



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

[REDACTED]
Darlena H.,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services
(National Institutes of Health),
Agency.

Appeal No. 2023003372

Hearing No. 531-2021-00397X

Agency No. HHS-NIH-0083-2020

DECISION

On May 19, 2023, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dated March 24, 2023, dismissing her complaint of unlawful 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, we REVERSE the Agency's final order and REMAND the matter for further processing.

ISSUES PRESENTED

The issues presented on appeal are: (1) whether Complainant timely filed her appeal; and (2) whether it was an abuse of discretion for the EEOC Administrative Judge (AJ) to dismiss Complainant's EEO complaint.

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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-0640-5 Health Technician in the Call Center, Nutrition Department (ND), National Institutes of Health (NIH) at the Agency's Clinical Center facility in Bethesda, Maryland.

On January 15, 2020, Complainant initiated contact with an EEO counselor. On August 8, 2020, Complainant filed a formal complaint, which she amended, alleging that the Agency subjected her to discrimination on the bases of race (African American), sex (female), color (Black), disability (physical), and reprisal for prior protected EEO activity (prior EEO complaint and opposing discrimination in November 2018) when:

1. On unspecified dates after November 27, 2019, the former Supervisory Dietitian (Supervisor-1) assigned Complainant to work the same shifts as a coworker (Coworker-1);
2. On unspecified dates after November 27, 2019, Supervisor-1 denied Complainant's requests for preferred work hours and for an alternate work schedule;
3. On unspecified dates after November 27, 2019, Supervisor-1 placed Complainant on special leave restrictions;
4. On unspecified dates after November 27, 2019, Supervisor-1 micromanaged Complainant's work;
5. On an unspecified date in January 2020, Supervisor-1 required Complainant to provide a "confirmation pass" from HR to account for Complainant's absence from the office to visit HR;
6. On January 4, 5 and 9, 2020, and other unspecified dates after November 27, 2019, Supervisor-1 forced Complainant to forfeit overtime opportunities and use unscheduled leave;
7. Since January 8, 2020, the NIH Director failed to respond appropriately to Complainant's concerns regarding harassment and discrimination;
8. On January 27, 2020, Supervisor-1 issued Complainant a 2019 Performance Management Appraisal Program (PMAP) summary rating of 3.8 (Achieved More than Expected Results) and denied Complainant an opportunity to submit her narrative and sign the PMAP;
9. On unspecified dates in February 2020, Supervisor-1 charged Complainant absent without leave (AWOL) and leave without pay (LWOP);

10. On an unspecified date in March 2020, Supervisor-1 denied Complainant's request to telework;
11. On March 29, 2020, the Chief, ND (Chief-1), failed to allow Complainant to leave work 16 minutes early after Complainant learned she may have been exposed to Covid-19 by a coworker;
12. In or around May 2020, Supervisor-1 overlapped the schedules of Complainant and Coworker-1 and failed to ensure that a manager would be on duty;
13. On May 31, 2020, Supervisor-1 modified Complainant's work schedule;
14. On unspecified dates in June 2020, Supervisor-1 charged Complainant AWOL and LWOP;
15. On an unspecified date in June or July 2020, Supervisor-1 informed Complainant that the previously issued Cease and Desist Orders for Complainant and Coworker-1 were revoked and failed to provide any resolution to Complainant's safety or workload concerns when working the same shift as Coworker-1;
16. On an unspecified date, ND management failed to discipline Coworker-1 for deliberately jamming the tube station by allowing canisters to pile up, causing delays with patient care;
17. On an unspecified date, Supervisor-1 endorsed Coworker-1 to be exempt from collaborating on work;
18. On an unspecified date, Supervisor-1 failed to discipline Coworker-1 after Complainant advised Supervisor-1 that Coworker-1 was sending food items through the pneumatic tube system, which was prohibited by the Epidemiology Department;
19. On unspecified dates, ND management denied three coworkers required reasonable accommodations;
20. On unspecified dates, Supervisor-1 involved unknown parties in high leadership roles to sit in on meetings Supervisor-1 conducted with Complainant;
21. On unspecified dates prior to November 28, 2019, Supervisor-1 micromanaged Complainant's work;
22. On unspecified dates prior to November 28, 2019, Supervisor-1 assigned Complainant and Coworker-1 to work the same shifts;
23. On unspecified dates prior to November 28, 2019, Supervisor-1 denied Complainant referred work hours;
24. On unspecified dates before November 28, 2019, Supervisor-1 forced Complainant to forfeit overtime opportunities and use unscheduled leave;

25. In November 2018, Supervisor-1 threatened that, if Complainant, Coworker-1, and another coworker (Coworker-2) could not get along, someone would lose their job;
26. On various dates before November 28, 2019, and on December 22, 2019, ND management failed to discipline coworkers who were negligent regarding patient care;
27. In February 2019, Supervisor-1 failed to take action after Coworker-1 delegated work to Complainant;
28. On July 8, 2019, Supervisor-1 discussed a work error with Complainant during her 2019 PMAP progress review;
29. On August 26, 2019, Supervisor-1 issued Complainant a Letter of Reprimand for a June 2019 incident;
30. On an unspecified date in September 2019, Supervisor-1 required Complainant to provide a "confirmation pass" from HR to account for her absence from the office to visit HR;
31. On an unspecified date in November 2019, Supervisor-1 threatened to deny Complainant's request to use annual leave for Thanksgiving 2019 and advised Complainant that she might want to change the leave request to sick leave;
32. In November 2019, Supervisor-1 excluded Complainant from the option of telework when the telework program rolled out;
33. On November 27, 2019, Supervisor-1 refused to accept Complainant's submission of form OPM-71 to request off New Year's Day and required Complainant to report to NIH to request the leave;
34. After Complainant had major surgery in November 2019, Supervisor-1 was begrudging in providing Complainant details of her return-to-work schedule;
35. On or about February 10, 2020, Supervisor-1 failed to discipline Coworker-1 after Complainant and others communicated to Supervisor-1 that there was an ongoing problem with Coworker-1 not printing menus; and
36. On August 2, 2020, Complainant was constructively discharged.

Because Complainant's complaint included an allegation involving the NIH Director, the Agency processed Complainant's complaint as a conflict-of-interest complaint. The Agency identified claim (36) as a mixed case claim, which it spun off as a separate complaint, Agency No. HHS-NIH-0731-2020.

The Agency dismissed claims (16) through (35). The Agency dismissed claims (16) through (26), (34), and (35) for failure to state a claim pursuant to 29 C.F.R. § 1614.107(a)(1), finding that Complainant was not personally aggrieved by the challenged actions. The Agency dismissed claims (21) through (25), claims (27) through (33), and claim (26) for all dates except December 22, 2019, for stating the same claim as a pending EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(1). According to the Agency, Complainant's prior EEO complaint, Agency No. HHS-NIH-CC-081-19, encompassed the time span from November 2018 through November 27, 2019, and involved identical allegations. The Agency also dismissed claims (22) through (24), claim (29), claim (32), claim (33), and claim (20) with respect to any incidents before December 1, 2019, for untimely EEO counselor contact pursuant to 29 C.F.R. § 1614.107(a)(2).

At the conclusion of the investigation into the accepted claims, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC AJ. Complainant timely requested a hearing.

On August 12, 2022, the AJ assigned to the case issued an Order Scheduling Initial Teleconference and Order to Produce Documents. The AJ's Order scheduled the Initial Teleconference for October 4, 2022. On August 14, 2022, Complainant filed a motion requesting an extension of time to participate in the Initial Teleconference. Complainant stated that she "will be on military orders from August 16, 2022 to approximately January 2023, and will not have access to email or phone during that time" and requested that the Initial Teleconference take place after January 2023.

On August 17, 2022, the AJ issued an Order Dismissing Complainant's Complaint Without Prejudice dated June 22, 2022 (Order-1). The AJ stated that, having no objections from either party and in the interest of docket efficiency, they were dismissing without prejudice the instant complaint and that, to reinstate her complaint, Complainant needed to email the undersigned AJ no later than February 6, 2023. The AJ averred that Complainant was hereby notified that failure to reinstate the matter by February 6, 2023, would be interpreted as a waiver of her right to pursue her claims and that the AJ would dismiss the matter, with prejudice. The AJ certified that Order-1 was issued to the parties via the electronic docket.

On February 7, 2023, the AJ issued a Dismissal Order (Order-2), which stated that Order-1 had directed Complainant to email the AJ directly by February 6, 2023, to reinstate her complaint and that no such email had been received. The AJ also noted that Order-1 had provided notice to Complainant that failure to reinstate her complaint by that deadline would result in dismissal of her complaint with prejudice. Accordingly, the AJ dismissed Complainant's EEO complaint with prejudice and certified that Order-2 was issued to the parties via the electronic docket.

On March 24, 2023, the Agency issued a final order stating that it would adopt and fully implement the AJ's decision to dismiss Complainant's complaint with prejudice. The Agency emailed Complainant a copy of the final order on March 24, 2023. The certificate of service stated that, for timeliness purposes, it would be presumed that the below-named individuals received the final order within one calendar day after it was sent by email.

On May 19, 2023, Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Complainant states that she was unable to file an appeal within 30 days of March 24, 2023, because she recently joined the military and did not have access to her email during training. According to Complainant, she first received the email with the Agency's final order on May 9, 2023.

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

STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes.

In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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”).

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). This gives an AJ wide latitude in directing the terms, conduct, or course of EEO administrative hearings. EEO MD-110 at Chapter 7, § III.D; Chere S. v. Gen. Serv. Admin., EEOC Appeal No. 0720180012 (Nov. 30, 2018) (citations omitted). Accordingly, such determinations by the AJ are reviewed based on an abuse of discretion standard.

ANALYSIS

Timeliness of Complainant's Appeal

Appeals to the Commission must be filed within thirty (30) calendar days after Complainant receives notice of the Agency's final action. 29 C.F.R. § 1614.402(a). Specifically, our regulations provide that if Complainant is represented by an attorney of record, the 30-day time period shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by Complainant. 29 C.F.R. § 1614.402(b). If a complainant or the complainant's representative does not file an appeal within the designated time limit, the appeal is untimely and will be dismissed by the Commission unless the principles of waiver, estoppel or equitable tolling apply. 29 C.F.R. §§ 1614.403(c), 1614.604(f); Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 95-96 (1990); Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 398 (1982).

Here, the Agency issued its final order on March 24, 2023, which it sent to Complainant by email.

Complainant, who was not represented by counsel, states on appeal that she did not receive the Agency's final order until May 9, 2023. Moreover, Complainant explains on appeal that she did not see the Agency's email transmitting the final order until May 9, 2023, because she joined the military and had recently completed military training. In her August 14, 2022, motion requesting an extension of time to participate in the initial teleconference, Complainant stated that she would "be on military orders from August 16, 2022, to approximately January 2023" and that she would "not have access to email or phone during that time."

As mentioned above, 29 C.F.R. § 1614.604(f) provides that time limits are subject to waiver, estoppel, and equitable tolling. A complainant who is on active duty status is protected by the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. § 3901 et seq. See Cross v. U.S. Postal Serv., EEOC Request No. 05940901 (May 18, 1995), citing Bowles v. Dixie Cab Ass'n, 113 F.Supp. 324 (D.D.C. 1953) (interpreting SCRA's predecessor, the Soldiers' and Sailors' Civil Relief Act of 1940). SCRA provides for the temporary suspension of legal proceedings that may prejudice the civil rights of persons in military service who have been detailed by proper authority for duty. The Commission has previously held that the time period during which a complainant was in active-duty status is excluded from the computation of time in determining whether a complaint was timely filed. See Thomas v. U.S. Postal Serv., EEOC Request No. 05990488 (Oct. 14, 1999) (finding good cause for extending the time period to file a complaint given complainant was in an active duty status); Myrbeck v. Dep't of Veterans Affs., EEOC Request No. 05970331 (Apr. 10, 1997) (finding the time for filing formal complaint should be tolled because complainant had military orders to receive medical treatment); Cross, EEOC Request No. 05940901 (finding the time period in which complainant was in active duty status for training was excluded from the computation of time in determining whether the complaint was timely filed). The Commission similarly found that the time limits for providing an affidavit during an EEO investigation and requesting a hearing should be equitably tolled while a complainant was deployed on active duty. See Complainant v. U.S. Postal Serv., EEOC Request No. 0520150345 (Sept. 4, 2015).

Complainant filed the instant appeal on May 19, 2023, which was within 30 days of when she stated that she received the Agency's final order on May 9, 2023. The Agency's certificate of service stated that it would be presumed that Complainant received the final order within one calendar day of March 24, 2023.

Where, as here, there is an issue of timeliness, “[a]n agency always bears the burden of obtaining sufficient information to support a reasoned determination as to timeliness.” Guy v. Dep’t of Energy, EEOC Request No. 05930703 (Jan. 4, 1994) (quoting Williams v. Dep’t of Def., EEOC Request No. 05920506 (Aug. 25, 1992)). The Agency has not provided any evidence showing when Complainant received the final order. Moreover, the time during which Complainant was in active duty status for training is excluded from the computation of time in determining whether her appeal was timely filed. See Cross, supra. Accordingly, we find that Complainant timely filed her appeal because it was filed within 30 days of receipt of the Agency’s final order.

The AJ’s Dismissal of the Complaint

On August 12, 2022, the AJ issued an order scheduling the Initial Teleconference for October 4, 2022. On August 14, 2022, Complainant filed a motion for an extension to participate in the Initial Teleconference, explaining that she would be on military orders from August 16, 2022, to approximately January 2023 and that she would not have access to email or phone during that time.

On August 17, 2022, the AJ issued Order-1, dismissing the complaint without prejudice and stating that, in order to reinstate her complaint, Complainant needed to email the AJ no later than February 6, 2023. The AJ notified Complainant that “failure to reinstate this matter by February 6, 2023, will be interpreted as a waiver of her right to pursue her claims. If this occurs, and I do not receive a request to reinstate this complaint by February 6, 2023, I will dismiss the instant matter, with prejudice.” The AJ issued Order-1 to the parties via the electronic docket on the same date, August 17, 2022. Because Complainant stated that her military orders started on August 16, 2022, she presumably did not have access to phone or email when the AJ issued Order-1 warning her that her EEO complaint would have been dismissed if she did not request reinstatement of her complaint by February 6, 2023. Complainant did not email the AJ by February 6, 2023, requesting to reinstate her complaint. On February 7, 2023, the AJ issued Order-2, dismissing Complainant’s EEO complaint without prejudice.

The record does not contain a copy of Complainant’s military orders. In August 2022, Complainant informed the AJ that her military orders extended through “approximately January 2023.”

Although the Agency emailed Complainant its final order adopting the AJ's decision dismissing the complaint on March 24, 2023, Complainant informed the Agency that she did not receive the email until May 9, 2023. Complainant explained that she joined the military and had only recently completed training, which appears to show that Complainant's military orders were extended.

Given the AJ's broad authority to regulate the conduct of a hearing, a party claiming that the AJ abused his or her 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). As we pointed out in Trina C., however, the Commission has found abuse of discretion by the AJ under a variety of circumstances. See Frederick A. v. Dept. of the Navy, EEOC Appeal No. 0120140377 (June 15, 2016) (dismissing complaint where complainant's partial response did not rise to the level of contumacious conduct); Madaris v. U.S. Postal Serv., EEOC Appeal No. 0120131585 (Aug. 13, 2013) (taking testimony by telephone absent exigent circumstances or a joint request from the parties); Duckwiley v. General Servs. Admin., EEOC Appeal No. 0120103514 (Feb. 4, 2011) (excluding claim accepted for processing by the agency and referred for investigation); Santos v. Dep't of Agric., EEOC Appeal No. 0120064263 (Sept. 26, 2008) (issuing a decision without a hearing when material facts remained in genuine dispute).

Here, the record appears to reflect that Complainant was on active duty both when the AJ warned her on August 17, 2022, that her complaint would be dismissed if she did not email the AJ by February 6, 2023, and on February 7, 2023, when the AJ dismissed her complaint, interpreting her failure to email to request reinstatement of her hearing request by February 6, 2023, as a waiver of her right to pursue her claims. Although the AJ was aware that Complainant was on active duty through "approximately January 2023," the AJ inappropriately found that Complainant not responding by February 6, 2023, constituted waiver of her complaint. See Complainant, EEOC Request No. 0520150345 (finding that the agency was on notice of complainant's deployment prior to conducting the investigation and issuing the FAD and therefore should have held the case in abeyance while she was on active duty).

Because Complainant's military orders had started by the time the AJ issued Order-1, there is no evidence that Complainant was even on notice of the February 6, 2023, deadline. Accordingly, we find that it was an abuse of discretion for the AJ to dismiss Complainant's complaint.²

Under the circumstances of this case, we find that it is appropriate to equitably toll any time limits for contacting the AJ to request reinstatement of her hearing request. Complainant does not indicate on appeal whether she is requesting reinstatement of her hearing request. We also note that it is possible that Complainant is now on active military duty or has recently received orders for active military duty. Accordingly, we will order the Agency to verify whether Complainant is on active duty or has been called up for active duty³ and reissue Complainant notice of the right to request a hearing on remand.

² Under the circumstances presented by this case, dismissal of the hearing request constitutes an abuse of discretion. The Commission has held that dismissal of a hearing request by an AJ as a sanction is only appropriate in extreme circumstances, such as when the complainant engages in contumacious conduct, not merely negligence. See Schoenrogge v. Dep't of Justice, EEOC Appeal No. 0120130893 (May 20, 2013) citing Thomas v. Dep't of Transp., EEOC Appeal No. 01870232 (Mar. 4, 1988) (dismissal of hearing request appropriate where the complainant engaged in contumacious conduct that included repeated failure to comply with discovery obligations and serious abuse of process by filling voice mail boxes of AJ and Agency Counsel with erratic, lewd, and vulgar messages regarding his complaint to the point where intervention of the Federal Protective Service and local police was necessary); Robert A. v. U.S. Postal Serv., EEOC Appeal No. 0120182698 (Feb. 21, 2020) (dismissal of hearing request upheld where complainant failed to respond to order to show cause and did not provide evidence that he was incapacitated and unable to comply with the AJ's order).

³ The Department of Defense Manpower Data Center (DMDC) maintains a SCRA website where it is possible to verify the active duty status for an individual on a specified date. See Servicemembers Civil Relief Act (SCRA) Website, <https://scra.dmdc.osd.mil/scra/#/home> (last visited Jan. 3, 2025). The Agency, as Complainant's former employer, should have access to Complainant's demographic information needed to perform a search to determine if she is currently on active duty or has been notified of call-up to active duty.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order dismissing Complainant's complaint and REMAND the matter to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency shall determine if Complainant is on active duty or has been notified a call-up to active duty and provide Complainant notice that it will hold her complaint in abeyance and/or notice of her right to request a hearing before an EEOC AJ.

- (1) The Agency shall perform a search on the Department of Defense Manpower Data Center (DMDC) SCRA website, using the date the Agency performs the search as the default active-duty status date, in order to determine if Complainant is on active duty as of that date or has been notified of call-up to active duty prior to that date. See Servicemembers Civil Relief Act (SCRA) Website, <https://scra.dmdc.osd.mil/scra/#/home> (last visited Jan. 3, 2025); Servicemembers Civil Relief Act (SCRA) Website, User Guide, <https://scra.dmdc.osd.mil/scra/services/content/documents/userGuide> (last visited Jan. 3, 2025).
- (2) If, after searching the DMDC SCRA website, the Agency determines that Complainant is on active military duty or has been notified she is being called up to active duty, the Agency shall inform Complainant that it will hold the processing of her complaint in abeyance until her return from active military duty. The notice shall inform Complainant that, within thirty (30) calendar days of her return from active military duty, she shall contact the Agency to request reinstatement of her complaint. Within thirty (30) calendar days of receipt of Complainant's request to reinstate her complaint, the Agency shall issue Complainant notice of the right to request a hearing before an EEOC AJ.
- (3) If, after searching the DMDC SCRA website, the Agency does not receive confirmation that Complainant is on active military duty or has been notified she is being called up to active duty, the Agency

shall issue Complainant notice of the right to request a hearing before an EEOC AJ.

- (4) If Complainant requests a hearing, the Agency shall submit to the Hearings Unit of the EEOC's Baltimore Field Office a renewed request for a hearing on this complaint on behalf of Complainant, the complete complaint file, and a copy of this appellate decision within fifteen (15) calendar days of receipt of Complainant's complaint. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Within five (5) calendar days of the date of assignment of the hearing number, the Agency shall provide written notification to the Compliance Officer. Thereafter, the Administrative Judge shall issue a decision in accordance with 29 C.F.R. § 1614.109 in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.
- (5) If Complainant requests a final decision without a hearing, the Agency shall issue a final decision with the appropriate appeal rights within thirty (30) calendar days of receipt of Complainant's request.
- (6) As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: (1) documentation of the Agency's search on the DMDC SCRA website to verify Complainant's active duty status; (2) if applicable, a copy of the Agency's notice that it is holding Complainant's complaint in abeyance and Complainant's request to reinstate her complaint; (3) a copy of the Agency's notice of the right to request a hearing; and (4) a copy of Complainant's request for a hearing, written notification that the complete complaint file has been transmitted to the Hearings Unit, and written notification of the new hearing number; or (5) a copy of the final agency decision ("FAD") if Complainant does not request a hearing.

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 13, 2025

Date