



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

[REDACTED]
Filiberto H.,¹
Complainant,

v.

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

Appeal No. 2024002492

Hearing No. 570-2021-01403X

Agency No. DIA-2021-00002

DECISION

Following its March 5, 2024, final order, the Agency filed a timely 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. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ. For the following reasons, the Commission REVERSES the Agency's final order.

ISSUES PRESENTED

1. Whether the Agency's appeal is timely.

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.

2. Whether the AJ exhibited prejudice towards the Agency throughout the administrative hearing process.
3. Whether there is substantial evidence to support the Administrative Judge's decision to award Complainant \$150,000 in non-pecuniary, compensatory damages, and \$43,087.50 in attorney's fees.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Contract Specialist at the Agency's Missile and Space Intelligence Center (MSIC) facility in Huntsville, Alabama. Complainant's first level supervisor was the Supervisory Contract Specialist (RMO1). The section chief (RMO2) was a management official in Complainant's chain of command, higher than RMO1.

On January 12, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African American) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On November 25, 2019, RMO1, Complainant's first-line supervisor, falsely accused Complainant of timecard fraud;
2. On November 25, 2019, RMO1 forced Complainant to change his work schedule;
3. On November 25, 2019, RMO1 revoked Complainant's Civilian Fitness Program privilege;
4. On November 25, 2019, RMO1 forced Complainant to utilize 46 hours of annual leave due to a forced schedule change;
5. On December 11, 2019, RMO1 forced Complainant to work for 28 hours for which he was not compensated;
6. On January 3, 2020, RMO1 questioned Complainant's choice to utilize liberal leave;
7. On March 3, 2020, RMO1 issued Complainant a Letter of Counseling for misconduct;
8. On March 17, 2020, RMO1 delayed authorizing Complainant's Civilian Fitness Program request;
9. On March 19, 2020, after working for five hours in the office, RMO1 told Complainant that he could not telework for the remainder of the day;
10. On May 27, 2020, RMO1 threatened Complainant with being absent without approved leave ("AWOL") when she did not receive Complainant's accountability email while he was teleworking;

11. In June 2020, RMO1 deferred Complainant's promotion and commented, "[Complainant] performs minor tasks for MSIC" and "[Complainant] needs to invest his time in developing experience in procurement such as source selecting and obtaining a Contracting Officers' warrant;"
12. On August 20, 2020, RMO1 denied Complainant a career-advancement opportunity when he was deemed not among the best-qualified candidates because he lacked a Contracting Officers' warrant;
13. On September 24, 2020, RMO1 questioned Complainant about leaving work after he informed her that he had an unforeseen emergency;
14. On September 25, 2020, RMO1 ordered Complainant to come in to work to on his day off although he had already completed his 40-hours and had finished all of his year-end actions;
15. On October 16, 2020, RMO1 failed to grant Complainant a Contracting Officer warrant, but awarded Contracting Officer warrants to three of Complainant's non-African American colleagues with less tenure;
16. On February 24, 2021, RMO1 denied Complainant a promotion opportunity when she removed Complainant from a task in which he had been the Lead Specialist;
17. On or around October 13, 2021, RMO1 identified Complainant as a "Junior Contract Officer," limited his authority, and instructed him to shadow Senior Contract Officers, while not allowing him to manage his own workload; and
18. On November 1, 2021, Complainant received his Fiscal Year 2021 performance appraisal in which RMO1 identified him as a "Junior Contract Officer," and made comments Complainant contends are false.²

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) 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 September 25-29, 2023. On November 8, 2023, the AJ held a Bench Decision, wherein she read into the record her Decision on Liability, Interim Decision on Relief, and Order for Briefing on Attorneys' Fees and Costs (Decision).

² Complainant alleged and the Agency accepted Complainant's allegation that issues 14-16 constituted disparate treatment based on race or reprisal.

In the decision, the AJ found Complainant was "subject to unlawful, hostile work environment harassment, initially, based on race, but ultimately, based on race and protected EEO activity," but did not find that Complainant was "separately subject to discrete acts of timely raised disparate treatment," with the Agency being liable for harassment but not disparate treatment.

During the reading of her Bench Decision, the AJ found that Complainant was entitled to an award of attorney's fees, among other relief, and ordered the Agency to provide Complainant an award of attorney's fees upon the receipt of Complainant's verified petition for fees. Complainant timely filed a Petition for Attorney's Fees seeking reimbursement of \$47,250.00 in attorneys' fees. On January 18, 2024, the Agency filed a Response to Complainant's Petition for Attorney's Fees stating that the requested fees should be reduced by 15-20% because there was no information to justify the stated fee, the listing of charges was vague and lacking specificity, the attorney used block billing, the attorney claimed unreasonable time on multiple entries, and Complainant did not succeed on all of his claims. The AJ issued a written decision on January 25, 2024, and ordered the Agency to implement the following remedies:

1. Pay Complainant \$150,000 in non-pecuniary compensatory damages within 90 days of issuing a Final Decision in this case;
2. Consider taking appropriate disciplinary action against RMO1, and specifically consider removing her supervisory responsibilities;
3. Provide RMO1 at least eight (8) hours of training on the topic of race discrimination under Title VII and at least eight (8) hours of training on the topic of implicit bias, taught by non-Agency personnel;
4. Provide RMO2 at least eight (8) hours of training on the topic of race discrimination under Title VII and at least eight (8) hours of training on the topic of implicit bias, taught by non-Agency personnel;
5. Post an attached Notice alerting employees of their right to be free of unlawful discrimination; and
6. Pay attorney's fees in the amount of \$43,087.50.

In the decision, the AJ noted that Complainant testified that he experienced significant stress for the three-year period that he worked at the Agency, which is why he ultimately felt compelled to leave. The AJ found that he credibly testified that he was going to work every single day not knowing what was going to happen, wondering whether he was going to be fired or subject to false allegations. He was extremely uncomfortable with RMO1 and simply did not want to interact with her due to the level of discomfort.

Complainant testifies that he was scared to leave his desk even to go to the bathroom. Specifically, Complainant testified that he was afraid that being in the bathroom too long would result in RMO1 thinking that he was away from his desk for too long and he would have to defend himself against another timecard fraud allegation.

The AJ stated that Complainant described somatic symptoms resulting from the ongoing harassment, including having sleepless nights and having headaches. Complainant testified that he realized that the leadership chain was not concerned with how he was being treated even after sending an October 12, 2021 email, which he described as a cry for help that resulted in a Letter of Counseling. In determining the award amount, the AJ considered the present-day value of the Commission's prior compensatory damages awards by using the Department of Labor, Bureau of Labor Statistic's Consumer Price Index calculator to account for inflation. The AJ found that the present-day value of the precedent cases' award ranged from \$106,505 to \$171,065.

The AJ also found that the number of hours presented by Complainant's attorney were reasonable and the hourly rate for which Complainant sought was also reasonable. However, the AJ found that 9.25 hours billed prior to the filing of the formal complaint was not recoverable. Contrary to the Agency's response, the AJ found that the attorney's billing entries were brief, but not so vague as to warrant reduction, nor were they duplicative, and he did not engage in block billing.

The Agency subsequently issued a final order partially rejecting the AJ's Final Order of Relief in her Decision and requested the Commission to affirm its rejection of the amount of monetary relief ordered by the AJ, as well as reduce the amount of awarded attorneys' fees. The instant appeal was filed simultaneously.

CONTENTIONS ON APPEAL

On appeal, the Agency contends that the AJ's award of 150,000 in nonpecuniary, compensatory damages is monstrously excessive, and an award in the range of \$7,500 to \$47,500 is more appropriate. The Agency also contends that some of the AJ's award of attorneys' fees is without factual support and should be reduced by at least \$1,687.50. In support of its contentions, the Agency argued that the evidence does not support, either by severity or duration or nature of harm, an award at the monetary level decided by the AJ, as it lacks both testimonial and evidentiary support,

is monstrously excessive and compared to awards in similar cases and was decided by impermissible prejudice.

On appeal, Complainant contends that the Agency's appeal was untimely. Complainant also contends that his testimony amply supports the required level of harm. More specifically, Complainant argued that he provided a significant amount of evidence to prove his emotional damages. Complainant contends that the relief was not monstrously excessive nor based on impermissible prejudice, but consistent with awards in similar cases. Complainant also argued that the attorneys' fees were supported by evidence.

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

ANALYSIS

As an initial matter, neither party has challenged the AJ's finding of harassment and Agency liability. Therefore, those issues are not before us. Instead, we limit our focus only to those portions of the AJ's Order not adopted by the Agency in its final order: the award of non-pecuniary compensatory damages and attorneys' fees, as well as the parties' arguments on appeal.

Timeliness of Appeal

EEOC regulations state that an agency shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision and notify the complainant whether or not the agency will fully implement the decision of the administrative judge. If the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file an appeal in accordance with § 1614.403 and append a copy of the appeal to the final order. 29 C.F.R. § 1614.110(a).

The 40-day time period from the AJ's January 25, 2024 decision concluded on March 5, 2024. A review of the record reveals that the Agency first attempted to submit its Final Agency Action, Notice of Appeal, and Brief in Support of the Appeal on March 5, 2024 by emailing the Commission its documents and requesting additional instructions on how to file an appeal through the electronic portal. See 2024002492 Appeal Record, Email Attempt to Submit on Mar 5. On March 6, 2024, the Commission responded and attached instructions for the Agency. On March 7, 2024, the Agency filed its appeal and supporting documents through the electronic portal. Given this information, we find that the Agency made attempts to timely file its appeal as it sent its appeal and other documents to the Commission within the statutory time period. Therefore, we find that the Agency's appeal was timely.

AJ Bias

An AJ has full responsibility for the adjudication of the complaint, including overseeing the development of the record, and has 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 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 3, 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).

The Agency must establish that the alleged bias demonstrated, so permeated the process, that it would have been impossible to receive a fair hearing, or that the process was so tainted by substantial personal bias that it did not receive a fair and impartial hearing.

See Smith v. Dep't of the Army, EEOC Appeal No. 01880866, (May 11, 1988) (citing, Roberts v. Morton, 549 F.2d 158 (10th Cir), cert. denied); and Roberts v. Andrus, 434 U.S. 834 (1977).

On appeal, the Agency contends that the AJ's actions failed to demonstrate an unbiased view of the case prior to hearing. The Agency stated that the AJ continually accepted Complainant's untimely-filed material, did not hold Complainant accountable for compliance with orders, and did not rule on motions. The Agency's examples include instances where Complainant's attorney was nonresponsive to the AJ's orders and the AJ ignored the Agency's motion for sanctions. Reviewing the record and considering the very high standard of proof in this context, we find that the Agency failed to establish that the AJ's conduct was so tainted by personal bias that the Agency was unable to receive a fair and impartial hearing.

Non-Pecuniary Compensatory Damages

When discrimination is found, an agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore him as nearly as possible to the position he would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII and the Rehabilitation Act may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and nonpecuniary losses (e.g., pain and suffering, mental anguish) as part of make-whole relief. 42 U.S.C. § 1981a(b)(3). Compensatory damages do not include back pay, interest on back pay, or any other type of equitable relief. 42 U.S.C. § 1981a(b)(2). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process.

Nonpecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, at 10 (July 14, 1992).

There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from a complainant concerning his emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id. Statements from others including family members, friends, health care providers, and other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id.

We note that a decision regarding damages is a question of fact and, as such, the AJ's post-hearing finding will be upheld if supported by substantial evidence. See 29 C.F.R. § 1614.405(a); Hernandez v. U.S. Postal Serv., EEOC Appeal No. 07A30005 (July 16, 2004).

In deciding not to adopt the AJ's award of non-pecuniary compensatory damages, the Agency argued that Complainant's proof of harm was not sufficient to justify the award amount. The Agency argued that the record is devoid of the level of evidence necessary to support the AJ's monetary finding, making it monstrously excessive. In arguing this, the Agency noted that Complainant's sole evidence at the hearing regarding his alleged harm consisted of his own brief testimony. In response, we note that the AJ held a hearing and found Complainant's testimony to be credible.

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 EEO MD-110, Chapter 9, at § VI.B. The Agency failed to carry its burden to show that testimony at the hearing should not be credited.

The Agency noted that no witness statements or any other documentary evidence was provided to support his alleged harm. Commission precedent states that Complainant's own testimony, along with the circumstances of the particular case, can suffice to sustain his burden in this regard. In other words, testimony is evidence. See *Cory V. v. Dep't of the Navy*, EEOC Appeal No. 2021004613 (Aug. 17, 2023) (accepting "testimonial evidence" as probative evidence). The more inherently degrading or humiliating the harassing action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. A review of the record reveals that Complainant sent an email to RMO2 which he expressed his discontentment with RMO1 alleged discriminatory behavior and its effects on his working environment and health, including stress and anxiety. See Hearing File at 97. The AJ also found that Complainant credibly testified that he felt significant stress for the three-year period that he worked at the Agency, which is why he ultimately felt compelled to leave.

The Agency also argued that the AJ's cited cases were not proper comparator cases because the testimony and evidence in those cases did not align to the testimony and evidence of the situation in this case. However, upon our review of the record and the cited cases in the AJ's decision, we find that the AJ's award of \$150,000 is supported by substantial evidence in the record and is consistent with other Commission decisions in similar cases.

In justification of the award, the AJ provided multiple cases with non-pecuniary compensatory damage awards ranging from \$75,000 to \$125,000, stating the complainants in the cited cases suffered from mental anguish, frustration, embarrassment, and loss of personal dignity supported by a limited amount of testimony, similar to Complainant in this case. See *Demarcus I. v. Dep't of Defense*, EEOC Appeal No. 0120150529 (May 4, 2017) (Commission found unlawful harassment and awarded \$100,000 when Complainant testified to having significant emotional distress for 14 months and suffered marital stress verging divorce; loss of consortium; loss of relationship with his children; loss of professional reputation; loss of ability to perform his duties at work; severe anxiety and stress, extreme

humiliation and embarrassment; insomnia; and feelings of dread); Duran v. Dep't of Homeland Sec., EEOC Appeal No. 0720100042 (April 13, 2021) (Complainant awarded \$125,000 after testifying to personal setbacks; emotional distress; public embarrassment and humiliation; and injury to professional standing and reputation for over two years); Regist v. Dep't of Veterans Affairs, EEOC Appeal No. 0120093445 (Feb. 4, 2010) (Complainant awarded \$75,000 for testifying that he experienced constant humiliation; physical isolation at work; high blood pressure; ongoing emotional pain and suffering; mental anguish; loss of reputation; and injury to professional standing for two years).

In the instant case, Complainant testified to experiencing stress; fear of leaving his desk to go to the bathroom during a 10-hour shift or being in the bathroom too long; harm to his professional reputation; sleepless nights; headaches; and lack of enjoyment in life for three years, which ultimately led to him leaving the federal government entirely. See Complaint File at 2156-2158.

Regarding the cited cases, the Agency argued that some of the cited comparator cases were not comparable to the instant case because medical evidence and witness statements were provided to support the harm in those cases. We note again that testimony is evidence, and it is not necessary to have medical evidence or witness statements to support a finding of compensatory damages. In fact, in Duran v. Dep't of Homeland Sec., the Complainant testified to the damaging impact the Agency's actions had on him personally, professionally and financially for over two years, and did not offer any medical evidence or witness statements in support of their testimony. EEOC Appeal No. 0720100042 (April 13, 2011). In that case, the Commission found that Complainant's testimony of harm supported a \$125,000 award in non-pecuniary compensatory damages. Id. Therefore, we do not find that the Agency's argument alone is enough to disrupt the award in this case.

The AJ in this case recognized that the Commission has stated that compensatory damage awards may take into consideration the present-day value of older comparable awards and adjust the award accordingly. See Lara G. v. U.S. Postal Serv., EEOC Request No. 0520130618 (June 9, 2017). As a result of using the Department of Labor, Bureau of Labor Statistic's Consumer Price Index calculator, the AJ found that the present-day value of the precedent cases' award ranged from \$106,505 to \$171,065. Given that the AJ's award of \$150,000 is within the range of the present-day value of the precedent cases' awards and that Complainant's testimony of harm is

similar to the harm described in the cited cases, we find no reason to disturb this award. We find this amount is not monstrously excessive and is consistent with the Commission's awards in similar cases.

Attorneys' Fees

Complainant sought \$47,250.00 in attorneys' fees. The AJ awarded \$43,087.50. The Agency contends that the attorneys' fees should be reduced because there are four clear errors in the record which are unreasonable and/or reflect unacceptable timekeeping habits of 3.75 identified hours. The Agency argues that because of these identified hours, the AJ's award of attorneys' fees should be reduced by \$1,687.50.

In the decision, the AJ was unpersuaded by the Agency's argument that any entries are excessive. The AJ stated that the Agency provided no support, other than counsel's opinion, that any entries were excessive. We agree. In making this argument, the Agency does not point to anything in the record to support its assertion. In fact, the Agency only stated "[t]his is excessive" under a January 28, 2022 entry for 1.25 hours. See Hearing File at 3733. In two other entries, the Agency argued that no such event occurred on September 24-25, 2022. A review of the record reveals that the events occurred on September 24-25, 2023, instead of the stated year 2022. We do not find this minor error supports a reduction in fees. Lastly, the Agency argued that an undated 2023 entry is administrative in nature and should not been billed at a clerical rate instead of at the determined rate. In making this argument, the Agency does not provide any documentation to support its assertion or contradict the AJ's inclusion of this entry in the award of attorneys' fees.

We also note that the AJ already considered the Agency's argument regarding the awarded amount of fees to Complainant's attorney and found that 9.25 hours of requested hours were not recoverable. Therefore, we find no reason to disturb the AJ's award of attorneys' fees and find that the award is not inaccurate or unreasonable.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's

decision finding race and reprisal discrimination and awarding compensatory damages and attorney's fees after a hearing and MODIFY the Agency's final order rejecting, in part, that decision. Furthermore, to ensure compliance with the AJ's remedial orders, we restate the order herein as follows.

ORDER

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

1. Within ninety (90) calendar days of issuing a Final Decision in this case, the Agency shall pay Complainant \$150,000 in non-pecuniary compensatory damages.
2. Within ninety (90) calendar days of issuing a Final Decision in this case, the Agency shall pay attorney's fees in the amount of \$43,087.50 to Complainant's attorney.
3. Within ninety (90) calendar days of the date this decision is issued, the individuals identified in this decision as RMO1 and RMO2 shall complete 8 hours of interactive training on the Agency's obligations under Title VII. The training shall include an emphasis on racial discrimination and harassment.

For assistance in obtaining the necessary training, the Agency may contact the Commission's Outreach, Training and Engagement Division via email, at FederalTrainingandOutreach@eeoc.gov. The Agency shall provide the Compliance Officer with proof of attendance, as well as the contents and materials it used for the training. If RMO1 or RMO2 have left the Agency's employ, the Agency shall furnish documentation of his/her/their departure date.

4. Within one hundred twenty (120) calendar days from the date this decision is issued, the Agency shall consider disciplining RMO1 for harassment in violation of Title VII found to have occurred in this decision. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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 these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure dates.

5. Within thirty (30) calendar days of the date this decision is issued, the Agency shall post a notice in accordance with the section listed below, entitled "Posting Order." The Agency shall provide the Compliance Officer with the original signed and dated notice, reflecting the dates that the notice was posted, along with evidence that the notice was physically posted at the facility and electronically.

POSTING ORDER

The Agency is ordered to post at its Redstone Arsenal facility in Huntsville, Alabama 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).

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 (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

December 4, 2024
Date