



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Deandre Y.,<sup>1</sup>  
Complainant,

v.

Terence Emmert,  
Acting Secretary,  
Department of the Navy,  
Agency.

Appeal No. 2024004195

Hearing No. 550-2023-00076X

Agency No. 22-41137-00433

**DECISION**

On June 27, 2024, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's June 25, 2024, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

**ISSUES PRESENTED**

Whether the final Agency decision properly substantiated some of Complainant's claims and ordered appropriate relief.

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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.

## BACKGROUND

During the relevant time, Complainant worked as a Human Resources Specialist Grade GS-9/Step 9, for the Human Resources Office Northwest (HRO NW) of the Agency's Pacific Fleet at the Puget Sound Naval Shipyard and Intermediate Maintenance Facility in Bremerton, Washington.

Complainant began his two-year probationary employment with the Agency on October 25, 2021. Thereafter, Complainant had three supervisors: Supervisory Human Resources Specialists SHRS-1, SHRS-2 and SHRS-3. The Human Resources Officer and Assistant Human Resources Officer directed the HRO NW. As a general policy, NRO NW probationary employees were required to obtain their department's head approval for telework.

Beginning in December 2021, Complainant began requesting telework as a reasonable accommodation (RA). In January 2022, Complainant provided two doctors notes in support of a request of 50-percent telework as a reasonable accommodation. On January 20, 2022, Complainant emailed SHRS-2 and stated that SHRS-1 had essentially approved his telework request. That same day, SHRS-1 emailed Complainant and clarified that that his telework request was denied. However due to COVID-19, Complainant could be allowed situational and liberal telework. SHRS-1's email also discussed performance concerns in terms of relationships and teamwork because the Agency determined that Complainant had been "confrontational, argumentative, and not working well or effectively with peers" both in-person and in writing.

On January 21, 2022, Complainant initiated contact with the appropriate EEO office. He also began submitting Family Medical Leave Act (FMLA) requests to cover his medical absences. On January 24, 2022, Complainant contacted the Assistant Human Resources Officer and accused SHRS-1 of creating a hostile work environment and physically threatening him. An employee from the HRO Southwest was appointed to conduct an internal hostile work environment investigation. In February 2022, the Agency charged Complainant with Leave Without Pay (LWOP) on five different dates. On February 8, 2022, Complainant amended his RA request for full-time telework. On February 24, 2022, SHRS-2 requested additional medical documentation from Complainant to support his request to work remotely full-time. Following an interactive meeting with the Complainant, the Agency recommended allowing the Complainant to telework with advance approval but only on those days when he had medical appointments.

On March 24, 2022, Complainant provided letters recommending telework from his neurologist and chiropractor who asked that Complainant be allowed to work from home until his next evaluation on April 25, 2022. On April 5, 2022, SHRS-1 approved Complainant's RA temporarily for full time telework until April 25, 2022. To have the telework further extended, the RA would require further evidence from Complainant's medical providers. On April 25, 2022, the HRO Southwest employee completed her report, which concluded that Complainant was subjected to a hostile work environment in terms of the Agency management's failure to provide an appropriate accommodation in a timely manner.

On May 13, 2023, Complainant reported to SHRS-3 and others that he was not paid. SHRS-3 responded that Complainant did not get paid because he failed to certify time and attendance report and verify the hours he worked for the preceding pay period. On May 23, 2022, SHRS-3 notified Complainant that the Agency required him to report to HRO NW or an approved Agency facility to exchange his non-functioning laptop for a functioning replacement and to login to the Agency network to activate the laptop. On July 22, 2022, Complainant and SHRS-3 corresponded about scheduling Complainant to come into the office for the laptop and to log on. Complainant stated that he would obtain medical clearance from his doctor to do so. Emails about the laptop between Complainant and SHRS-3 continued into August 2022. Ultimately, the Agency and Complainant did not successfully coordinate the laptop exchange. The Agency terminated Complainant's probationary employment effective August 31, 2022.

On May 3, 2022, Complainant filed the instant formal EEO complaint. Therein, Complainant claimed that the Agency discriminated against him based on physical and mental disability and reprisal (for requesting a Reasonable Accommodation) when:

1. Whether the Agency failed to accommodate Complainant's disabilities (physical and mental) when: from January 21, 2022, to current, the Supervisory Human Resources Specialist (SHRS-1), and the Supervisory Human Resources Specialist (SHRS-2) delayed, required excessive documentation for, and denied Complainant's reasonable accommodation (RA) request for regular and recurring telework.
2. Whether Complainant was subjected to disparate treatment and harassment by the Agency based on disability (physical and mental) and in reprisal for prior protected EEO activity (requesting

reasonable accommodation on December 20, 2021) in the following incidents:

- a. from January 2022 – Present, SHRS-2 frequently implied Complainant was stupid, threatened to charge him as AWOL, scrutinized timekeeping for his medical appointments, and held him to arbitrary work standards and requirements;
- b. on January 10, 2022, SHRS-1 accused Complainant of falsifying credit hour entries in the Standard Labor Data Collection and Distribution Application (SLDCADA);
- c. on January 18, 2022, SHRS-1 announced changes to the entire division's credit hour earning system, e.g., restricting amount of credit hours earned and requiring supervisor approval before use, to undermine Complainant's accommodation request;
- d. on January 21, 2022, SHRS-1 emailed Complainant manufactured "performance" concerns related to timekeeping, which SHRS-1 used to deny Complainant COVID-19 liberal leave and telework;
- e. from February – April 2022, SHRS-2 inputted Complainant as AWOL in SLDCADA, then directed him to certify his electronic timecard;
- f. in February 2022, SHRS-2 delayed the reasonable accommodation (RA) interactive discussion by scheduling in-person meetings on days Complainant was scheduled for leave;
- g. on February 28, 2022, SHRS-2 requested that Complainant provide additional medical documentation and sign a waiver to release unlimited medical documentation;
- h. on February 28, 2022, SHRS-2 used the RA interactive meeting to question Complainant's leave use and accused him of "robbing the government;"

i. from March 2022 to present, SHRS-2 directed Complainant to call his mentor, Human Resources Specialist (Employee/Labor Relations), every morning at 0800 or otherwise face discipline for not doing so;

j. on March 2, 2022, SHRS-1 and SHRS-2 implemented new division-wide telework policies, which require specialists to meet with shipyard supervisors in-person, and stay in the office for the rest of the workday if another on-base meeting is scheduled;

k. on March 11, 2022, the Human Resources Officer denied Complainant's request to extend his annual performance evaluation period by 90 days from the date of his approved RA request;

l. on April 5, 2022, SHRS-2 only approved a three-week accommodation acquiring recertification of medical by April 25, 2022;

m. on April 12, 2022, the Human Resources Officer refused to mail Complainant's new laptop, and stated he must come in the office, contrary to Complainant's physician's recommended accommodation of 100% telework;

n. on April 18 – 23, 2022, the Human Resources Officer and USPACFLT Deputy Counsel stated the intention to terminate Complainant regardless of Complainant's performance under the recently approved accommodation;

o. on April 23, 2022, the Human Resources Officer stated that while she knew Complainant was on disability retirement when they hired him, had she known he was still disabled, they would not have done so;

p. since April 28, 2022, the Human Resources Officer and Supervisory Human Resources Specialist (SHRS-3) have purposefully taken actions that have resulted in a loss of pay; and

q. on August 31, 2022, SHRS-3, issued Complainant a Notice of Termination During Probation Period, effective August 31, 2022;

3. Complainant alleged that he was subjected to an instance of per se reprisal when during a February 22, 2022 interactive discussion SHRS-2 stated, "you filed a complaint against me." Complainant responded that there was no complaint yet and if there were, it would be against the Secretary of Defense. SHRS-2 responded, "you filed a complaint against me."

After 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. However, Complainant subsequently withdrew his request.

On February 1, 2023, the AJ issued an order dismissing Complainant's hearing request and remanding the matter to the Agency to issue a final decision. However, it appears the Agency failed to take any action pursuant to the AJ's remand.

On September 15, 2023, the Agency completed a supplemental investigation into the matter. On December 21, 2023, the Agency completed a second supplemental investigation.

On April 16, 2023, when the Agency did not issue a final decision after the second investigation, Complainant appealed to the Commission.

In EEOC Appeal No. 2023002880, the Commission concurred with Complainant's appeal and ordered the Agency to comply with the AJ's order by issuing a final decision. On June 25, 2024, the Agency did so and the final decision is the subject of the instant appeal.

In the instant final decision, the Agency concluded that Complainant proved that he had been subjected to discrimination as alleged on several claims. Regarding Claims 1, 2l, and 2p, the Agency found discrimination because SHRS-2 had required the Complainant to use leave from March 2022 through April 2022, while the Agency failed to provide the Complainant a flexible schedule as an interim reasonable accommodation.

The Agency further found discrimination when SHRS-3 and the Human Resources Officer stopped paying Complainant when his laptop was inoperable from May 2022 until his termination in August 2022. The decision concluded that Complainant was not subjected to disparate treatment or reprisal. In addition to training for the responsible management officials, the Agency ordered the restoration of the Complainant's leave for the period of March 28, 2022, through April 5, 2022. The Agency also ordered payment of back pay for leave taken from April 22, 2022, through August 31, 2022. The Agency further directed Complainant to submit to the Agency his claims for compensatory damages, attorney's fees, or costs.

However, for the reasons discussed extensively below, the agency found no discrimination in the majority of his claims.

The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant has argued that despite Agency assertions of having granted his reasonable telework requests, beginning in April 2022, the Agency had severed Complainant's network, making telework access impossible. Complainant maintains that Agency management did this because he refused to resign or withdraw his EEO complaint. Complainant's appeal describes a coordinated conspiracy among Agency management to harass him and deny him an effective accommodation that would have allowed him to perform his duties while teleworking. For example, Complainant argues that the Agency did not investigate computer security measures (such as allowing a proxy to log on for him in-person) that could have given him access to the network. Complainant further argues that he merited reinstatement. He said that prior to his hiring, the Agency had promised him rapid advancement to the GS-12 level within months of his hiring. To the extent that the Agency accused Complainant of inappropriate statements to supervision and co-workers, Complainant responded that his outbursts were appropriate given his frustration over the difficulties associated with his accommodation request. Complainant stated that the Agency should have provided emotional intelligence training in lieu of terminating him. Overall, Complainant stated that the Agency's final decision should have found discrimination occurred in many more of his claims.

Complainant further argued that his case merited a default sanction against the Agency.

Complainant further requested that the Commission order reinstatement at GS-12/Step 3, backpay (with interest and a lump sum income tax offset) for the period since he was fired on August 31, 2022 until the date his employment is restored, along with a paid and permanent change of station out of Pacific Fleet. Complainant also asked that he be permitted to work on a fully remote or 'distant remote' basis, as consistent with recommendations of his medical care team. Complainant requests an award of legal expenses, interest on his debts in default, interest and penalties made on early thrift savings withdrawal and six hours of annual leave and four hours of sick leave for each pay period occurring from his August 31, 2022, when he was terminated until his reinstatement date. Complainant said he merited additional compensation for pain, suffering, emotional distress, humiliation, loss of enjoyment and fulfillment, and inconvenience as well as other just and proper relief to include front pay.

The Agency opposed Complainant's appeal and averred that its final decision was correct. The Agency additionally opposed Complainant's motion for sanctions.

#### STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

#### ANALYSIS

As an initial matter, we reviewed Complainant's request for sanctions against the Agency for various procedural and investigative deficiencies. We note that Complainant had the opportunity to rectify alleged problems in the investigative process by submitting his hearing request and engaging in discovery. However, Complainant elected to withdraw his hearing request and for a final Agency decision instead. We find that sanctions are not appropriate here.

### Rehabilitation Act Violations

Under the Commission's regulations, agencies are required to make reasonable accommodation for the known physical and mental limitations of qualified individuals with disabilities, unless an agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o) and (p).

After receiving a request for reasonable accommodation, the employer should engage in an informal process with the disabled individual to clarify what the individual needs and identify the appropriate reasonable accommodation. EEOC Enforcement Guidance No. 915.002; Abeijon v. Dep't of Homeland Sec., EEOC Appeal No. 0120080156 (Aug. 8, 2012). Protected individuals are entitled to reasonable accommodation, but they are not necessarily entitled to their accommodation of choice. Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994). Improper termination of the interactive process constitutes an improper denial of a reasonable accommodation. See Harvey G. v. Dep't of the Interior, EEOC Appeal Nos. 0120132052 & 0120150844 (Feb. 4, 2016).

In this case, it is undisputed that Complainant was a qualified individual with a disability and that the Agency failed to accommodate Complainant where it did not make a showing of undue hardship. Specifically, the Agency delayed or curtailed in the interactive process and neglected to grant Complainant a temporary flexible work schedule as an interim RA. Then, when the Agency did grant his full-time telework request, the RA was inappropriately limited to three weeks and required additional re-certification. Thereafter, from May 2022 until his termination in August 2022, the Agency incorrectly placed Complainant in an unpaid status for not working while the Agency had failed to issue him a functional laptop so that he could telework. We see no reason to disturb the final Agency decision's findings or the relief ordered on these matters.

### Disparate Treatment

Claims of disparate treatment are examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For a complainant to prevail, they must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978).

For a prima facie case of reprisal, a complainant must show that: (1) they were engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, they were subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A complainant can also establish a prima facie case of reprisal by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996)(citing McDonnell Douglas, 411 U.S. at 802). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993).

While it is undisputed that Complainant is a member of a protected class by virtue of his participation in EEO-protected processes, in addition to his disabilities, and was subjected to adverse treatment, we find that he failed to meet his burden to sufficiently show a nexus between his protected activity and the adverse treatment.

Furthermore, we find that the Agency articulated legitimate, nondiscriminatory reasons for the adverse treatment, including its decision to issue Complainant notice of termination. Especially with regard to the termination, the Agency stated that, throughout his probationary period, Complainant was unacceptably antagonistic in communications with his supervision and his peers. The record corroborated the Agency's statement.

Two co-workers described how Complainant was overbearing and interjected himself into work-related conversations to insist that others were wrong. One employee, after she had been assigned to become a partner with Complainant, authored a memorandum on how difficult and unpleasant it had been for her to work with him. She argues that Complainant had harassed her, as reflected in the following narrative:

He is obstinately averse to receiving advice or feedback for improvement on every case we have worked on together, and during every substantive conversation onsite with co-workers that I have been part of or observed . . . [Complainant's] approach

involves researching how he can prove his peers wrong, rather than engaging as a team member and asking questions where there is a question on understanding or perhaps disagreement. While he is skilled at researching, he often misapplies or misinterprets information to suit his position and bombards with excessive argumentative emails, even when asked to stop . . . My experience with him is essentially that if I say "up", he retorts with "down" black/white, hot/cold; etc. He has shared in emails with me (attached) that he has adversely interacted with every LER team member . . . His barrage of combative discourse; dismissive attitude, and outright rudeness is pervasive; exhausting and unwelcome . . . Working directly with him created a constant and significant degree of stress that was draining at the workplace . . .

Complainant's acrimonious approach to the workplace was confirmed by a HRO Southwest employee, who conducted the internal hostile work environment investigation that Complainant initiated. Though she supported Complainant's failure to accommodate accusation, even she observed that Complainant was unapologetically abrasive, writing:

I find that he is argumentative, self-promoting, lacks diplomacy, and can be unprofessional in his written communication. He has even acknowledged that he can come across as a "prick."

A careful review of the record indicated that there were more instances where Complainant was disruptive or offensive in his dealings with others. Another example of impropriety in communications comes from Complainant himself. On April 6, 2022, when he signed the temporary RA approval from SHRS-2, he included a signing statement that not only criticized the granted RA approval as insufficient, but also insulted the entire HRO NW:

I have, without pause, demonstrated the absolute incompetence of this HRO office, and its inability to ascertain and apply the law, be it the FSL-MRS, reasonable accommodation law, FMLA, or whatever else.

Based on the foregoing, Complainant did indeed communicate with his supervision and other co-workers in an unprofessionally confrontational manner. In sum, we find that the agency's adverse actions towards him were informed by the Complainant's quarrelsome style rather than his protected characteristics.

As to pretext, Complainant has maintained that HRO NW management intentionally frustrated his good faith efforts to exchange his non-functioning laptop for a functional one. In other words, Complainant has contended, that the Agency, motivated by retaliatory animus, conspired to sabotage his efforts to obtain a functional laptop whereby he could telework effectively. Complainant further accused management of being disingenuous in exploring alternative means to provide the Complainant with the laptop he needed.

On the other hand, according to SHRS-3, the Agency had made extensive inquiries into options so that Complainant could receive a laptop without having to come to the worksite, but these were found unviable. SHRS-3 additionally testified that Complainant was terminated after he was evasive and then a no-show on August 23, 2022, the date that they had selected for Complainant to come to the office in person to make the necessary laptop exchange and log-on in-person.

The Assistant Human Resources Officer supported SHRS-3's version of events. The Assistant Human Resources recounted how Complainant's laptop had ceased working such that he could not gain access to emails or the HRO NW's shared files or the Agency's interne, and lost access to online resources that he needed to work. Then, the Agency attempted unsuccessfully to make arrangements for Complainant to come to the worksite to log on and obtain a new laptop. The Assistant Human Resources Officer said that Complainant would inform them that he was reporting to the office, but then would not show up and then later informed them that he was unable to report based on his medical documentation.

Complainant withdrew his request for a hearing before an AJ, and, as a result we do not have the benefit of an AJ's credibility determinations of the witnesses in this case. Complainant bears the burden to prove, by a preponderance of the evidence, that the alleged discriminatory acts occurred as he has alleged.

Here, the testimonial and documentary evidence is, at best, in equipoise such that Complainant fails to meet that burden. Lore v. Dep't of Homeland Sec., EEOC Appeal No. 0120113283 (Sept. 13, 2013) (complainant failed to establish that witnesses made false statements where he withdrew his request for a hearing and credibility determinations were unable to be made); Brand v. Dep't of Agric., EEOC Appeal No. 0120102187 (Aug. 23, 2012) (complainant failed to establish that his co-worker made offensive comments in a "he said, she said" situation where complainant requested a final decision and an AJ did not make credibility determinations).

### Harassment

We also considered Complainant's claims in the context of harassment. In order to establish a prima facie case of harassment, Complainant must prove, by a preponderance of the evidence, the existence of five elements: (1) that he is a member of a statutorily protected class; (2) that he was subjected to unwelcome conduct related to his protected class; (3) that the harassment complained of was based on his protected class; (4) that the harassment had the purpose or effect of unreasonably interfering with his 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); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). See also Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Flowers v. S. Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001).

EEOC has held that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences. Gray v. U.S. Postal Serv., EEOC Appeal No. 0120091101 (May 13, 2010). Unless it is reasonably established that the common workplace occurrence was somehow abusive or offensive, and that it was taken in order to harass Complainant on the basis of his protected class, we do not find such common workplace occurrences sufficiently severe or pervasive to rise to the level of a hostile work environment or harassment. Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120130465 (Sept. 12, 2014).

It is undisputed that Complainant is a member of a protected class for his disabilities and protected activity. However, we find that the complained of conduct did not occur as he described, and much of it was related to the management of Complainant's assignments, performance, and conduct.

The Commission also notes that problems with government-furnished laptops and disagreements over full-time telework or accounting issues with leave and time and attendance at are all common federal workplace occurrences.

### Per Se Reprisal

The Commission has held that attempting to dissuade an employee from participating in the EEO process is a per se violation of the EEOC's regulations against interference in the EEO process. Lewis v. U.S. Postal Serv., EEOC Appeal No. 01922440 (Apr. 14, 1994) (attempts by management to dissuade an employee from filing a sexual harassment complaint are "unequivocally prohibited by the regulations..."); Mindy O. v. Dep't of Homeland Sec., EEOC Appeal No. 0720150010 (Sept. 2, 2016).

Whereas Complainant accused SHRS-1 of disparaging him for filing a complaint, SHRS-1 counter-accused Complainant of bringing up his EEO complaint or threatening to file one against her. Once again, Complainant's testimony and that of SHRS-1 are in equipoise. Therefore, Complainant has not proved, with preponderant evidence, that SHRS-1 chastised him for filing a complaint against her. Accordingly, we cannot find that the Agency subjected Complainant to per se reprisal.

### CONCLUSION

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

Although we affirm the Agency's final decision, we note that the Agency made a discrimination finding regarding several claims regarding Complainant's RA requests. We will, therefore provide a synopsis of the remedial relief the Agency found in those claims, as addressed in the ORDER below.

### ORDER

To the extent that it has not done so regarding the discrimination findings in claims 1, 2l, and 2p, , within ninety (90) calendar days of the date this decision is issued, the Agency shall take the following remedial actions:

1. Provide 24 hours of interactive EEO training to SHRS-1, SHRS-2, SHRS-3 and the Human Resources Officer in accordance with Paragraph 1 of the Statement of Relief in the Agency's final decision.

2. Consider taking appropriate disciplinary action against SHRS-1, SHRS-2, SHRS-3 and the Human Resources Officer, the individuals responsible for the violation in this case in accordance with Paragraph 2 of the Statement of Relief in the Agency's final decision.
3. Restore any leave taken between March 28, 2022 and April 5, 2022 to attend doctor's appointments in accordance with Paragraph 3 of the Statement of Relief in the Agency's final decision.
4. Pay Complainant back pay for and leave or leave without pay during the period of April 22, 2022, until August 31, 2022, in accordance with Paragraph 4 of the Statement of Relief in the Agency's final decision.
5. Pay Complainant compensatory damages in accordance with Paragraph 5 of the Statement of Relief in the Agency's final decision.
6. Pay Complainant attorneys fees in accordance with Paragraph 6 of the Statement of Relief in the Agency's final decision.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of leave, back pay, damages and attorney fees and other benefits due Complainant, including evidence that training and the corrective action have been implemented.

#### 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).

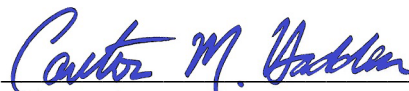
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

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

March 4, 2025

Date