



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

[REDACTED]  
Junior T.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Federal Bureau of Prisons),  
Agency.

Appeal No. 2023004886

Hearing No. 550-2018-00216X

Agency No. BOP-2016-01164

DECISION

On July 24, 2023, an EEOC Administrative Judge (AJ) issued a decision containing findings that the Agency had violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, by subjecting Complainant to a hostile work environment based on his sex and reprisal for prior EEO activity. Concurrent with its August 31, 2023 final order rejecting the AJ's decision, the Agency filed a timely appeal, which the Commission accepts pursuant to 29 C.F.R. § 1614.403(a).

On appeal, the Agency requests that the Commission affirm its rejection of the AJ's discrimination findings. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ. Specifically, the Agency determined that Complainant is not entitled to receive compensatory damages or attorney's fees and costs. The Agency also determined that there is no legal basis for the additional relief that the AJ ordered, which consisted of training for management personnel, the posting of a notice, the restoration of 140 hours of sick leave, and the expungement of negative information in Complainant's OPF file. For the following reasons, the Commission REVERSES the Agency's final order.

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<sup>1</sup> 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

The issue is whether there is substantial evidence to support the AJ's decision after a hearing finding that the Agency subjected Complainant to a hostile work environment based on his sex and reprisal for prior EEO activity.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Correctional Officer at the Department of Justice, Federal Correctional Institution in Herlong, California (FCI Herlong).

On December 14, 2016, Complainant filed an EEO complaint alleging that the Agency subjected him to hostile workplace discrimination on the bases of sex (male) and reprisal for prior protected EEO activity. In support of this claim, Complainant asserted the following allegations:

1. On various dates in 2016, the Senior Officer Specialist (Senior Correctional Officer (G)) discussed information of a sexual nature regarding Complainant's spouse with other Agency staff.
2. On March 6, 2017, Complainant's co-worker, Correctional Officer (F), threatened Complainant with physical harm;
3. In March 2017 and thereafter, Complainant's assigned duties were altered;
4. On March 20, 2017, the Special Investigative Services (SIS) Lieutenant sent an e-mail to all Disturbance Control Team (DCT) members that Complainant believed was regarding him;
5. On March 24, 2017, confidential information regarding Complainant was disseminated by the Agency to the Captain, SIS Lieutenant and bargaining unit staff at FCI Herlong, including to an Officer, who Complainant claims harassed him on April 4 and 7, 2017;
6. On August 16, 2017, Complainant was issued a minimally satisfactory performance log entry;
7. On October 16, 2017, Complainant was notified that his co-worker made inappropriate comments of a sexual nature in reference to him and his wife.

The Agency accepted the claims and conducted an investigation which produced the following evidence.

In February 2015, Complainant married a woman who was not an Agency employee. In June 2016, Complainant's spouse received a text message from Correctional Officer (M), stating that he had "heard something interesting about [her]." She stated that she immediately called him, and he told her that he had heard that she and Complainant were "swingers."<sup>2</sup> Complainant's spouse testified that she then told Complainant, who called Correctional Officer (M) and heard about other rumors, including that she was having an affair with Senior Correctional Officer (G), who was a co-worker of Complainant's and who worked with him in the Special Housing Unit. Complainant and his wife then drove to five of their co-workers' houses to find out the source of these rumors. When Complainant and his wife confronted four of these co-workers, they indicated that Senior Correctional Officer (G) had been showing nude photos and a video of Complainant's spouse.

According to Complainant, upon confronting Senior Correctional Officer (G), the latter told him that the rumors of an affair were not true, that he did not know how Complainant's co-workers had seen any photos, and that they were "making it up." However, shortly thereafter Complainant texted Senior Correctional Officer (G) and accused him of taking the photos and video off his (Complainant's) phone, and Senior Correctional Officer (G) texted back, "I took them out of your phone during annual refresher training. I'm sorry. Don't blame [your wife]." In light of Senior Correctional Officer (G)'s admission and apology, Complainant initially decided he would not pursue the matter any further. However, after returning to work a few days later, Complainant discovered that Senior Correctional Officer (G) was telling other FCI Herlong employees that he was, in fact, having an affair with Complainant's wife; that she had sent him the photos and the graphic video; that Senior Correctional Officer (G) was "appeasing" Complainant by telling him that he, Senior Correctional Officer (G), had taken the photos out of Complainant's phone; and that Senior Correctional Officer (G) was lying to "protect" Complainant's wife. On June 20, 2016, Complainant submitted a two-page memo to the SIS Lieutenant and Acting Captain and copied another SIS Lieutenant. In that memo Complainant explained that a co-worker had informed him that four months earlier at a super bowl party, Senior Correctional Officer (G) had shown him nude photos and a sexually explicit video of Complainant's wife. The memo further stated that another co-worker had confirmed to Complainant that Senior Correctional Officer (G) had shown him the same photos in April or May 2016. Complainant wrote that he believed the photos and video were stolen from his phone. At the end of the memo, Complainant wrote:

I would also like to note that I first desired to internalize this entire conflict, keeping it completely separate from my employer; however, because of the unimaginable situation created solely by [Senior Correctional Officer (G)], a possible problematic working relationship now exists between him and that of all co-workers that were involved.

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<sup>2</sup> Those who engage freely in sex.

In response to Complainant's memo, on June 20, 2016, an SIS Lieutenant referred both Complainant and Senior Correctional Officer (G) to EAP counseling. The other SIS Lieutenant also referred the matter to the Agency's Office of Internal Affairs (OIA). On July 27, 2016, OIA authorized a local investigation into "Unprofessional Conduct," listing both Senior Correctional Officer (G) and Complainant as subjects. The authorization letter stated the completed investigation along with supporting documentation should be forwarded to OIA within 120 days. According to Complainant, he only became aware of the OIA authorization letter when he saw it in the EEO Report of Investigation (ROI), which was completed in June 2017. An SIS Lieutenant, who was assigned to conduct the local investigation, despite the fact that he was Senior Correctional Officer (G)'s friend, did not contact Complainant, his wife, or co-workers to interview them or to get sworn statements. In August 2016, both Complainant and his wife separately contacted the SIS Lieutenant. Complainant's wife contacted the SIS Lieutenant after her husband was coming home from work upset about continuing rumors and the lack of investigation. She ended up meeting the SIS Lieutenant in a local Starbucks where, among other things, she discussed the possibility of her husband initiating an EEO complaint. Complainant's spouse testified that she felt "uncomfortable by some of the things he [the SIS Lieutenant] was saying" so she began to record the conversation with her phone. In the certified transcript of the conversation entered into the hearing record as CE-1, the SIS Lieutenant stated that while filing an EEO is "an option," for him the "leave me alone approach" has been most helpful. He also stated with regard to programs like the EEO process, they're meant to "help" but "tend to hinder," and that he's seen the EEO process "do damage to ninety percent of the forest to save this tiny little garden, which didn't die." The SIS Lieutenant then reiterated that filing an EEO complaint is an "option" but stated that he himself "wouldn't consider it." Complainant's wife shared the recording with her husband later that same evening. Complainant, for his part, stated in his affidavit that because Senior Correctional Officer (G) was continuing to tell their co-workers that his wife had tried to initiate a sexual relationship with Senior Correctional Officer (G), he, Complainant, "was approached by staff members on a daily basis about whether [he] was a swinger, about whether [his] wife was a swinger, if this was a swinging incident that had gone bad." In response, on August 1, 2016, Complainant e-mailed the SIS Lieutenant and asked to meet with him. According to Complainant, he and the SIS Lieutenant met approximately two weeks later, and Complainant recounted what the SIS Lieutenant told him:

[C]ertain things are expected of me because I represent the Disturbance Control Team and that they've invested a lot in me, and I'm being groomed for certain things and that I need to be able to persevere and deal with it and that [Senior Correctional Officer (G)] is a liar. And it brought a lot of comfort to me when he said that because I felt that he was being, he was being very real with me by stating [Senior Correctional Officer (G)] was a liar. I felt very comforted by him saying that because he was an investigator. In hindsight I see that after nine months that lapsed after that with no action that it only hurt me more. But he told me that I needed to deal with it and that he did not want me to use sick time, that this is not something I should be using sick time for. His exact words were "This isn't something I want to see you using sick time for."

Also in August 2016, both Complainant and his wife started to see an EAP Counselor. According to Complainant, he felt like he “just couldn’t come into work anymore. . . .” Complainant contacted EEO on September 3, 2016. At that time, Complainant stated that his assigned duties had been altered, his work performance had been interfered with, and a hostile work environment had been created as a result of the lack of accountability for Senior Correctional Officer (G)’s actions.

On December 22, 2016, Complainant and his wife went to the Reno Police Department and reported a crime, i.e., that Senior Correctional Officer (G) had unlawfully disseminated an intimate image. Complainant informed both SIS Lieutenants the next day. On February 10, 2017, Complainant sent a Memoranda for the Record (MFR) to the investigating SIS Lieutenant, complaining of FCI Herlong’s delayed response and the fact that he continued to have to work with Senior Correctional Officer (G). On February 21, 2017, Complainant sent an MFR to both SIS Lieutenants, notifying them that he had been informed by Reno PD that Senior Correctional Officer (G) had admitted to the initial theft of the intimate pictures and video from Complainant’s phone and the subsequent display of them to Agency employees. On March 12, 2017, Senior Correctional Officer (G) resigned from the Agency. At a March 21, 2017 hearing on Complainant and his wife’s application for a Temporary Restraining Order (TRO) against Senior Correctional Officer (G), Senior Correctional Officer (G) admitted to taking the photos and video from Complainant’s phone and sending them to his own phone in December 2015. He also admitted showing them to co-workers.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing on April 24, 25, 2023, and issued a decision on July 24, 2023. The Agency subsequently issued a final order rejecting the AJ’s finding that Complainant proved that the Agency subjected him to discrimination as alleged.

The AJ specifically found that Complainant established that he was subjected to a sexually hostile work environment when Senior Correctional Officer (G) stole nude photos and a sexually explicit video from Complainant’s phone, spread false rumors about Complainant’s wife trying to initiate an affair with him, and led co-workers and some members of management to further spread rumors that Complainant and his wife were “swingers.” The AJ also found that management failed to take timely and appropriate corrective action in response to Complainant’s June 16, 2016 report of a sexually hostile work environment to the investigating SIS Lieutenant. The AJ further found that members of management and other FCI Herlong employees actively and intentionally engaged in a retaliatory campaign to isolate Complainant, render him unpromotable, dissuade other employees from befriending him or staying friends with him, and intimidate him. This campaign was based both on Complainant’s filing an EEO complaint and his original good faith opposition to being subjected to a hostile work environment. With regard to the specifically identified allegations of reprisal, the AJ found in Complainant’s favor on claims (2), (3), and (4) and in the Agency’s favor on claims (5) and (6).

In a supplemental order following her findings of discrimination, the AJ ordered non-pecuniary, compensatory damages relief in the amount of \$85,000. In reaching this amount, the AJ concluded that the evidence of record, from Complainant, his wife, management and his co-workers, is that Complainant was deeply affected by Senior Correctional Officer (G)'s theft, the Agency's failure to timely investigate and uncover the truth, the consequent perpetuation of Senior Correctional Officer (G)'s lies by management and staff, the retaliatory ostracizing of Complainant, and the virtual implosion of what had been a happy and productive workplace for Complainant. The AJ also ordered: expungement of negative information in Complainant's OPF file; restoration of 140 hours of sick leave; training for FCI Herlong management personnel; and posting of a notice informing all employees at FCI Herlong that a finding of discrimination and reprisal has been made against the Agency and that they have a right to be free from hostile work environment harassment and from unlawful retaliation for engaging in protected EEO activity. Finally, the AJ awarded attorney's fees and costs for a total of \$56,236.80.

### CONTENTIONS ON APPEAL

The Agency mainly argues:

[T]he evidence both in the file and presented at hearing failed to demonstrate that the alleged conduct was unwelcome. In fact, the evidence demonstrated that despite the Agency's diligent efforts to investigate the Complainant's allegations of misconduct, stop the "rumor mill", and mitigate any damage to Complainant, the Complainant repeatedly discussed the ongoing investigation of misconduct, and later, his EEO complaint, with a wide variety of co-workers and supervisors.

The Agency maintains that the record does not support a reprisal finding. In response, Complainant asks the Commission to uphold the AJ's findings of discrimination and remedies awarded.

### ANALYSIS AND FINDINGS

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 EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

### *Hostile Work Environment*

To prove his harassment claim, Complainant must establish that he was subjected to conduct that was either so severe or so pervasive that a “reasonable person” in Complainant’s position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of a protected basis – in this case, his sex or prior EEO activity. Only if Complainant establishes both of those elements – hostility and motive – will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). See also, Enforcement Guidance on Harassment in the Workplace, EEOC Notice No. 915.064 (April 29, 2024).

Furthermore, an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 118 S.Ct. 2257, 2270 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 2292-93 (1998). However, where the harassment does not result in a tangible employment action (e.g., a discharge, demotion, or undesirable reassignment) the employer can raise an affirmative defense, which is subject to proof by a preponderance of the evidence, by demonstrating that it exercised reasonable care to prevent and correct promptly any harassing behavior; and the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. See Burlington Industries, supra; Faragher, supra; Enforcement Guidance on Harassment in the Workplace (Supervisor – Vicarious Liability), EEOC Notice No. 915.064 (April 29, 2024). In the case of co-worker harassment, an employer is responsible for acts of harassment in the workplace where the employer (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. Id.

In order to establish a prima facie case of sex or reprisal harassment, a complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that they are a member of a statutorily protected class; (2) that they were subjected to unwelcome conduct related to their class; (3) that the harassment complained of was based on their class; (4) that the harassment had the purpose or effect of unreasonably interfering with their work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) that there is a basis for imputing liability to the employer. Celine B. v. Dep’t of Navy, EEOC Appeal No. 2019001961 (Sept. 21, 2020).”

*(Sex: Claims 1-7)*

The AJ noted that Complainant learned in June 2016 that Senior Correctional Officer (G) was showing nude pictures and a sexually explicit video of Complainant’s wife to co-workers and claiming that Complainant had sent them to him in an attempt to start an affair. Although Senior Correctional Officer (G) initially admitted to Complainant that he had taken the photos and video from Complainant’s phone without his permission, he subsequently retracted his admission and repeated the lie to co-workers and supervisors at FCI Herlong.

Furthermore, Senior Correctional Officer (G)'s lies led to rumors that Complainant and his wife were "swingers," rumors that Complainant was asked about at work. The Agency has argued over the course of this case that Senior Correctional Officer (G)'s actions were not based on Complainant's sex, that Complainant's wife is not an Agency employee, and that much of the alleged harassment occurred outside of the workplace. However, it is clear from the evidence that Complainant himself was asked at work about his alleged "swinger" lifestyle and that lies about his sex life were perpetuated by employees at work, including by the SIS Lieutenant, who at one time was supposed to be investigating Complainant's initial hostile work environment claim against Senior Correctional Officer (G). Furthermore, in a community as small and tightknit as FCI Herlong, where work and social life overlapped so significantly, Senior Correctional Officer (G)'s theft and display of a video of Complainant's wife masturbating created an untenable work environment for Complainant. The Agency also argues Complainant himself had shown nude photos and an explicit video of his wife to his co-workers. Complainant concedes that he had shown "boudoir" photos to a few co-workers but categorically denies showing fully nude photos or the video to anyone at work. The AJ noted that both Complainant and his wife testified consistently on this issue, with Complainant admitting the inappropriate behavior he had done, and after observing their demeanor throughout their testimony, the AJ found them both credible.

The AJ further noted that the OIA investigative report eventually produced by the Agency in March 2018 (AE-1) contains the investigator's summary of the witnesses' statements, but not the statements themselves. Thus, it is unclear if any of the witnesses provided their statements under oath. Some of the witnesses interviewed in the OIA investigation claimed Complainant himself showed them the nude photos and the sexually explicit video. However, the Agency called none of these witnesses at the hearing, and as the record is replete with evidence that Senior Correctional Officer (G)'s actions, even after he confessed and resigned, divided the facility into Senior Correctional Officer (G) versus Team Complainant, the AJ was unable to credit the absent witnesses over Complainant and his wife who appeared and testified credibly. Nonetheless, it is undisputed that Senior Correctional Officer (G) stole the photos and video and displayed them without Complainant's permission and in a manner that was decidedly unwelcome. Complainant clearly communicated that unwelcomeness to Senior Correctional Officer (G) and both SIS Lieutenants. In contrast, no one appears to have mentioned, much less complained, to management about any photos Complainant displayed until after he raised the issue of Senior Correctional Officer (G)'s theft to the investigating SIS Lieutenant. The AJ found that Senior Correctional Officer (G)'s actions and falsehoods and the subsequent repetition of those falsehoods created a sexually hostile work environment for Complainant. We agree.

As noted previously, Complainant reported the hostile work environment harassment to the investigating SIS Lieutenant in June 2016. However, the Agency did not even complete the investigation until almost two years later. During the nine-month period between June 2016 and March 2017 when Senior Correctional Officer (G) resigned and subsequently confessed in open court to the theft, the Agency virtually did no investigation whatsoever.

The investigating SIS Lieutenant received an MFR that Senior Correctional Officer (G) drafted on June 20, 2016, in which Senior Correctional Officer (G) repeated his lie that Complainant's wife had sent him the photos and video. There is no evidence that Senior Correctional Officer (G) was interviewed, that any attempt was made to confirm how he received the videos and photo, or that any kind of substantive interview was conducted with Complainant's wife. The AJ found that liability attaches to the Agency due to its failure to take timely appropriate corrective action with regard to Complainant's June 2016 report to the investigating SIS Lieutenant. We also agree.

*(Reprisal: Claims 2-6)*

Concerning the overall reprisal campaign lodged against Complainant, the AJ noted that several lieutenants warned employees to stay away from Complainant, "a rat," and even threatened consequences to the employees' own careers if they did not disassociate from Complainant. Furthermore, in July 2018, when a new warden came to FCI Herlong, he was told by executive staff members, including "the associate wardens, captain, several department heads, and then off and on through -- just through rounds from line staff" that "[Complainant] is. . . trouble, to stay away from him. He's a weirdo. You'll figure it out. You'll hear some things, but . . . the consensus was to stay away from him." Contrary to what he was being told, however, the Warden found Complainant to have "a good head on his shoulders" and assigned him a mentor. However, the Warden later learned that staff was discouraged from mentoring Complainant because "he was bad news." Again, this campaign was based both on Complainant's filing an EEO complaint and his original good faith opposition to being subjected to a hostile work environment. The Warden ended up promoting Complainant to Case Manager. The AJ noted that the investigating SIS Lieutenant's comments to Complainant's wife in August 2016 appear to have been specifically intended to keep Complainant from pursuing an EEO complaint, despite this Lieutenant's lip service that it was "an option." The AJ also addressed the five individual events alleging retaliation (noted above), finding reprisal in claims (2), (3), and (4).

After a careful review of the record, we discern no basis to disturb the AJ's findings of discrimination. The findings of fact are supported by substantial evidence, and the AJ correctly applied the appropriate regulations, policies, and laws. While the Agency maintains that Complainant did not prove that he was subjected to a hostile work environment based upon his sex, the AJ articulated her reasoning for finding the Agency had subjected Complainant to a hostile work environment. Specifically, Complainant was repeatedly asked at work about his alleged "swinger" lifestyle and that lies about his sex life were perpetuated by employees at work. Additionally, the substance of the harassment investigation is lacking. There was little attempt to immediately contact the people relevant to the matters examined during the internal investigation. Agency witnesses who provided accounts on which the Agency relied were not called by the Agency at hearing. Also, the length of time this investigation stayed open or remained incomplete calls into question the legitimacy of the investigation. Given the circumstance that Complainant was complaining about retaliatory assignment(s), the AJ found that the changing of Complainant's assignments were done to retaliate against Complainant for filing a harassment complaint and then complaining about those who continuously harassed him.

We agree. Complainant has established that he had been subjected to a hostile work environment based upon his sex and reprisal for pursuing an EEO complaint. Furthermore, the Commission affirms the AJ's award of compensatory damages and other remedies ordered in this matter.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, the Commission REVERSES the Agency's final order and remands the matter to the Agency to take corrective action in accordance with this decision and the Order below.

### ORDER

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

1. The Agency is ordered to pay Complainant non-pecuniary damages in the amount of \$85,000.
2. The Agency is ordered to restore 140 hours of sick leave to Complainant.
3. The Agency is ordered to expunge negative information in Complainant's OPF file.
4. The Agency is ordered to pay Attorney's Fees and Costs in the amount of \$56,236.80.
5. The Agency is ordered to provide training for FCI Herlong management personnel concerning what constitutes creation of a sexually hostile work environment, the Agency's duty to take timely appropriate corrective action, and the Title VII prohibition on reprisal, including per se reprisal, to ensure that similar violations do not occur.
6. The Agency is ordered to post a notice at its Herlong, California (FCI Herlong) Prison Facilities indicating that it has been found to have discriminated against an employee in violation of the Commission's regulations. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted by the Agency and shall remain posted for sixty (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 Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation of benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0900)

The Agency is ordered to post at its Herlong, California (FCI Herlong) Prison Facilities copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted by the Agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (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 at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

July 25, 2024

Date