



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

[REDACTED]

Chere S.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Intelligence Agency),
Agency.

Appeal No. 2021004666

Hearing No. 510-2018-00387X

Agency No. DIA-2018-00008

DECISION

Following its August 19, 2021, final order, the Agency filed an appeal, and Complainant filed a cross appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of 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 affirm its rejection of the relief ordered by the AJ. Complainant requests that the Commission affirm the AJ's finding of discrimination and increase the award of compensatory damages.

For the following reasons, the Commission REVERSES the Agency's final order rejecting the AJ's decision finding discrimination and AFFIRMS the AJ's ordered relief.

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.

ISSUES PRESENTED

Whether the AJ's finding of discrimination is supported by substantial evidence and supported credibility determinations?

Whether the amount awarded by the AJ in non-pecuniary compensatory damages should be increased?

BACKGROUND

Complainant identified her race as Black, her sex as female, and her national origin as Puerto Rican and Jamaican.² CF at 501-02; HT at 24. At the time of events giving rise to this complaint, Complainant worked for the Agency as a GG-0132-11 Intelligence Officer at the United States Central Command (CENTCOM) Headquarters at MacDill Air Force Base, Florida. CF at 127, 154, 156. Complainant's supervisor at CENTCOM Headquarters was a Branch Chief ("the Branch Chief"). CF at 154.

On July 17, 2017, Complainant deployed for 120 days to the Joint Special Operations Command (JSOC) External Operations Platform (EOP) in Jordan as a CENTCOM Intelligence Analyst. CF at 195, 223, 431; HT at 26. Complainant was scheduled to return to the United States on November 25, 2017,³ but her deployment was curtailed after 115 days on November 9, 2017. CF at 431; HT at 221. After her deployment was curtailed, Complainant was placed on administrative leave. CF at 360-61, 515-16, 775, 820-21.

The Jordan CENTCOM team at the EOP consisted of a supervisory Team Lead, a Senior Intelligence Analyst (SIA), two all-source analysts, and one publicly available information (PAI) analyst. CF at 563-64, 675-76; HT at 232-33. Complainant, during her deployment, was one of the all-source analysts. CF at 564. The CENTCOM analysts received intelligence reports and data and were responsible for writing intelligence products and preparing briefings. HT at 30.

The Team Lead functioned as the administrative supervisor but was not necessarily an intelligence professional, while the SIA ("the Senior Analyst") was responsible for the analysts' work, including prioritization of analytic effort, assigning tasks, training, and production efforts. CF at 563-65, 675-76; HT at 32, 232-34, 820-21. The Senior Analyst was present for the duration of Complainant's deployment. CF at 563-65, 675-76; HT at 32.

² Citations to the appellate record will cite to the Bates numbers in the two-part Complaint File (CF) uploaded by the Agency, with exception of citations to the sequentially numbered pages of the four-volume Hearing Transcript (HT).

³ According to the record, Complainant's replacement was scheduled to arrive at the EOP in mid-November 2017, and they were expected to overlap until November 25. CF at 444-45.

The Senior Analyst, who, like Complainant, was a CENTCOM civilian employee, stated that he met Complainant prior to deployment when she came to his work center for a pre-deployment briefing on expectations. CF at 465, 618, 648, 853; HT at 240, 443.

At the EOP, the CENTCOM team worked in a large, open secured workspace with large screens in the front of the room showing news or briefings. HT at 30-31, 372, 821-22, 1183-84. Multiple witnesses described the workspace as a sensitive compartmented information facility (SCIF) for accessing classified materials. CF at 423, 456-57, 471-72, 595, 651, 828, 837, 843, 847, HT at 352, 367, 372, 390, 457, 740, 748, 825, 883, 892, 895, 933, 1040, 1050, 1059-60, 1080, 1096. The CENTCOM team shared the space with approximately 80 people who sat in clusters of five or six people, including law enforcement and other American teams, as well as teams from several other countries. HT at 31, 457, 933, 1060, 1183-85. Additional teams of coalition partners, from approximately 21 different countries, were located in a separate space. CF at 573, 647-48; HT at 31-32, 457. Complainant spoke six languages: English, Spanish, French, Italian, Portuguese, and Arabic. HT at 36-37; CF at 757. During her deployment, Complainant often spoke Spanish and Portuguese with coalition partners. CF at 504-05, 573-74, 679-80, 756-57; HT at 37, 48, 247-48, 275-76, 390-91.

On December 22, 2017, Complainant filed an EEO complaint alleging she was subjected to discrimination on the bases of her race (Black), national origin (Puerto Rican/Jamaican⁴), and sex (female) when:

1. On September 5, 2017, the Senior Analyst became extremely hostile and hypercritical after Complainant disclosed she had been sexually assaulted and sexually harassed in the past in response to his comments that the Agency's sexual assault/harassment training was stupid and the statistics presented during mandatory training were made up.
2. On September 6, 2017, and multiple occasions in August and early September, the Senior Analyst scowled and reprimanded Complainant when she spoke Spanish with Spanish and Portuguese coalition partners and said she was taking advantage of their presence.

⁴ In its brief in support of appeal, the Agency contends that the AJ's decision mischaracterized Complainant's claims to include a claim of discrimination based on Jamaican national origin, as Complainant's formal EEO complaint identified her national origin as "Puerto Rican/Hispanic." However, Complainant identified her national origin as "Puerto Rican/Jamaican" during the investigation and in her testimony at the hearing. CF at 502; HT at 24, 69-70. Moreover, the Agency's February 6, 2020, Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment stated that it was undisputed that Complainant identifies "as a Black Female of Puerto Rican/Jamaican descent." CF at 935. Accordingly, we find that the AJ correctly identified the bases for the complaint and that the Agency was on notice that Complainant was alleging discrimination based on Jamaican national origin.

3. On September 18, 2017, after a product meeting, the Senior Analyst cursed several times and insisted Complainant inform him of all meetings.
4. On September 21, 2017, the Senior Analyst responded to Complainant's typographical error in all caps with multiple exclamation marks in a reply all email.
5. On September 22, 2017, the Senior Analyst wrote something down on paper every time Complainant left and returned to her desk.
6. On October 5, 2017, the Senior Analyst looked at Complainant, then turned around and ignored her when she offered him the use of her computer system after a white male colleague, who sat close by, told him he did not have access to the system.
7. On October 6, 2017, at a morning meeting, the Senior Analyst singled Complainant out aggressively in front of others and implied she was stupid.
8. On or about October 6, 2017, the Senior Analyst conspicuously looked at Complainant's computer while walking by and loudly asked her what she was doing.
9. On October 26, 2017, Complainant went to the Senior Analyst's desk and asked him if he had time to talk, and he immediately began screaming and cursing at Complainant.
10. On October 27, 2017, the Team Lead informed her that the Senior Analyst claimed Complainant was abusing the timecard system.
11. On November 8, 2017, the Team Lead asked Complainant to apologize to the Senior Analyst because he "went nuclear" about something Complainant said.
12. On November 8, 2017, the window to Complainant's room was spray-painted black, and she was informed the camp commandant ordered it to be spray painted because there was a complaint from someone who had looked into her room and seen her in a stage of undress.
13. On November 9, 2017, Complainant was sent home early from deployment accused of sub-par performance and poor judgment.
14. On November 20, 2017, Complainant was placed on administrative leave pending a decision regarding her performance status.⁵

⁵ In October 2017, Complainant applied for a GG-0132-11 Executive Assistant position with the Agency at the United States Indo-Pacific Command (INDOPACOM) in Pearl Harbor, Hawaii.

At the conclusion of the investigation into her complaint, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing.

The Agency filed a motion for summary judgment, and Complainant did not respond to the Agency's motion. CF at 917-72. The AJ denied the Agency's motion, finding that, based on the record and the Agency's motion, there were genuine issues of material fact warranting a hearing. CF at 973. The Agency proposed calling nine witnesses at hearing, but later withdrew one witness, and Complainant proposed calling eight witnesses. CF at 981-89, 1017. In the Scheduling Order and Order on Witnesses, the AJ approved five witnesses for both Complainant and the Agency, finding that the remaining witnesses were not relevant or unduly repetitious. CF at 1017.

The AJ held a hearing on liability from March 8-10, 2021. HT at 1-1153. On March 10, 2021, Complainant requested to amend her complaint to add reprisal as an additional basis of her complaint based on the Senior Analyst's testimony regarding Complainant's prior protected EEO activity.⁶ HT at 701-10. The Agency opposed the request to amend, arguing that such a late amendment was prejudicial and citing emails to and from the Senior Analyst discussing Complainant's prior protected EEO activity in the investigative record. HT at 705-07. The AJ decided to take Complainant's request to amend under advisement and did not make a ruling at the hearing. HT at 708-10.

On March 16, 2021, the AJ issued a Notice of Discrimination Finding, Order on Motion to Amend and Scheduling Order, which notified the parties that the AJ would be issuing a decision finding Complainant was subjected to discriminatory harassment based on race, sex, and national origin and scheduling a hearing on remedies. CF at 1042-43. The AJ also denied Complainant's amendment request, finding that Complainant's motion on the final day of the hearing after most witnesses, including the Senior Analyst, had been released was too late and potentially prejudicial to the Agency. CF at 1042. The AJ found that information about the Senior Analyst's conversation about Complainant's prior EEO activity could have been obtained during discovery or that, at the latest, Complainant could have made a motion to amend during the hearing while the Senior Analyst was still testifying. CF at 1042. The AJ held a hearing on damages on May 3, 2021. CF at 1043; HT at 1154-1370.

CF at 276-86, 501; HT at 1287. She hoped to be selected for the position after her deployment in Jordan was over. In January 2018, Complainant was offered the position. HT at 213, 1257-60. In March 2018, Complainant started her INDOPACOM position in Hawaii. HT at 27, 1262.

⁶ The Senior Analyst testified that his U.S.-based supervisor informed him that Complainant had performance and attendance issues in the past and had filed sexual harassment complaints. CF at 2530.

The AJ issued an order entering judgment and decision on July 12, 2021, finding that Complainant established that she was subjected to discrimination based on race, sex, and national origin. CF at 2527-92. The AJ generally found Complainant to be a credible witness and generally did not find the Senior Analyst to be credible. CF at 2558-60. The AJ stated that the Senior Analyst was not credible because he was “sarcastic,” his testimony was “internally inconsistent,” and he spent most of the time he was testifying “smirking” and “acting generally disdainful of the process.” CF at 2559. The AJ found that the Senior Analyst “clearly downplayed his statements and conduct” and that parts of his testimony reflected “ongoing anger and hostility” towards Complainant. CF at 2559. In contrast, the AJ found Complainant’s testimony “clear, credible, and consistent” and corroborated by contemporaneous text messages and photos, and the AJ characterized her demeanor during the hearing as “straight forward and not evasive.” CF at 2559.

The AJ found that, throughout the hearing, “[t]he confusion over supervisory relationships in various aspects of personnel matters was apparent.” CF at 2530. Although the Team Lead was identified as Complainant’s supervisor, the AJ found that the Senior Analyst often acted as her supervisor and that her U.S.-based supervisor, the Branch Chief, also retained some supervisory authority as well. CF at 2530. The AJ’s decision placed “greater reliance” on the witnesses who testified at the hearing. CF at 2534. Because neither party requested the Team Lead as a witness at hearing and the AJ could not assess his credibility, the AJ’s decision relied on statements by Team Lead “to the extent he is quoted by witnesses or from the statement included in the ROI, this is taken to such an extent that it comports with other credible testimony from the hearing.” CF at 2534.

The AJ found that Complainant established the Senior Analyst’s conduct was objectively and subjectively offensive, severe, frequent, humiliating, and unreasonably interfered with her job performance. CF at 2558. The AJ determined that the Senior Analyst “harbored substantial animosity” towards Complainant and spent most of her deployment monitoring and criticizing her while refusing to give her any feedback. CF at 2558. The AJ found that, as the harassment became more pronounced and intense, Complainant became depressed, anxious, and suicidal as a direct consequence of the harassment and that there was “no question” that she made her supervisory chain aware of the harassment. CF at 2564. Regarding the curtailment of her deployment, the AJ found that Complainant established that the Agency’s legitimate, nondiscriminatory explanation was pretextual. CF at 2570-75. The AJ also determined that that there was no legitimate, nondiscriminatory explanation for placing Complainant on administrative leave in the investigative record or in witness testimony. CF at 2575-76.

The AJ found that management officials gave each other inaccurate and incomplete information that lacked a basis in fact and successively signed statements giving differing unsupported rationales for the curtailment. In particular, the AJ specifically held that a witness who said she had complaints as to Complainant’s work performance presented testimony that was disjointed, inconsistent and not credible, or supported by documentary evidence.

The witness acknowledged that the complaints were less about the Complainant's work and more about the general tension on the team caused by the interactions between Complainant and the Senior Analyst. She also cited as a reason for curtailment of the Complainant the concern that the "workforce" needed to see Complainant held accountable. She said the workforce had a "resentment" about the Complainant that needed to be addressed. The AJ found that no one in the workforce was named beyond the Senior Analyst, and that this took place in a workplace swirling with innuendo, discrimination and harassment. The AJ found it notable that not only did no one speak to the Complainant about curtailing her before it occurred, but that the Complainant's supervisor was not even consulted about it. The supervisor said that he was "blindsided" by the decision and did not agree with it. By the time the Complainant was told about it, the decision had been made and she was put on a plane a few hours later. The AJ further determined that the failure to even consult the Complainant's supervisor before taking action tended to indicate that the reasons given for the curtailment were pretextual. CF at 2573-74.

Pursuant to the finding of discrimination, the AJ ordered pecuniary damages in the amount of \$5,400, non-pecuniary damages in the amount of \$75,000, attorney's fees, expungement of documents related to her curtailment and non-recommendation for future deployment, removal of negative references from her performance evaluation, EEO training for the responsible management officials and all CENTCOM employees, consideration of discipline against the Senior Analyst, and the posting of a notice. CF at 2578-87.

The Agency issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged and filed an appeal.

Complainant filed a cross appeal concerning the denial of her motion to amend her complaint and the remedies awarded.

STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chapter 9, at § VI.B. (Aug. 5, 2015).

ANALYSIS AND FINDINGS

Agency's Appeal

On appeal, the Agency argues, among other things, that it was an abuse of discretion for the AJ to deny its February 6, 2020 motion for summary judgment and asks that the Commission issue a decision in favor of the Agency on that basis. We do not find that it constituted an abuse of discretion for the AJ to deny the motion for summary judgment after reviewing the Agency's motion and the investigative record and determining that there remained material facts in dispute that required resolution through a hearing.

In her decision reached after the hearing, the AJ found that the Complainant had been subjected to a work atmosphere that was hostile and discriminatory based on her race, national origin and sex perpetrated primarily by the Senior Analyst. Contrary to the Agency's argument on appeal, our review of the record shows substantial evidence supports the AJ's decision. The AJ relied upon multiple statements in the record which indicated specifically that the Senior Analyst's problem was with the Complainant's race, sex and national origin. His mocking and questioning of the sexual harassment training, comments in favor of confederate statues and the Charlottesville marchers supporting those statues, frequent negative comments about immigrants, and referring to the Complainant as a "naïve little girl," were all cited by the AJ, as well as pervasive comments about the Complainant's clothing and how her body looked. The AJ found that the continual obsession with the Complainant's clothing was overriding, frequent and apparent. She noted that the issues taken with her clothing appear related to her body type as a black Hispanic woman, and the fact that she was one of few females in the platform wearing civilian clothing. She further linked what she deemed the sexualized commentary about Complainant's clothing to a "Jezebel" stereotype of black women in America which dates back to the time of slavery, has continued on through popular culture and remains a dominant image to the present day. AJ's decision, CF 2567-68.

Moreover, in finding that Complainant established discrimination based on race, national origin, and sex, based mainly on the actions of the Senior Analyst, the AJ's decision made various credibility determinations, including generally finding the Senior Analyst not to be a credible witness, unlike Complainant. The AJ detailed the actions of the Senior Analyst towards Complainant, finding he "harbored substantial animosity" towards Complainant and spent most of her deployment monitoring and criticizing her while refusing to give her any assistance. She found that the Senior Analyst treated Complainant far less favorably than her Caucasian and male colleagues. This led to negative references in her performance evaluations and the early curtailment of her deployment. An AJ's credibility determinations are generally entitled to significant deference due to the AJ's first-hand knowledge through personal observation of the demeanor and conduct of witnesses at the hearing. Grant v. Dep't of the Treasury, EEOC Appeal No. 01985972 (Aug. 2, 2001). Having fully considered all the arguments raised on appeal, we defer to the credibility determinations rendered by the AJ in this matter based upon the evidence presented before her at the hearing.

In conclusion, based on our independent review of the record, we find that substantial evidence supports the AJ's conclusion that discrimination based on race, national origin and/or sex occurred as alleged. In reaching this conclusion, we note the attempts to provide new evidence on appeal, involving the unrelated termination of a later deployment of Complainant and a subsequent plea agreement. As a general rule, no new evidence will be considered on appeal absent an affirmative showing that the evidence was not reasonably available prior to or during the investigation or during the hearing process. See EEO MD-110, at Ch. 9, § VI.A.3. In opposition to the Agency's appeal, Complainant contends that this information was available during the hearing process. We have determined that, even if considered, this evidence would not be sufficiently probative, to override the AJ's credibility determinations and rulings supported by substantial evidence in her decision herein on this matter.

Complainant's Cross Appeal

Motion to Amend Complaint

Complainant contends on cross appeal that the AJ erred in denying her motion to amend her complaint to add an allegation of unlawful retaliation as an additional motivation for the events at issue. Administrative Judges have full responsibility for the adjudication of the complaint, including overseeing the development of the record, and have broad discretion in the conduct of hearings. 29 C.F.R. § 1614.109(a), (e). Given the AJ's broad authority to regulate the conduct of a hearing, a party claiming that the AJ abused their discretion faces a very high bar. Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016), citing Kenyatta S. v. Dep't of Justice, EEOC Appeal No. 0720150016 n.3 (June 2, 2016) (responsibility for adjudicating complaints pursuant to 29 C.F.R. § 1614.109(e) gives AJs wide latitude in directing terms, conduct, and course of administrative hearings before EEOC).

Here, Complainant requested to amend her complaint on the final day of the hearing on liability, after the Senior Analyst had been released as a witness and the majority of witnesses had already testified. According to Complainant, she made the request to amend after the Senior Analyst's hearing testimony showed that he was aware of her prior protected activity. Complainant alleges that retaliatory animus is clearly demonstrated by substantial evidence in the record and that the AJ's decision to deny her amendment request was in error.

The AJ found that Complainant's motion was too late and in a manner that could have been prejudicial to the Agency. CF at 1042. The AJ found that the information regarding the Senior Analyst's knowledge of Complainant's prior protected activity could have been obtained during discovery, which would have allowed Complainant to file a motion to amend at that time. There was also evidence in the investigative record regarding the Senior Analyst's knowledge of Complainant's prior protected activity, some of which Complainant cites in support of her cross appeal. CF at 339, 439-41, 655-57. Finally, as the AJ noted, the Senior Analyst's testimony started on March 9, 2021, so Complainant could have made a more immediate motion to amend while the Senior Analyst was still testifying. CF at 1042.

If Complainant had requested to amend her complaint during the Senior Analyst's testimony, the Agency would have had the opportunity to question the Senior Analyst about his knowledge of Complainant's prior protected, activity. In sum, we do not find that it was an abuse of discretion for the AJ to deny the amendment request.

Compensatory Damages

The AJ awarded Complainant non-pecuniary compensatory damages in the amount of \$75,000 in her remedial Order. She found this amount to be consistent with awards she cited to in similar cases and that it took into account the nature and severity of the harm and the duration or expected duration of the harm. See for example, Elliot J. v. SSA, EEOC Appeal No. 2019000550 (Jan. 28, 2020) (awarding \$50,000 for decreased quality of life, anxiety, depression, insomnia, weight gain/loss, inability to concentrate, cardiac issues, hypertension, cardiac issues, panic attacks, mental anguish and lack of motivation to engage in daily tasks); Complainant v. Dep't of the Interior, EEOC Appeal No. 0120131110 (Sept. 18, 2015) (awarding \$75,000 for anxiety, depression and insomnia); and Crear v. Dep't of Veterans Affairs, EEOC Appeal No. 07A50079 (Jan. 26, 2006) (awarding \$70,000 for lack of sleep, fear, nightmares, worry about what the responsible management official would do, upset, anger, embarrassment, professional isolation, losing hair, and a disrupted relationship with spouse and child).

In considering this amount, she also considered the lack of medical evidence presented but weighed that against the "substantial and significant evidence presented" in the form of testimony from both the Complainant and her husband, concerning the severity of her depression and effect on Complainant's professional reputation and familial relationships, as well as the documents presented which supported her finding. In her cross- appeal, Complainant asserts that the damages awarded were inadequate to compensate her for the emotional harm to which she and her husband testified, citing other cases involving higher damage awards that involved differing circumstances, including the submission of medical evidence corroborating treatment for conditions caused by the discriminatory acts. Here, however, the AJ correctly relied upon several cases with similar effects for an appropriate comparison and arrived at an award that was not "monstrously excessive" and served "the purpose of compensating the Complainant for the harm caused by the Agency's harassment and discriminatory actions and treatment." AJ's Decision, CF 2584. Based on the foregoing, we uphold the AJ's assessment of the appropriate damage award in this case.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, it is the decision of the Commission to REVERSE the Agency's final order rejecting the AJ's decision. Since Complainant has established a violation of Title VII, we direct the Agency to comply with the AJ's Order found below.

ORDER (D0617)

The Agency is ordered to take the following remedial actions:

1. Within thirty days of the date this decision is issued, the Agency shall expunge any and all documents regarding the curtailment of the Complainant (defined at hearing as sending her home prior to the scheduled end of her deployment) and non-recommendation for future JSOC support. Any other documents in the Complainant's official personnel file referencing the curtailment shall be rescinded or corrected to remove any language referring to the curtailment. No references shall be made to the curtailment in any future personnel documents.
2. Within thirty days of the date this decision is issued, the Agency shall remove any negative references to "integrity" or "judgment" in Complainant's performance evaluation for the October 2016 through September 2017 time period. The performance evaluation shall be reissued without that language or any language like it, placed in her official personnel file, and the prior evaluation shall be expunged. The Agency shall also send a copy of the new performance evaluation to the Complainant at the time it is placed into her official personnel file or shall send the Complainant a digital notice that it has been entered if it is in an employee accessible database.
3. Within 90 calendar days from the issuance of this decision, Complainant shall be compensated in the amount of \$5,400 for the deployment incentive payment and \$75,000 for non-pecuniary compensatory damages. The Agency shall include the appropriate amount of interest due Complainant, pursuant to 29 C.F.R. § 1614.501.
5. Within 90 calendar days from the issuance of this decision, the Agency shall reimburse the Complainant for attorneys' fees in the amount of \$28,662.50.
6. The Agency is directed to conduct 16 hours of in-person or interactive training for the responsible individuals cited in the AJ's decision order. Eight hours of training shall address responsibilities in the workplace with respect to discrimination and harassment based on race, national origin and sex under Title VII of the Civil Rights Act and EEOC regulations. The second eight hours of training shall address implicit (unconscious) bias and diversity, as well as effective, non-discriminatory communication. Both eight-hour training sessions shall be conducted for all identified individuals no later than 90 days from the date of this decision. The Agency may contact our Training and Outreach Division for Assistance in obtaining the necessary training via <https://www.eeoc.gov/federal-sector/federal-training-outreach>.
7. Within 60 days of the date of this decision, the Agency shall consider taking appropriate disciplinary action against the Senior Analyst and shall notify the Commission of such. 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 the individual has left the Agency's employ, the Agency shall furnish documentation of his departure date. A report explaining the Agency's decision on this matter shall be uploaded to the case file via the Federal Sector EEO Portal (FedSep).

8. The Agency shall post a notice in accordance with the paragraph below entitled, "Posting Order."

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

POSTING ORDER (G0617)

The Agency is ordered to post at its Joint Special Operations Command (JSOC) External Operations Platform (EOP) facility in Jordan 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).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (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)

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

Alternatively, Complainant can submit his or her 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 his or her 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 (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

January 22, 2024

Date