



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

[REDACTED]
Shondra S.,¹
Complainant,

v.

Rob Shriver,
Acting Director,
Office of Personnel Management,
Agency.

Appeal No. 2019000984

Agency No. 2016026

DECISION

On November 26, 2018, 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 October 19, 2018, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and 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 VACATES the Agency's final decision and REMANDS the matter to the Agency for a supplemental investigation.

ISSUE PRESENTED

Complainant is a transgender woman who underwent breast/chest surgery to treat her gender dysphoria. Years later in 2016, one of her silicone breast implants began to leak, and Complainant stated that her doctor proposed to remove and replace her breast implants and perform a breast lift. However,

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.

her health insurance plan, the Blue Cross Blue Shield Service Benefit Plan, which was contracted by the Agency, categorically excluded from coverage all “[s]urgeries related to sex transformation.”

Complainant alleged that the Agency discriminated against her on the bases of sex (gender identity/transgender status) and disability (gender dysphoria) when it contracted for a health insurance plan that excluded from coverage surgeries “related to sex transformation,” including breast/chest surgeries and breast lifts, for transgender women with gender dysphoria.

The issue presented is whether the record is sufficiently developed to determine whether this exclusion constituted discrimination on the basis of sex (gender identity/transgender status) and/or disability (gender dysphoria).

BACKGROUND

Complainant is a transgender woman. She stated that she had gender dysphoria, which refers to the discomfort or distress that is associated with a discrepancy between a person’s gender identity and sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics). To alleviate her gender dysphoria, Complainant stated that she underwent breast/chest surgery in 2007 and received silicone breast implants. ROI at 53. But years later in 2016, one of her implants began leaking.

During this health emergency, Complainant was enrolled in the Blue Cross and Blue Shield (BCBS) Service Benefit Plan (the Plan). The Plan was negotiated, contracted, and made available to federal employees through the Federal Employee Health Benefits (FEHB) Program, which was administered by the Agency.²

A plan’s brochure is the document that establishes the benefits that are covered for the plan’s participants. Hence, we must examine the relevant provisions in this Plan’s brochure.

² The Federal Employees Health Benefits Act of 1959 authorizes the Agency to contract with fee-for-service plans, comprehensive medical plans, and plans sponsored by federal employee and postal organizations. As part of its contracting responsibility, the Agency negotiates benefits and premiums with each plan. 5 U.S.C. § 8902.

Section 5(b) of the 2016 Plan brochure described the surgical services that the Plan will cover and exclude. It specified it would provide coverage for reconstructive surgeries, including:

- Surgery to correct a functional defect
- Surgery to correct a congenital anomaly – a condition that existed at or from birth and is a significant deviation from the common form or norm.
- All stages of breast reconstruction surgery following a mastectomy, such as:
 - Surgery to produce a symmetrical appearance of the patient’s breasts
 - Treatment of any physical complications, such as lymphedemas

Final Agency Decision (FAD) Attachment 4 at 69.

Section 5(b) indicated the Plan would not cover:

- Cosmetic surgery – any operative procedure or any portion of a procedure performed primarily to improve physical appearance through change in bodily form – unless required for a congenital anomaly or to restore or correct a part of the body that has been altered as a result of accidental injury, disease, or surgery . . .
- Surgeries related to sex transformation

Id.

To fix the leaking breast implant, Complainant’s doctor proposed that she undergo the following procedures (along with anesthesia):

- Removal and replacement of silicone gel implants;
- Breast lift.³

Complainant asked her health insurance plan about coverage. In a February 16, 2016, electronic message to Complainant, a BCBS representative stated:

If a defect is identified that is causing you harm, the Plan will pay for the removal of the implant. However, because the original placement of the implant was not in relation to restoring the breast following a mastectomy, the reinsertion of a new implant

³ Complainant also requested breast enhancement, and one of the procedures performed was “Bilateral breast augmentation.” ROI at 114.

would not be covered. Please refer to [section 5(b)] of the 2016 Service Benefit Plan brochure.

ROI at 63.

About a week later, on February 25, 2016, the same BCBS representative reiterated:

As stated in my prior response, benefits are available for the removal of an implant where complications exist. The reinsertion of the implant is dependent upon the initial indication for placement. Because the breast reconstruction services you have performed were not related to a mastectomy [sic] for cancer treatment, benefits for the reinsertion are not available.

Id.; see also id. at 147-48 (according to Insurance Operations Program Manager, for the 2016 plan year, removal of defective or leaking breast implants was a covered service under the Service Benefit Plan because it was a complication that required correction, but “breast augmentation/breast lifts” would only be covered post-mastectomy or in the case of a congenital anomaly).

On May 26, 2016, a board-certified plastic surgeon performed a bilateral breast augmentation and bilateral crescent mastopexy (breast lift) on Complainant. ROI at 102-06, 114-19, 122-26. In the operative report, the surgeon noted that there was a small pinpoint hole in the removed left breast implant. ROI at 114-15.

Complainant averred that she had to pay \$8,200 for the 2016 surgical procedures because they were not covered by her health insurance plan. ROI at 54.

EEO procedural history

On May 23, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (gender identity/transgender status),⁴ disability (gender dysphoria), and reprisal for prior protected EEO

⁴ In Bostock v. Clayton Cty., the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. 644 (2020); see also Macy v. Dep’t of Justice, EEOC Appeal No. 0120120821 (Apr. 20, 2012) (an allegation of discrimination based on gender

activity when it contracted for a health insurance plan that excluded from coverage the removal and replacement of silicone gel implants with breast lift for transgender women with gender dysphoria.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

Final Agency Decision

The final agency decision elected to apply the analytical framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and assumed, for argument's sake, that Complainant had established a prima facie case of discrimination.

Next, the final decision determined that the Agency had articulated legitimate, nondiscriminatory reasons. First, the Agency generally asserted that it does not set requirements over what to include in individual health insurance plans, other than what is required by Federal law. During the 2016 plan year, there were one or more plans providing some coverage for gender transition services in every jurisdiction, and it was up to each individual to identify and enroll in the plan that best met that individual's needs. For example, the Agency highlighted the 2016 Aetna HDHP/Aetna Direct and Aetna HealthFund CDHP brochure, which provided coverage for genital "gender reassignment surgery" for transgender women with gender dysphoria, which was in notable

identity, change of sex, and/or transgender status states a claim of sex discrimination under Title VII because discrimination on this basis is inherently sex-based).

"When [the Supreme Court] applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule." Harper v. Virginia Dep't of Tax'n, 509 U.S. 86, 97 (1993); see also Rivers v. Roadway Exp., Inc., 511 U.S. 298, 312-13 (1994) ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.").

contrast to the express exclusion of such surgical procedures in the Plan at issue here.⁵

Second, the final decision determined that the Plan provided coverage for the removal of a defective and leaking silicone breast implant.

Third, the Agency's decision appeared to acknowledge that the Plan covered breast augmentation and breast lifts for women who had undergone mastectomies or had congenital anomalies, but not for transgender women as a component of gender-affirming care.

- "BCBSA does not cover breast augmentation/breast lifts for any woman with the exception of post-mastectomy or a congenial [sic] anomaly."
- "With regard to replacing her implants, the BCBS of Oklahoma plan brochure clearly stated that surgery for gender transition was not covered."

In addition, the Agency essentially argued it was not the proper defendant for the dispute over the replacement of a silicone breast implant. The Agency characterized the conversation between Complainant and the BCBS representative as a dispute between Complainant and the insurance carrier over whether the replacement of a silicone breast implant was medically necessary, and the Agency was not directly involved in adjudicating this

⁵ We note this is not a legitimate reason. First, Complainant experienced an unforeseen urgent medical situation in that her breast implant began to leak. She could not have selected an appropriate medical health insurance plan ahead of time during the prior enrollment period. Second, in the record does not reflect that the 2016 Aetna HDHP/Aetna Direct plan or the Aetna HealthFund CDHP/Aetna Value plan would not have covered Complainant's surgical procedures either. FAD Attachment 5 at 67, 117; FAD Attachment 8 at 60, 102. Those plans' 2016 brochures stated that only three types of "gender reassignment surgery" would be covered: (1) "Surgical removal of breasts for female-to-male patients"; (2) "Surgical removal of uterus and ovaries in female-to-male and testes in male-to-female"; and (3) "Reconstruction of external genitalia." *Id.* and the plans excluded from coverage all other types of "gender reassignment surgery." Third, the Agency's articulated reason reflects a misunderstanding of existing law and precedent. Insurance coverage conditioned upon a protected status violates Title VII. The Agency is not shielded from liability when it engaged in discriminatory practices concerning some treatment and not others. Each instance of discrimination presents an independent violation. *Bostock*, 590 U.S. at 662. To find otherwise would render Title VII obsolete.

disputed claim. As the Agency put it, "There is no evidence in the record to show that OPM encouraged the denial or that only persons with gender dysphoria had their claims of replacement implants denied."⁶

Finally, the Agency found that Complainant did not establish pretext, given that the Agency had removed its general exclusion for "sex transformation" services in 2015, and that the Plan at issue covered certain types of treatments for gender dysphoria. The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that she was subjected to discrimination because, as a transgender woman, she was denied coverage for services that were afforded to non-transgender women post-mastectomy or who had a congenital anomaly. According to Complainant, she has stated a claim of discrimination because she was denied benefits, and the existence of another nondiscriminatory plan she could have chosen is not a defense to coverage,

⁶ We note that this articulated reason is not a legitimate one because it is based on the mistaken premise that the adverse employment action here consists solely of the Plan's representative's communication that the Plan would not cover Complainant's breast reconstructive surgical procedures. But this sidesteps or ignores the alleged underlying adverse employment action, which is the Plan brochure's categorical exclusion from coverage of all "[s]urgeries related to sex transformation," and obfuscates the Agency's role in bringing about this alleged discriminatory policy.

When an EEO complaint involves a provision in the brochure of an FEHB health insurance plan that is allegedly discriminatory, the Agency is a proper defendant because of its role in not only administering the FEHB Program, but also negotiating and reaching agreements on what health insurance benefits are offered to federal employees, directing how plan brochures are drafted and what language is used, and contracting with health insurance carriers for all federal employees. See, e.g., Boyden v. Conlin, 341 F.Supp.3d 979 (W.D. Wis. 2018) (finding two state government entities, which were empowered by the State to set benefits terms, administer policies, and contract with health insurers for all state employers, could be held liable for sex discrimination under Title VII, as agents of plaintiffs' state employers or the State as the ultimate employer).

as the Agency had an obligation not to offer violative plans. Complainant requests that the Commission reverse the Agency's final decision and order the Agency and the BCBS Service Benefit Plan to reimburse her for the costs of her medical procedure. Complainant withdraws reprisal as a basis for her EEO complaint.

The Agency did not submit a statement or brief in response to Complainant's appeal.

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 (EEO MD-110) 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

Title VII prohibits discrimination on the basis of sex in compensation and in the terms, conditions, or privileges of employment, which includes health insurance and other fringe benefits. See 42 U.S.C. §§ 2000e-2(a), 2000e-16(a); Newport News Shipbuilding & Dry Dock Co. v. EEOC, 462 U.S. 669, 682 (1983); Lawrence v. Office of Pers. Mgmt., EEOC Appeal No. 0120162065 (May 30, 2024).

In Macy v. Dep't of Justice, EEOC Appeal No. 0120120821 (Apr. 20, 2012), the Commission made clear that discrimination against a transgender individual because he or she is transgender is, by definition, discrimination "based on . . . sex," within the meaning of Title VII. In 2020, the U.S. Supreme Court issued its landmark decision in Bostock v. Clayton Cty., 590 U.S. 644 (2020), which explained, "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." Id. at 660. Both Macy—which the Commission decided in 2012, well

before the 2016 Plan year at issue in this case—and Bostock are controlling law for purposes of this federal sector appeal.⁷

Where an agency's policy or practice discriminates against a protected characteristic, no further proof of disparate intent is needed. See id. at 667; see also Int'l Union, United Auto., Aerospace & Agric. Implement Workers v. Johnson Controls, Inc., 499 U.S. 187, 199 (1991) (holding that "[w]hether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination").

Section 501 of the Rehabilitation Act prohibits covered entities from discriminating on the basis of disability by entering into, or participating in, a contractual or other arrangement or relationship with an insurance company that has the effect of discriminating against qualified applicants or employees with disabilities. See Theo B. and Cathie K. v. Office of Pers. Mgmt., EEOC Request Nos. 0520080057, 0520080067 (Dec. 21, 2018). Section 501 has been amended to adopt the standards and defenses of the Americans with Disabilities Act in non-affirmative action discrimination claims. See 29 U.S.C. §791(g).

Inadequacy of the record

EEOC regulation 29 C.F.R. § 1614.108(b) requires that the agency develop an impartial and appropriate factual record upon which to make findings on the claims raised in the complaint. One purpose of an investigation is to gather facts upon which a reasonable fact finder may draw conclusions as to whether a violation of the discrimination statutes has occurred. Id.; EEO MD-110, at Chap. 6, § IV.B. An investigation must include "a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group as compared with the treatment of similarly situated employees...and any policies and/or practices that may

⁷ "When [the Supreme Court] applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule." Harper v. Virginia Dep't of Tax'n, 509 U.S. 86, 97 (1993); see also Rivers v. Roadway Exp., Inc., 511 U.S. 298, 312-13 (1994) ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.").

constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant.” Id. at § IV.C. Also, an investigator must identify and obtain “all relevant evidence from all sources regardless of how it may affect the outcome.” Id. at § VI.D.

EEOC regulations provide that the Agency and any employee of a federal agency shall produce such evidence as the investigator deems necessary. 29 C.F.R. § 1614.108(c)(1). The regulations further provide that, when the Agency or its employees “fail without good cause shown to respond fully and in timely fashion” to requests for documents, affidavits, the attendance of witnesses, or other evidence “the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal, may in appropriate circumstances: (i) draw an adverse inference that the requested information, or the testimony of the requested witness would have reflected unfavorably on the party refusing to provide the requested information; (ii) consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party; (iii) exclude other evidence offered by the party failing to produce the requested information or witness; (iv) issue a decision fully or partially in favor of the opposing party; or (v) take such other actions as it deems appropriate.” 29 C.F.R. § 1614.108(c)(3).

To adjudicate whether the 2016 Blue Cross and Blue Shield Service Benefit Plan’s brochure contained a policy that discriminated against transgender women based on sex, the record must be adequately developed for a fact finder to determine whether:

- the Plan covered breast/chest surgery and breast lifts for medical needs outside of the context of gender-affirming care;
- clinically appropriate breast/chest surgery and breast lifts, as a component of gender-affirming care, met the Plan’s definition of “medical necessity”;
- clinically appropriate breast/chest surgery and breast lifts, as a component of gender-affirming care, met the Plan’s definition of “[s]urgeries related to sex transformation”; and
- clinically appropriate breast/chest surgery and breast lifts, as a component of gender-affirming care, met the Plan’s definition of “cosmetic surgery.”

But we find the record here is inadequately developed to answer all these questions.

- The record is missing the 7th edition of the World Professional Association for Transgender Health (WPATH) Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People

(Standards of Care). The WPATH Standards of Care represents “the consensus approach of the medical and mental health community” for outlining appropriate protocols and treatments for gender dysphoria and has “been recognized by various courts . . . as the authoritative standards of care.” Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 595 (4th Cir. 2020). The seventh edition was published in 2012 and would have been the relevant version for the 2016 plan year.

- The record is missing additional documents that could help a fact finder supplement or interpret the Plan’s brochure, such as the relevant version of the Blue Cross Blue Shield Federal Employee Program (FEP) administrative manual.⁸ Obtaining relevant sections of this administrative manual could help in numerous ways.
 - The administrative manual could help interpret what the phrase “[s]urgeries related to sex transformation” meant, since the phrase was not defined in the 2016 Plan brochure.
 - The administrative manual could help a fact finder understand what circumstances the Plan covered breast/chest surgeries and breast lifts outside the context of gender-affirming care, such as in situations when a patient had a defective or leaking silicone breast implant, or some other medical need.
 - Additionally, the administrative manual could help a fact finder understand the Plan’s definition of cosmetic surgery, and how this definition’s exceptions applied (or not) to Complainant’s circumstances (“to restore or correct a part of the body that has been altered as a result of accidental injury, disease, or surgery”).

For the reasons stated above, the Commission finds that the investigation was inadequate and the record lacks the thoroughness required for a fact-finder

⁸ In Willia M. and Alonzo N. v. Office of Pers. Mgmt., EEOC Appeal Nos. 0120132419, 0120132420 (Dec. 21, 2018), the complainants alleged that the Agency had contracted with BCBS for a health insurance plan that discriminatorily denied them coverage for in vitro fertilization treatment. At the administrative hearing, the Agency’s counsel emphasized the importance of the Federal Employee Program (FEP) Administrative Manual, which contained BCBS’s complete description of the benefits and guidance for the appropriate administration of federal program benefits, exclusions, and limitations. “The Blue Cross and Blue Shield Association’s position on [Assisted Reproductive Technologies] is documented every single year that’s at issue in this case, potentially, 1998, ‘99 and 2000, in what’s called its FEP administrative manual.” Willia M. and Alonzo N. Hearing Transcript at 35.

to address the ultimate issue of whether discrimination occurred. Accordingly, we will vacate the Agency's final decision and remand the matter for a supplemental investigation. For an EEO complaint where a complainant challenges a provision in the FEHB plan brochure as discriminatory, the investigative record should include any relevant documents or policy statements that supplemented the plan brochure, such as a copy of the BCBS FEP Administrative Manual. In this case, which involves a transgender woman diagnosed with gender dysphoria who is alleging discrimination based on sex and disability, that would also include the relevant version(s) of the Diagnostic and Statistical Manual of Mental Disorders and the 7th Edition of the WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People published in 2012, which was the most recent version of the Standards of Care for the 2016 plan year.

As part of the supplemental investigation, Complainant shall be provided the opportunity to submit additional evidence regarding medical necessity, including testimony from her medical providers, medical documentation related to her diagnosis of gender dysphoria, medical documentation related to the December 2007 surgery during which her breast implants were initially placed, and additional medical documentation related to the May 2016 surgery during which her damaged breast implant was replaced.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we VACATE the Agency's final decision finding no discrimination and REMAND the matter to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall conduct and complete a supplemental investigation consistent with the requirements of 29 C.F.R. § 1614.108(b), Chapter 6 of EEO MD-110, and this decision. The supplemental investigation shall include, but is not limited to, the following:

1. The EEO investigator shall request, at a minimum, the following documentary evidence from the Agency:
 - a. Any relevant documents or policy statements that supplemented the BCBS Service Benefit Plan brochure for the 2016 plan year,

including, at a minimum, a copy of the relevant version(s) of the BCBS Federal Employee Program (FEP) Administrative Manual.

- b. A copy of the World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th ed. 2012).
- c. A copy of the following editions of the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders:
 - i. Third Edition (1980) (DSM-III);
 - ii. Third Edition-Revised (1987) (DSM-III-R);
 - iii. Fourth Edition (1994) (DSM-IV);
 - iv. Fourth Edition Text Revision (DSM-IV-TR); and
 - v. Fifth Edition (2013) (DSM-5).

If the Agency does not provide information or documentation requested by the EEO investigator, the EEO investigator shall include an explanation in the record.

2. Complainant shall be provided the opportunity to submit additional relevant evidence regarding medical necessity, including testimony from her medical providers, medical documentation related to her diagnosis of gender dysphoria, medical documentation related to the December 2007 surgical procedure during which her breast implants were initially placed, and additional medical documentation related to the May 2016 surgical procedure during which her damaged breast implant was replaced.
3. Complainant shall also be provided the opportunity to provide a rebuttal affidavit in response to the evidence and materials provided in the supplemental investigation by the Agency.

Upon completion of the investigation, the Agency must provide the Complainant with a copy of the supplemental record and findings. Within **thirty (30) calendar days** of the date the Agency completes the supplemental investigation, the Agency shall issue a new final decision (FAD), including the appropriate appeal rights.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: (1) a copy of the Agency's letter of acknowledgment to Complainant; (2) a copy of the Agency's notice that transmits the investigative file; and (3) a copy of the FAD.

In accordance with Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § IX.E (Aug. 5, 2015), the Agency shall give priority to this remanded case in order to comply with the time frames contained in this Order. The Office of Federal Operations will issue sanctions against agencies when it determines that agencies are not making reasonable efforts to comply with a Commission order to investigate a complaint.

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 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

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 their 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

January 17, 2025
Date