



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

[REDACTED]
Casie S.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2023002574

Hearing No. 430-2020-00535X

Agency No. 200I-0544-2020101740

DECISION

On March 27, 2023, 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 February 24, 2023 final decision concerning her 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 REVERSES the Agency's final decision and REMANDS claims 8 and 9 for remedial action.

ISSUES PRESENTED

1. Whether the Agency properly dismissed Complainant's reasonable accommodation claim pursuant to 29 C.F.R. § 1614.107(a)(1).
2. Whether the Agency improperly revoked Complainant's reasonable accommodation.
3. Whether the Agency properly determined that Complainant failed to meet the burden of proving that she was subjected to an improper disclosure of her medical information.

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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Medical Instrument Technician in the Hemodialysis Clinic, Acute Nursing Service at the Agency's Columbia Veterans Health Care System facility in Columbia, South Carolina. Complainant's first-line supervisor was the Assistant Clinical Manager (RMO1). Complainant's second-line supervisor was the Interim Clinical Manager for Hemodialysis (RMO2). Complainant's third-line supervisor was the Associate Nurse Executive (RMO3)

On February 7, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability and in reprisal for prior protected EEO activity when:

1. On December 11, 2019, and on December 20, 2019, Complainant's reasonable accommodation for weekends off was terminated when her schedule was changed, requiring her to work every other weekend.
2. On December 16, 2019, RMO1 altered Complainant's reasonable accommodation when she changed Complainant's tour of duty.
3. On December 12, 2019, through December 26, 2019, Complainant's work schedule was not corrected.
4. On December 24, 2019, in violation of her reasonable accommodation, Complainant was scheduled to work.
5. On December 30, 2019, RMO3 scheduled Complainant to work on December 31, 2019, in violation of her reasonable accommodation.
6. On December 31, 2019, and from January 8, 2020 through January 11, 2020, RMO2 charged Complainant absent without leave (AWOL).
7. On January 14, 2020, Complainant was issued a proposed three-day suspension that was sustained on February 19, 2020.
8. On January 22, 2020, RMO1 changed Complainant's tour of duty from 4:00 am to 2:30 pm to 6:00 am to 4:30 pm.
9. On January 24, 2020, Complainant's privacy was violated when her coworker (C1) accessed her medical records.
10. On January 26, 2020, Complainant's privacy was violated when C1 did not safeguard her personal information.

The evidence developed during the Agency's investigation of the complaint showed that Complainant was diagnosed with Anxiety Disorder, Post-Traumatic Stress Disorder (PTSD), and Attention Deficit Hyperactivity Disorder (ADHD) in 1999. As a result of her medical conditions, Complainant testified that she is substantially limited, among other ways, in her ability to focus and concentrate, to complete daily tasks, remember job duties, or recall daily actions or activities.

Prior to filing the complaint in the instant matter, Complainant filed a complaint related to reasonable accommodation issues that arose in 2018. In the previous matter, an EEOC

Administrative Judge (AJ) issued a summary judgment decision in favor of the Agency. On appeal, the Commission reversed and remanded claims, including those related to Complainant's alleged reasonable accommodation issues, for further processing. See Tess W. v. Dep't of Veterans Aff., EEOC App. No. 2020003516 (Dec. 22, 2021). During the pre-hearing stage, the Complainant withdrew her hearing request and on September 13, 2023, the AJ ordered the Agency to issue a Final Agency Decision on Complainant's complaint. See EEOC Hearing No. 430-2022-001119X record. Complainant later withdrew her claims regarding alleged denials of a reasonable accommodation.

Regarding the instant appeal, the record shows that in a September 6, 2019 reasonable accommodation request, Complainant requested to: (1) have a consistent schedule with consistent start and end time, (2) start work in the early morning (0400-0600) so she could be off in the early to midafternoon for ongoing appointments, and (3) have a several days block of time off instead of off days scattered throughout the schedule. In support of this request, she submitted an August 26, 2019 letter from her medical provider that explained that Complainant needed a consistent schedule throughout the week in order to assist in her treatment, in particular her medication schedule, and to have afternoons off for ongoing appointments.

On October 14, 2019, the Agency, inter alia, granted Complainant a schedule with 10-hour tours of duty from 4:00am to 2:30am. The Accommodation Request Determination included language that stated, "[s]hould [Complainant] call out during the 4am shift she will be moved to the 6am shift. Should [Complainant] call out on the 6am shift she will be moved back to the 8am shift." ROI at 797. The Accommodation Request Determination did not specify whether a "call out" included sick leave supported by a doctor's note.

RMO1 testified that she was not aware of Complainant's specific medical condition but was aware that she had a reasonable accommodation in place. RMO2 testified that she was aware of Complainant's condition because Complainant frequently disclosed it. On January 22, 2020, RMO1 changed Complainant's tour of duty to the 6am shift because she called out sick. Complainant provided medical documentation to confirm that she had been sick, and management approved the leave as sick leave based on the documentation.

On January 26, 2020, when walking by a coworker's (C1) desk, Complainant discovered that her date of birth and the last four digits of her social security number were on a handwritten note on the desk. On January 31, 2020, the Agency issued Complainant a Sensitive Patient Access Report (SPARS) that confirmed C1 had accessed Complainant's medical records. Complainant testified that, as a coworker of hers, C1 did not have an official need to obtain and review Complainant's medical records.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew her request. Prior to the issuance of the Final Agency Decision (FAD), Complainant submitted a brief in support of her claims to the Agency

and in it, withdrew claims 1-7 and requested the Agency to issue a FAD only on the incidents presented in issues 8-10. See Complainant's Brief at 21-22.

Nonetheless, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b) on February 24, 2024, addressing all of the incidents (1-9) and reframing Complainant's claims into 4 separate claims. The Agency treated issues 1-5 and 8 as one claim and analyzed issues 9 and 10 as one claim.²

While the Agency initially accepted claims 1-5 and 8 for investigation, in its FAD, the Agency dismissed those claims pursuant to 29 C.F.R. § 1614.107(a)(1) as claims already pending before the Commission. The decision also concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Specifically, the Agency found no pretext in the Agency's actions regarding Complainant's disparate treatment claims. The Agency also found that the record showed no evidence that Agency officials made unlawful disclosures of Complainant's medical information, and that the coworker did not access any information beyond what Complainant asked her to do.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the record establishes that the Agency revoked her reasonable accommodation as a form of punishment for taking sick leave, and that her coworker accessed Complainant's medical records in violation of 29 C.F.R. § 1630.14(b)(1). Complainant also argues that the dismissal of claim 8 was improper. On appeal, Complainant requests that the Commission reverse the Agency's FAD as it related to claims 8 and 9 and remand the matter to the Agency for damages.

On appeal, the Agency argues that the FAD was correct, and that Complainant's claims were thoroughly and well analyzed. The Agency requests the Commission to affirm the FAD.

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

² In the FAD, the Agency stated that claims 1-5 and 7 were consolidated into one claim. A review of the FAD reveals that the Agency was actually referencing claim 8, not claim 7. See FAD at 3. Therefore, we will analyze the Agency's dismissal as referencing claim 8, not claim 7.

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 note that the Commission has the discretion to review only those issues specifically raised in an appeal. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chap. 9, § IV.A.3 (Aug. 5, 2015). On appeal, Complainant did not contest the Agency’s dismissal of some of her claims. In fact, Complainant withdrew claims 1-7 in writing to the Agency before her appeal. See Complainant’s Appellate Brief at 21-22. In her appellate brief, Complainant specifically requests that the Commission address only issue 8 and 9. See id. Therefore, we will only address claims 8 and 9 in this decision.

Reasonable Accommodation Issue: Change in Tour of Duty (Claim 8)

The Agency initially accepted claim 8 for investigation. However, in the FAD, the Agency dismissed claim 8, along with claims 1-5, as a claim already pending before the Commission.³ In a previous case, Complainant alleged, inter alia, a denial of a reasonable accommodation. See EEOC Appeal No. 2020003516; EEOC Hearing No. 430-2019-00209X. In its FAD, the Agency found that there were many overlapping facts between the reasonable accommodation claims, and that they both stemmed from the same reasonable accommodation request originally made in May 2018. See FAD at 3.

Our review of the record shows that in the previous complaint, Complainant alleged reasonable accommodation issues in 2018. In the instant complaint, Complainant alleged reasonable accommodation issues that occurred in December 2019 through January 2020. Additionally, the Agency accepted medical information from Complainant’s provider on August 26, 2019, regarding her reasonable accommodation request, and her accommodation request determination was approved and began on October 14, 2019.

The Commission has stated that, because an employer has an ongoing obligation to provide a reasonable accommodation, failure to provide such accommodation constitutes a violation each time the employee needs it. See EEOC Compliance Manual Section 2: Threshold Issues, No. 915.003, at 2-IV (May 12, 2000, revised in part, July 21, 2005). Given the differences in dates between Complainant’s previous claims and the claims involved in the instant appeal, as well as the Commission’s finding on the Agency’s ongoing obligation to provide a reasonable accommodation, we find that the claims alleged in Complainant’s prior complaint and those

³ Complainant’s prior complaint is no longer pending before the Commission. During the pre-hearing stage on remand, the Complainant withdrew her hearing request and on September 13, 2023, the AJ ordered the Agency to issue a Final Agency Decision on Complainant’s complaint. See 430-2022-001119X Hearing Record.

alleged in the instant complaint do not state the same claim and, therefore, cannot be dismissed under 29 C.F.R. § 1614.107(a)(1). As such, the Agency improperly dismissed Complainant's allegations regarding her reasonable accommodations as described in claim 8.

However, since the Agency investigated claim 8, we exercise our discretion to address this claim on its merits.

An agency is required to make reasonable accommodation to the known physical and mental limitations of an individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). In order to establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability as defined by 29 C.F.R. § 1630.2(g); (2) she is "qualified" as defined by 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002). The Agency does not dispute that Complainant is a qualified individual with a disability. As such, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o), (p).

In this claim, Complainant alleged that management wrongfully revoked her prior approved reasonable accommodation when it changed her tour of duty from 4:00am to 2:30pm to 6:00am to 4:30pm after she called out sick. Complainant stated that she provided medical documentation to support the time when she was out sick. ROI at 125. In response, the Agency stated that Complainant signed the reasonable accommodation decision agreeing to a change her tour of duty based on unplanned call-outs, and as a result of her first call-out, Complainant's schedule was shifted to the 6am shift. ROI at 163 and 185. In essence, the Agency, under the prior approved reasonable accommodation decision was allowed to change Complainant's reasonable accommodation any time she missed work, even if it was for sick leave supported by a doctor's note. We find the language in the Agency's reasonable accommodation decision to be in violation of the Rehabilitation Act.

An Agency cannot predicate the provision of a reasonable accommodation on an employee's usage of accrued leave. In fact, permitting the use of accrued paid leave, or even unpaid leave, is a form of reasonable accommodation when necessitated by an employee's disability. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002). It is undisputed that Complainant used sick leave because of her disability, given that it was supported by documentation from her medical doctor and the fact that the Agency later approved her sick leave. ROI at 805. The record does not contain any evidence of undue hardship on the part of the Agency if it had allowed Complainant to continue with her granted accommodation to start work at 4am and take sick leave, especially considering that Complainant was allowed to work the 4am schedule for months before her sick leave initiated the switch in her schedule.

Additionally, an employer may not refuse to provide an employee with, or revoke a reasonable accommodation, as punishment for that employee's conduct. See generally, Ghannam v. Agency for Int'l Dev., App. No. 01990574 (Nov. 9, 2000) (for misconduct, employers may have grounds for disciplinary action, a poor appraisal, or other appropriate personnel action, not termination of a reasonable accommodation); Corazon P. v. Dep't of the Navy, EEOC App. No. 2021003798 (Oct. 13, 2021) ("an employer may not withhold a reasonable accommodation, such as telework, from an employee with a disability as a punishment").

Since there is no evidence of an undue hardship on the part of the Agency, we find that the Agency denied Complainant a reasonable accommodation to start her tour of duty at 4am and keep a consistent schedule as requested in her medical documentation, and violated the Rehabilitation Act when it included language in her reasonable accommodation decision that predicated her accommodation on her leave usage.

Medical Confidentiality (Claim 9)

The Commission's regulations implementing the Rehabilitation Act provide for the confidentiality of employee medical records. Specifically, information "regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record." 29 C.F.R. § 1630.14(c)(1); see also 42 U.S.C. § 12112(d)(4)(C). This requirement applies to all medical information, including information that an individual voluntarily discloses. See EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), No. 915.002, at 4 (July 26, 2000). Employers may share confidential medical information only in limited circumstances: supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations; first aid and safety personnel may be told if the disability might require emergency treatment; and government officials investigating compliance with the ADA and Rehabilitation Act must be given relevant information on request. 29 C.F.R. § 1630.14(c)(1).

In this claim, Complainant alleged that her privacy was violated when C1 accessed her medical records. It is a violation of the Rehabilitation Act to access confidential employee medical records when the access is not shown to be job-related and consistent with business necessity. See Melanie F. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120142156 (Jun. 23, 2016), Vale v. United States Postal Serv., EEOC Request No. 05960585 (Sept. 5, 1997). The Agency conducted an internal investigation, and it was determined that C1 did in fact access Complainant's electronic medical appointment schedule in the Computerized Patient Record System (CPRS). See Hearing File at 42-43. The Agency did not argue that C1 had a job-related reason to access Complainant's records.

In its FAD, the Agency argued that C1 stated that she accessed Complainant's chart on Complainant's request. ROI at 1120. Complainant denied this assertion by the Agency and stated

that she never requested C1 to access her medical information or look into her medical appointment schedule. We take special note that the ROI does not contain a direct statement from C1. We also take special note that, while not a claim that Complainant is pursuing on the merits in this appeal, that the Agency's internal investigation confirmed that Complainant's name, birth date, and partial social security number written on paper was written in C1's handwriting.

The preponderance of evidence in the record reflects that C1 accessed Complainant's medical information, including her medical appointment schedule, and other personal information, without a job-related reason. We do not find the Agency's purported argument that Complainant authorized the access of her medical information to be supported by the record. Thus, we find that Complainant has established that the Agency improperly disclosed her medical information.

CONCLUSION

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

ORDER

The Agency is ordered to take the following remedial actions:

1. Within **ninety (90) calendar days** of the date this decision is issued, the individuals identified in this decision as C1, RMO1, RMO2, and RMO3 shall complete 2 hours of interactive EEO training, if they are still employed by the Agency, on responsibilities under the Rehabilitation Act. For C1, special emphasis should be given on the Agency's obligation to safeguard employee medical records and the limited reasons to access such information. For RMO1, RMO2, and RMO3, special emphasis should be given on the responsibilities under the Rehabilitation Act to provide reasonable accommodations. 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 EEOC Compliance Officer with proof of attendance, as well as the contents and materials it used for the training. If any of these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure date.
2. Within **one hundred twenty (120) calendar days** from the date this decision is issued, the Agency shall consider disciplining C1 and RMO3. *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.

3. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall conduct and complete a supplemental investigation to determine whether Complainant is entitled to compensatory damages for the violation of the Rehabilitation Act in claims 8 and 9. In so doing, the Agency shall:
 - (a) Issue a notice to Complainant of her right to submit evidence based our guidance in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993) and request evidence from Complainant in support of compensatory damages.⁴
 - (b) Issue a new final agency decision ("Compensatory Damages FAD") based on the findings of the supplemental investigation. The Compensatory Damages FAD shall state the amount (if any) of compensatory damages owed to Complainant and explain how the Agency determined that amount. The Compensatory Damages FAD shall include appeal rights to the Commission.
4. Within **sixty (60) calendar days** of the date the Compensatory Damages FAD is issued, the Agency shall pay Complainant the amount of compensatory damages it determined are owed. If there is a dispute over the exact amount of compensatory damages owed, the Agency shall pay the undisputed amount to Complainant. If Complainant disagrees with the agency's award, they may challenge the Agency's decision on the amount of compensatory damages by filing an appeal of the Compensatory Damages FAD with the Commission. Instructions on how to appeal, including the deadline to file, will be included in the appeal rights portion of the Compensatory Damages FAD.⁵

⁴ The Notice shall provide Complainant with **thirty (30) calendar days** to respond (with an option and instructions to request an extension in the case of extenuating circumstances). Complainant has a duty to cooperate with Agency's investigation to determine compensatory damages, including responding to agency requests for documentation or completing agency forms.

⁵ To establish entitlement to compensatory damages, the evidence must show a causal relationship between the Agency's discriminatory action and any pecuniary (monetary) or non-pecuniary losses/harm experienced by Complainant. For more information on evidence to determine compensatory damages: EEOC Management Directive 110, Ch. 11 § VII (Aug. 5, 2015), available at https://www.eeoc.gov/federal/directives/md-110_chapter_11.cfm (provides the types of compensatory damages available under EEOC statutes and "Objective Evidence" of entitlement); and N. Thompson, Compensatory Damages in the Federal Sector: An Overview, EEOC Digest Vol. XVI, No. 1 (Winter 2005) available at

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 (G0617)

The Agency is ordered to post at its Columbia, South Carolina, Veterans Health Care System Clinic copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

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

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

<https://www.eeoc.gov/federal/digest/xvi-1.cfm#article> (explains Carle v. Dep't of the Navy under the subsection "Proof of Damages").

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 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

May 20, 2024

Date