



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

[REDACTED]  
Bill A.,<sup>1</sup>  
Complainant,

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service  
(Northeast Area),  
Agency.

Appeal Nos. 0120182340,  
2019005819

Agency Nos. 1B-007-0016-17,  
1B-007-0011-18

**DECISION**

On June 22, 2018, and on August 7, 2019, Complainant filed appeals with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's June 18, 2018, and July 17, 2019, final decisions concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

The Commission may, in its discretion, consolidate two or more complaints of discrimination filed by the same complainant. See EEOC Regulation 29 C.F.R. § 1614.606. Accordingly, the Commission exercises its discretion to consolidate the aforementioned cases herein.

For the following reasons, the Commission REVERSES the Agency's final decisions.

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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.

### ISSUE PRESENTED

The issue presented is whether the preponderance of the evidence in the record establishes that Complainant was subjected to discrimination based on disability and in retaliation for his prior EEO activity.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Handler at the Agency's Processing and Distribution Center in San Juan, Puerto Rico. Complainant's first-line supervisor was a Supervisor, Distribution Operations (S1), and his second-line supervisor was a Manager, Distribution Operations (S2). According to S1, Complainant's Mail Handler duties include operating a tow truck and lifting flat tubs of mail, which can weigh up to 70 pounds.

Complainant has intervertebral disc syndrome and degenerative disc disorder. Complainant stated that his Mail Handler duties aggravate his chronic back pain. On April 13, 2016, Complainant's physician determined that Complainant's restrictions were no bending, twisting, kneeling, squatting, pulling, pushing, lifting over 20 pounds, or operating motor vehicles. On April 21, 2016, Complainant submitted a request for light duty, along with his doctor's statement regarding his medical restrictions, to S1.

S2 stated that he decided to deny Complainant's request for light duty because Complainant could not perform the duties of his position based on his medical restrictions. On April 28, 2016, S1 issued Complainant a letter denying his request for light duty, stating that there was no work available within Complainant's restrictions. According to Complainant, he was sent home and told that there was no work available within his restrictions. Complainant averred that there were light duty assignments available within his restrictions. Complainant also alleged that S1 and S2 failed to follow the Agency's light duty policy. Complainant filed an EEO complaint in which he alleged discrimination when he was sent home and his light duty request was denied. Complainant's complaint was the subject of the Commission's decision in EEOC Appeal No. 0120170557 (Jan. 25, 2018). In EEOC Appeal No. 0120170557, the Commission found that Complainant was subjected to discrimination when on April 28, 2016, his request for light duty was denied and he was sent home.

Complainant has since continued to assert that he has been denied a reasonable accommodation. He submitted a written request for a reasonable accommodation on May 15, 2017. He appeared before the Agency's District Reasonable Accommodation Committee (DRAC) on August 8, 2017. He stated that during the meeting, he was able to work the preparing stations. However, by letter dated November 21, 2017, the DRAC denied his request for reasonable accommodation. During this time, on August 4, 2017, S1 issued Complainant a letter requesting a justification for his absences.

On or about August 11, 2017, Complainant was issued a letter notifying him that his tour was changing effective August 19, 2017. The Agency indicated that the schedule change impacted 82 other employees. Subsequently, on August 21, 2017, Complainant was informed that his bid was being abolished effective September 16, 2017. The Senior Plant Manager (M1) indicated that Complainant was issued the letter because he was not working, and the position was being reposted. Because Complainant continued to be absent from the position due to his medical restrictions, he was issued a Letter of Warning on December 26, 2017, and a Notice of Seven-Day Suspension on January 30, 2018. He was also placed on Absent without Leave (AWOL) status.

On October 20, 2017, Complainant filed an EEO complaint (Complaint 1, Agency No. 1B-007-0016-17) alleging that the Agency discriminated against him and subjected him to harassment on the bases of disability (lower back) and in reprisal for prior protected EEO activity arising under the Rehabilitation Act when:

1. Beginning on or about May 15, 2017, his request for reasonable accommodation has not been answered.
2. On August 4, 2017, he was sent a letter requesting him to provide updated medical information to justify his absences.
3. On August 11, 2017, he received a letter notifying him that his tour would be changed effective August 19, 2017.
4. On August 21, 2017, he received a letter notifying him that his bid was being abolished effective September 16, 2017.
5. On November 21, 2017, his request for reasonable accommodation was denied.
6. On or about December 26, 2017, he was issued a letter of warning.
7. On February 1, 2018, Complainant realized that his leave status for pay period 02-2018 and continuing was changed to AWOL.
8. On January 30, 2018, Complainant was issued a Notice of a Seven Day Suspension for his failure to be in regular attendance.

Subsequently, in April 2018, the Agency had Complainant appear before the DRAC again regarding his condition and what accommodations the Agency could provide to allow him to return. Complainant's manager (Manager) averred that Complainant indicated that he could perform light duty assignments. However, she stated that the work Complainant claimed he could perform were not the duties of a Mail Handler but of a Clerk. She indicated that the Agency could only provide Complainant with two hours of duties within his Mail Handler position. Before and following Complainant's responses provided to the DRAC in April 2018, Complainant was issued several letters regarding the scheduling of investigative interviews and a letter requesting that he apply for disability retirement. Complainant alleged that his requests for reasonable accommodation since 2017 have been denied.

As such, on September 11, 2018, Complainant filed another EEO complaint (Complaint 2, Agency No. 1B-007-0011-18) alleging that the Agency discriminated against him and subjected him to harassment on the bases of disability (lower back) and in reprisal for prior protected EEO activity arising under the Rehabilitation Act when:

9. On or about March 1, 2018, May 19, 2018, and June 11, 2018, management sent him several letters scheduling him for an investigative interview for attendance issues;
10. Since March 1, 2018, and continuing, his request for reasonable light duty accommodation has not been granted.
11. On October 9, 2018, Complainant requested that management fill out a VA Form 21-4192 and they have failed to honor his request.

Complainant amended his complaint to include the following event:

12. On December 18, 2018, he received a letter notifying him that if he did not apply for disability retirement within 30 days, the Agency would take administrative action to separate him because he is unable to perform his duties due to his medical condition.

At the conclusion of the investigations, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decisions concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

#### CONTENTIONS ON APPEAL

Complainant filed his appeals without specific comment.

The Agency provided the Commission copies of the complaint files without specific comment or argument in response to the instant appeals.

#### ANALYSIS AND FINDINGS

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 (EEO MD-110), 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”).

*Disparate Treatment – Claims 3 and 11*

A claim of disparate treatment based on indirect evidence is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For Complainant to prevail, he or she 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. McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep’t. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, 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. St. Mary’s Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether Complainant has shown by a preponderance of the evidence that the Agency’s actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep’t. of Transp., EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep’t. of Health and Human Serv., EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep’t. of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

In claim 3, Complainant asserted that he was subjected to discrimination when he was issued a notice that his tour would be changed effective August 19, 2017. We note that there is no indication that this notice was connected to his request for reasonable accommodation. The Agency has shown that the schedule change was due to the general staffing realignment at the Agency’s facility. M1 averred that Complainant was one of some 82 employees who had their schedule changed. The record included a five-page list of employees who had their schedule changed due to the staffing realignment.

With respect to claim 11, Complainant alleged that on October 9, 2018, he sent his wife to the Agency to ask management to fill out a VA Form 21-4192, Request for Employment Information in Connection with Claim for Disability Benefits. The Administrative Assistant averred that an unidentified woman dropped off the form for management. However, Complainant did not submit an authorization letter in order for the Agency to provide private information to anyone. The Agency cannot do so unless permission is given in writing by Complainant.

The Agency also noted that Complainant did not follow up or provide a due date for the form. Based on Complainant's failure to provide authorization, management could not complete a form through another person, even if that person was Complainant's spouse.

Finding that the Agency has provided legitimate, nondiscriminatory reasons for its actions, we turn to Complainant to establish that the reasons were pretext for discrimination. We find that Complainant failed to put forward any argument or evidence. As such, we conclude that the Agency properly concluded that Complainant failed to show that he was subjected to discrimination or retaliation with respect to claims 3 and 11.

*Denial of Reasonable Accommodation – Claims 1, 2, 4, 5, 6, 7, 8, 9, 10, and 12*

The Agency determined that only claims 1, 2 and 5 involved Complainant's assertion that he was denied a reasonable accommodation. A review of the record shows that the Agency's decision erred in limiting Complainant's claims of reasonable accommodation to only three claims. Complainant has asserted that as he has not been provided with reasonable accommodation, he has been removed from his post, subjected to disciplinary actions, and placed in AWOL status. As such, we find that claims 1, 2, 4, 5, 6, 7, 8, 9, 10, and 12 are all part of Complainant's claim of denial of reasonable accommodation.

Under the Commission's regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). The agency may choose among reasonable accommodations as long as the chosen accommodation is effective. An "effective" accommodation either removes a workplace barrier, thereby providing an individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation).

To establish that he was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) he is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide him with a reasonable accommodation. See Enforcement Guidance on Reasonable Accommodation. An individual with a disability is "qualified" if he satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R. § 1630.2(m). "Essential functions" are the fundamental job duties of the employment position that the individual holds or desires. 29 C.F.R. § 1630.2(n).

We first determine if Complainant established he is an individual with a disability covered by the Rehabilitation Act. The record indicates that Complainant has intervertebral disc syndrome and degenerative disc disorder. Due to his medical condition, he is limited to lifting no more than 10 pounds, and no standing or walking for more than 2 hours. He also cannot operate a car, truck, crane, tractor, or other type of motor vehicle. Finally, he stated that he can do no bending, squatting, kneeling, and twisting. We find that Complainant is an individual with a disability under the Rehabilitation Act because he is substantially limited in the major life activity of lifting. See, e.g., Higgins v. U.S. Postal Serv., EEOC Appeal No. 07A300S6 (Sept. 14, 2005) (finding complainant was substantially limited in the major life activity of lifting where he was restricted to lifting no more than 20 pounds); see also Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013) (finding complainant is individual with a disability where she was substantially limited in the major life activity of lifting and restricted to lifting no more than 10 pounds).

A request for a modification or change at work because of a medical condition is a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Q. 1. After receiving a request for reasonable accommodation, an agency “must make a reasonable effort to determine the appropriate accommodation.” 29 C.F.R. pt. 1614. app. § 1630.9. Thus, “it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. § 1630.2(o)(3); see also 29 C.F.R. pt. 1630 app. § 1630.9; Enforcement Guidance on Reasonable Accommodation at Q. 5.

Reasonable accommodation includes such modifications or adjustments as job restructuring, the acquisition or modification of equipment or devices, and reassignment to a vacant position. 29 C.F.R. § 1630.2(o)(2)(ii). In general, reassignment is the reasonable accommodation of last resort and should be considered only when: (1) there are no effective accommodations that would enable an employee to perform the essential functions of his or her current position; or (2) accommodating the employee in the current position would cause an undue hardship. 29 C.F.R. pt. 1630 app. § 1630.2(n); Enforcement Guidance on Reasonable Accommodation, “Reassignment.” An agency should reassign the employee to a vacant position that is equivalent in terms of pay, status, and other related factors; if there are no vacant equivalent positions, then the agency should reassign the employee to a lower-level position that is closest to the current position. Id. The agency, however, may not use reassignment “to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities.” 29 C.F.R. pt. 1630 app. § 1630.2(n); see also EEOC Enforcement Guidance: Workers, Compensation and the ADA, EEOC Notice No. 915.002 (Sept. 1996), at Q. 21 (employer may not unilaterally reassign an employee with a disability-related occupational injury to a different position without first assessing whether the employee can perform the essential functions of his or her current position with or without reasonable accommodation).

An agency is in the best position to know which jobs are vacant or will become vacant within a reasonable time and, as part of the interactive process, should ask the employee about his qualifications and interests. Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 26, 2016). Because it possesses the relevant information, an agency is obligated to inform an employee about vacant positions for which the employee may be eligible as a reassignment. Woodman v. Runyon, 132 F.3d 1330, 1344 (10th Cir. 1997) (federal employers are far better placed than employees to investigate in good faith the availability of vacant positions); see also Enforcement Guidance on Reasonable Accommodation at Q. 28. The employee should assist the agency in identifying vacancies to the extent that the employee has information about them. Further, if the agency is unsure whether the employee is qualified for a particular position, the agency can discuss with the employee his or her qualifications. Mengine v. Runyon, 114 F.3d 415, 419-20 (3d Cir. 1997) (once an employer has identified possible vacancies, an employee has a duty to identify which one he is capable of performing)); see also Enforcement Guidance on Reasonable Accommodation at Q. 28.

We emphasize that a federal agency's obligation under the Rehabilitation Act to offer reassignment is not limited to vacancies within a particular department, facility, or geographical area. Instead, the extent of the agency's search for a vacant position is an issue of undue hardship. Enforcement Guidance on Reasonable Accommodation at Q. 27. Accordingly, absent undue hardship, the agency must conduct an agency-wide search for vacant, funded positions that the employee can perform with or without reasonable accommodation. See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017).

In the instant case, Complainant indicated that he is limited to walking or standing for no longer than two hours with an assistive device. Complainant indicated that he submitted a letter to the Postmaster requesting a reasonable accommodation on May 15, 2017. On August 8, 2017, Complainant appeared before the DRAC and provided the Committee with his request for reasonable accommodation and attachments from his physician. On November 21, 2017, M2 informed Complainant that the DRAC had denied his request for reasonable accommodation because his restrictions prevented him from performing the essential functions of his position. Complainant believed that there were functions within his bid assignment that he could accomplish. Furthermore, Complainant averred that "there are hundreds of different positions [at the Agency]; I have to believe there are other positions" to which he could have been reassigned. M2 averred that there is no eight-hour position within Complainant's bid assignment that would allow him to perform within his restrictions. There is no indication that the Agency took any further steps regarding Complainant's request for a reasonable accommodation.

During this time, the Agency officials issued disciplinary action against Complainant, including S2 issuing a "failure to comply with postal policies governing absence reporting," dated August 1, 2017. Complainant was unable to work his position and was absent from his position. On August 21, 2017, as raised in claim 4, Complainant was issued a letter stating that his bid assignment had been abolished and that he would remain as an "unassigned, regular full-time employee" until a vacant bid could be awarded to him.

Further, as a result of his unassigned status, as alleged in claims 6, 7, and 8, Complainant was issued a Letter of Warning by his supervisor (S3) to address his absences from September 21 to December 18, 2018; charged with AWOL beginning with pay period 02-2018 by S3; and issued a seven-day suspension by S2 and S3 for his attendance issues.

Turning to claims 9, 10, and 12, the record showed that the Agency continued to deny Complainant a reassignment as a reasonable accommodation. The record indicated that the Manager informed Complainant during the DRAC meeting in April 2018 that there was no work available in the Mail Handler position. We note that Complainant asserted that there were duties he could perform. The Manager chose not to consider Complainant's claims, finding that those duties were performed by Clerks. As such, his request for a reassignment, as alleged in claim 10, was denied. Further, Complainant was subjected to investigative interviews regarding his attendance issues by S1, as alleged in claim 9. Finally, in claim 12, Complainant was issued a letter dated December 17, 2018, stating that because the Agency could not locate a vacant funded position, he would have three options including disability retirement, administrative separation, or obtain another position through eReassign.<sup>2</sup>

The record reflects that because of his restrictions, Complainant was not qualified to perform his Mail Handler duties. We find that there were no effective means available to accommodate Complainant in the position he held, which raises the issue of reassignment. See Reita M. v. U.S. Postal Serv., EEOC Appeal No. 0120150260 (July 19, 2017). We therefore turn to whether the Agency met its obligations under the Rehabilitation Act. S2 determined that Complainant could not be accommodated in his Mail Handler position. As Complainant could not be accommodated in his current position, we find that the Agency, absent undue hardship, was obligated to consider reassigning him to a different position, consistent with the Commission's regulations noted above. The Agency did not do so.

The burden now shifts to the Agency to provide case-specific evidence proving that providing reasonable accommodation would cause an undue hardship in the particular circumstances. A determination of undue hardship should be based on several factors, including: (1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility; (3) the overall financial resources, size, number of employees, and type and location of facilities of the employer; (4) the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and (5) the impact of the accommodation on the operation of the facility. See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017); Enforcement Guidance on Reasonable Accommodation.

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<sup>2</sup> The record indicates that Complainant was separated from the Agency effective April 2019. Complainant filed a mixed case complaint alleging discrimination regarding the separation action, which is part of Agency No. 1B-007-0014-19 and which is not before us at this time.

However, neither in its decision nor on appeal has the Agency submitted an argument that reassigning Complainant to a different position would have resulted in an undue hardship on its operations. Therefore, based on the record, we find that Complainant has established that he was denied reasonable accommodation for his disability as alleged in claims 1, 2, 5, and 10. Further due to the Agency's denial of reasonable accommodation, we find that the events alleged as claims 4, 6, 7, 8, 9, and 12 also constitute violations of the Rehabilitation Act.<sup>3</sup>

### 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 finding no discrimination as to claims 3 and 11. However, we REVERSE the Agency's final decision finding no discrimination as to claims 1, 2, 4, 5, 6, 7, 8, 9, 10, and 12 and REMAND the matter in accordance with the ORDER below.

### ORDER

Unless otherwise indicated, within one hundred twenty (120) calendar days of the date this decision is issued, the Agency is ordered to take the following remedial action:

1. Within sixty (60) days of the date this decision is issued, the Agency shall identify all vacant, funded positions or assignments with equivalent pay and status to Complainant's Mail Handler position and determine, with Complainant's input and per the requirements of the Rehabilitation Act, which of these positions he is able to perform, with or without accommodation. If such a vacant, funded position is identified, Complainant shall be placed in the position.
2. The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due Complainant, pursuant to 29 C.F.R. § 1614.501, no later than sixty (60) calendar days after the date Complainant is either placed in a position or declines any position offered. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

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<sup>3</sup> As we find that the Agency's actions constituted violations of the Rehabilitation Act, we need not further address Complainant's claims of unlawful retaliation and harassment.

3. The Agency shall restore any leave used by Complainant due to the Agency's failure to provide him with an effective reasonable accommodation as of May 15, 2017 and continuing.
4. The Agency shall conduct a supplemental investigation on compensatory damages,<sup>4</sup> including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. Thereafter, within ninety (90) calendar days of the date this decision is issued, the Agency shall determine the amount of compensatory damages to be awarded. Within thirty (30) days of determining the amount of compensatory damages, the Agency shall pay Complainant the compensatory damages.
5. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to the identified responsible management officials regarding their responsibilities with respect to eliminating discrimination in the federal workplace. The training must emphasize the Agency's obligations under Section 501 of the Rehabilitation Act, particularly its duties regarding reasonable accommodation.
6. The Agency shall consider taking appropriate disciplinary action against the responsible management officials. The Commission does not consider training to be disciplinary. 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 any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
7. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

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 back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Processing and Distribution Center in San Juan, Puerto Rico copies of the attached notice. Copies of the notice, after being signed by the Agency's duly

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<sup>4</sup> Implicit in our determination is a finding that the Agency's failure to engage in sufficient reasonable accommodation efforts and failure to demonstrate undue hardship herein evidence a lack of the "good faith" necessary to avoid the payment of compensatory damages.

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 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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(c).

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

February 26, 2020

Date