotion to the ET Program. The justification details must illustrate the highly advanced knowledge required to independently perform troubleshooting, installation, testing, configuring, and maintain complex electronic systems for radio communications, secure data networking, and physical security systems in optimum condition. After, the TM submits the promotion package to the ET Program, the ET Program reviews the package and determines if all of the qualifications have been met. If not, the ET Program reaches back out to the TM to determine next steps: for example, add more justification/detail and resubmit the package; provide guidance to the TM on what criteria was not met; and approve or deny based on actions taken. Approvals are forwarded to the Human Resources Division (HRD) staffing specialists for the promotion to be processed.

The ET Program developed the FD-1122 form in conjunction with the HRD career development group so that career boards are not necessary. The form's GS-12 requirements are based off Technical Personnel and Technical Equipment and Use Directive and Policy Guide which lists the core responsibilities of the field ET position.

The field ET career ladder is GS-5, GS-7, GS-9, GS-10, GS-11, and GS-12. The senior level GS-12 is expected to be proficient in all of the core systems comprised of radio communication, secure data networking, and physical security systems. The GS-10 grade level requires subject matter expertise in one of the core systems; the GS-11 grade level requires subject matter expertise in two of the core systems; and the GS-12 grade level requires subject matter expertise in three of the core systems...

After one year at the current grade level, ETs are eligible for promotion. However, ETs are promoted based on their knowledge, skills, and abilities to meet the requirements of each grade level. The ET Program in conjunction with the field supervisors (TMs) determine if the ET meets these requirements...

Absent discrimination, Complainant was due to begin the ET position at the GS-7 level on December 11, 2014. The record shows that Complainant accepted the offer of reinstatement in September 2018 and commenced the ET position sometime thereafter. Based upon UC's statements, Complainant would have been eligible for promotion to the GS-12 level on December 11, 2018 assuming he had the requisite knowledge, skills and abilities to meet the requirements of each grade level. The Agency asserts that because Complainant does not have the knowledge, skills and abilities to meet the GS-12 grade-level, he cannot be placed at that level. However, if the Agency followed this reasoning, it would not have placed Complainant in a GS-11 grade-level either, since he has no prior experience or training and the GS-11 grade level requires subject matter expertise in two of the core systems.

In determining what grade level Complainant is entitled to upon his reinstatement the proper focus should be on what grade level he would have risen to absent discrimination. Albemarle Paper Co. v. Moody, 442 U.S. 405, 418-19 (1975); Davis v. U.S. Postal Serv., EEOC Petition No. 04900010 (November 29, 1990); Day v. Matthews, 530 F.2d 1083 (D.C. Cir. 1976).⁷ The fact that a subsequent position or grade-level would have been obtained through a competitive process is not dispositive. See, e.g., Rai v. Dep't of the Interior, EEOC Request No. 05880596 (Aug. 12, 1988 (the discriminatory denial of a GS-14 position may entitle the complainant to placement in a GS-15 position); Allen v. Dep't of Def., EEOC Request No. 05900807 (Sept. 11, 1990) (the discriminatory denial of a GS-12 position may entitle the complainant to placement in a GS-13 position); Ritchie v. U.S. Postal Serv., EEOC Appeal No. 01952558 (Feb. 10, 1998) (the discriminatory termination of a temporary employee may entitle the employee to placement into a career position).

⁷ In calculating a backpay award as the result of a finding of discrimination, the Commission must assume that the complainant has performed satisfactory work, or at least at the fully successful level. Grigsby v. U.S. Postal Serv., EEOC Petition No. 04A10049 (June 12, 2002).

For the Commission to determine Complainant's correct grade level, it is necessary to know the exact date he was reinstated. While the record shows that he accepted an offer of reinstatement on September 28, 2018, it is devoid of evidence establishing Complainant's official start date. If Complainant started on or after December 11, 2018, he would have been eligible for promotion to the GS-12 level upon reinstatement.⁸ In determining the proper grade level for reinstatement of a complainant, the Agency must consider the grade level obtained by similarly-situated employees who were not subject to discrimination. We note that the Agency has not responded to the assertion by Complainant that the Comparator was a GS-12 around the time Complainant was offered reinstatement to the position.

In Watson v. Dep't of Transp., EEOC Request No. 05950040 (June 7, 1996), the Commission ordered the complainant reinstated to a Grade 14 position where 11 of the 13 students in his training class all received promotions with minimum time-in-grade. The Commission found that, but for the discrimination, the complainant would have successfully completed the training and, thus, was entitled to reinstatement at the Grade 14 level. However, the complainant also was entitled to complete the training because "pay status is not equivalent to operational status." The Commission noted that training was necessary for the complainant to be able to perform at the Grade 14 level. See also Complainant v. Dep't of Veterans Affairs, EEOC No. 0120113877 the complainant would have received an accretion of duties promotion but for the discrimination; Miller v. Dep't of the Navy, EEOC Appeal No. 0120053382 (Feb. 9, 2007). Contrary to the Agency's assertion, if the record shows that Complainant would have been promoted to the GS-12 level at the time of his reinstatement, he would be entitled to the GS-12 grade level pay, even if he did not possess the requisite knowledge, skills, and abilities to perform the actual work of a GS-12 ET at that time.⁹ Unfortunately, the record is devoid of evidence to determine whether Complainant is entitled to the GS-12 grade-level. Accordingly, this matter is remanded for further processing as set forth below.

Compensatory Damages Investigation

The OFO Decision and Order states in relevant part:

Within ninety (90) days of receipt of this Order, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of his compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993), Complainant shall cooperate with the

⁸ If, however, Complainant's official reinstatement start-date occurred prior to December 11, 2018, then the GS-11 grade-level is the highest level he could have risen to absent discrimination and the Agency's placement in that grade level complies with our Order dated July 27, 2018.

⁹ The Agency would then be required to train him as quickly as possible so that his pay status is equivalent to his operational status. See Watson v. Dep't of Transp., EEOC Request No. 05950040 (June 7, 1996).

Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than thirty (30) days after the completion of the investigation.

When an Agency is ordered to conduct a supplemental investigation on the issue of compensatory damages, it should request from Complainant specific objective and other evidence of the alleged damages. Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). The Carle decision provides guidance on the type of evidence that the Agency should ask Complainant to provide to establish a claim of pecuniary and non-pecuniary compensatory damages. For example:

Objective evidence could have taken the form, if appellant obtained medical care, of receipts and/or bills for medical care, medication, and transportation to the doctor. Other evidence could have taken the form of a statement by appellant describing her emotional distress, and statements from witnesses, both on and off the job, describing the distress. To properly explain the emotional distress, such statements should include detailed information on physical or behavioral manifestations of the distress, if any, and any other information on the intensity of the distress, information on the duration of the distress, and examples of how the distress affected appellant day to day, both on and off the job. In addition, the agency should have asked appellant to provide objective and other evidence linking expenses, if any, and the distress to the alleged unlawful discrimination occurring on or after November 21, 1991.

Id. Complainant asserts that the Agency failed to comply with our order to conduct a supplemental investigation on the issue of compensatory damages. Specifically, Complainant contends that the Agency failed to investigate compensatory damages as ordered but instead placed the entire burden on him to compile the compensatory damages record when, on October 12, 2018, it sent him a letter simply requesting all relevant documentation in support of compensatory damages to be sent to the Agency within 30 days. Complainant also asserts that the Agency sent this request to the wrong address resulting in a substantial delay in his receipt (which did not occur until November 6, 2018), giving him only one week to compile the information requested. In addition, Complainant asserts that his attempts to gather affidavits from coworkers were thwarted by Agency instructions to his coworkers not to assist him in any fashion. Complainant also states that Agency officials explicitly instructed him not to discuss his EEO case with anyone (even his family) which he asserts impeded his ability to gather evidence. Complainant further notes that aside from the original letter requesting information, the Agency has not exerted any effort to investigate his claim for compensatory damages (e.g., an investigator was never assigned, no interviews have been conducted, including Complainant's, no specific documents have been requested or produced, a report of investigation has not been compiled).

While the Agency provides briefs responsive to both Complainant's PFE and Appeal2, it does not address the assertion that it failed to comply with the order to conduct a supplemental investigation or that efforts were made to thwart Complainant's ability to obtain evidence in support of his claim for compensatory damages. In FAD2, the Agency states that, on or about September 17, 2018, it requested that Complainant submit evidence in support of his compensatory damages claim, yet this written request is not found in the evidentiary records (i.e., PFE and Appeal2). Given this lack of evidence, we cannot find that the Agency provided Complainant adequate time to gather evidence in support of his claim for compensatory damages.¹⁰

In addition, the following evidence necessary to evaluate the merits of Complainant's compensatory damages arguments is missing from the PFE and Appeal2 evidentiary records: (1) Complainant's email received by the Agency on or about November 14, 2018 in support of Complainant's compensatory damages claim (as referenced by the Agency in FAD2); (2) all of Complainant's underlying evidence provided to the Agency in support of his claim for compensatory damages (as referenced by the Agency in FAD2); and (3) the Agency's December 4, 2018 Brief in response to Complainant's request for compensatory damages (as referenced by the Agency in FAD2).¹¹ Without these documents it is impossible to determine whether the Agency complied with the OFO Decision and Order.

Similarly, upon review of the record, we find the decision of FAD2 must be vacated because: (1) the Agency has failed to show that it conducted an adequate supplemental investigation on the issue of compensatory damages as ordered; and (2) because the evidentiary record is wholly inadequate to render a decision on the merits given the absence of any underlying evidence. Accordingly, we remand the issue of compensatory damages for further processing as set forth below.

¹⁰ See Adesanya v. U.S. Postal Serv., EEOC Petition No. 04950026 (Feb. 15, 1996). In response to an order from the Commission to conduct a supplemental investigation, the agency, in Adesanya v. U.S. Postal Serv., sent the petitioner a letter requesting information in support of her claim for compensatory damages. Our decision found that the Agency failed to comply with our order to conduct a supplemental investigation on compensatory damages because it provided the petitioner with only six days to respond to its request for information, which we found was insufficient, given the type and amount of information needed to establish a claim for compensatory damages. Id.

¹¹ We note that FAD2 found that Complainant was not entitled to a substantial portion of his claimed damages because they relate to injuries he incurred by events unrelated to the discrimination (e.g., hardships of litigation, problems he incurred after the relevant time-frame) or because the relevant documentary evidence he provided was not considered sufficient to establish a causal connection to his out-of-pocket expenses or other claim for compensatory damages. However, the record is devoid of evidence establishing whether the Agency provided any explanation or guidance as to what form of evidence was necessary or beneficial in accordance with our decision in Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). We also note that Complainant is not represented by an attorney.

CONCLUSION

As set forth above, the Commission GRANTS Complainant's PFE, in part, VACATES FAD2, and directs the Agency to take additional steps as set forth in the ORDER below.

ORDER

To the extent it has not already done so, the Agency is ORDERED to take the following remedial actions:

- (1) As set forth in EEOC Appeal. No. 0120162225 (July 27, 2018), within thirty (30) days of receipt of this Order, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501. *Part of the Agency's efforts shall include, but is not limited to, determining the appropriate amount of reimbursed transportation costs due to Complainant.*¹² Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled, "Implementation of the Commission's Decision."
- (2) Within sixty (60) days of receipt of this Order, the Agency shall determine whether Complainant would have received a promotion to the GS-12 level had he not been subjected to unlawful discrimination and place Complainant at the appropriate grade level. Complainant's grade level should reflect the grade level he likely would have risen to by his "reinstatement start-date" assuming he started his position on December 11, 2014 (i.e., the date the Agency denied Complainant's appeal after receiving sufficient medical information) at the GS-7 grade level. *The Agency shall look to similarly-situated comparison employees, especially Comparator. The Agency shall provide evidence of the exact date that Complainant commenced his reinstated position.* In addition, the Agency shall provide Complainant any necessary training as quickly as possible so that his pay status is equivalent to his operational status. The Agency shall then include its grade level determination into Complainant's back pay award.

¹² If Comparator received a benefit that has a monetary value (e.g., the use of a car and/or reimbursement or direct payment for the cost of gas to drive to/from work) such benefit should be included in Complainant's backpay calculation. The Agency is ordered to provide evidence to the Compliance Officer as to whether, or not, it reimbursed Comparator's commuting costs in any respect.

- (3) Within ninety (90) days of receipt of this Order, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages and guidance on what evidence is necessary to prove pecuniary and non-pecuniary damages. See EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov.); See *Carle v. Dep't of the Navy*, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than thirty (30) days after the completion of the investigation.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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

October 24, 2019

Date