



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

████████████████████
Reggie D.,¹
Complainant,

v.

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

Appeal No. 0120182401

Agency No. 4E890000618

DECISION

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 May 29, 2018, 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. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Technician at the Agency's Crossroads Post Office in Las Vegas, Nevada. On October 4, 2017, Complainant filed a formal EEO complaint alleging race discrimination when he was denied official union time, and when he was given an investigative interview. The Agency dismissed his complaint on October 23, 2017.²

On November 1, 2017, Complainant's first-line supervisor (S1), conducted an investigative interview with him.

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

² Complainant appealed the dismissal, and the Commission affirmed the dismissal in Reggie D. v. U.S. Postal Serv., EEOC Appeal No. 0120180525 (Feb. 8, 2018).

S1 asked Complainant if he was aware that he had five unscheduled absences since July 23, 2017; Complainant responded that he had “no idea.” However, Complainant stated that he called in sick and submitted a “3971” each time. Report of Investigation (ROI) at 123-30.

On November 4, 2017, S1 conducted another investigative interview with Complainant. S1 asked if Complainant did a “penalty” on November 3, 2017, and he responded that he alerted management and requested two hours of overtime. ROI at 131-6. Also, on November 4, 2017, S1 issued Complainant a notice that he was being placed on the “deems desirable list” due to his attendance. S1 instructed Complainant to provide sufficient documentation for “every absence,” until February 2, 2018. ROI at 140.

On November 6, 2017, S1 issued Complainant a Letter of Warning for Unacceptable Attendance. S1 listed four dates from July 26, 2017, through October 19, 2017, when Complainant took eight hours of unscheduled sick leave, and one date when Complainant took 0.12 hours of unscheduled leave. S1 noted that Complainant participated in an investigative interview, and that S1 found Complainant’s actions unacceptable and his reasons were non-mitigating. S1 informed Complainant that future deficiencies will result in more severe disciplinary action. ROI at 141-3.

On November 7, 2017, S1 conducted an investigative interview with Complainant to discuss a Failure to Perform. When asked if he was given multiple instructions to go back to case his mail, Complainant responded that he was asked twice by his second-line supervisor (S2) within 30 seconds. Complainant added that he followed the instructions, and that he did not ignore them. ROI at 144-8.

On December 2, 2017, S1 issued Complainant a 7-day suspension for Failure to Follow Instructions. S1 noted that Complainant failed to follow instructions on November 4, and 6, 2017, when he incurred an unauthorized penalty overtime, and he failed to scan multiple points on his route. S1 stated that after reviewing the evidence, including Complainant’s responses during the investigative interviews, he concluded that Complainant failed to follow previous instructions and policies regarding unauthorized penalty overtime and scanning. ROI at 149-50.

On December 14, 2017, Complainant stated that S1 asked him why he left mail the previous day, and he responded that he was instructed to leave it. Complainant stated that when S1 told him to fill out a form 1571, he informed S1 that S2 told him to leave the mail without filling out a form. Later that day, Complainant needed overtime to complete his delivery, and he stated that S1 instructed him to curtail the delivery. Complainant stated that when he informed S1 that he needed a 1571 form, S1 refused to give him the form. ROI at 108.

On December 16, 2017, S1 conducted an investigative interview with Complainant for Failure to follow instructions/Unacceptable Behavior. S1 asked Complainant if he was aware that he was supposed to alert management when he was unable to take all mail and/or fill out a 1571 form. Complainant responded that he informed S2, who stated to him, “you need to leave right now.” Complainant stated that on December 14, 2017, S1 asked if S1 and S2 were liars, and Complainant agreed. ROI at 154-62.

Also, on December 16, 2017, Complainant stated that S1 gave him a completed 3971 form to sign, and that Complainant responded that he did not agree with the information and refused to sign it. ROI at 115.

On December 26, 2017, S1 issued Complainant a 14-day suspension for Unacceptable Job Performance on December 13, 2017.³ S1 stated that he considered Complainant's responses during the investigative interview held on December 16, 2017, and that he found Complainant's responses unacceptable. S1 also noted that Complainant's disciplinary record contains: (1) a Letter of Warning for Unacceptable Attendance, issued on February 2, 2017; (2) a Letter of Warning for Unacceptable Attendance, issued on November 6, 2017 and; (3) a 7-day suspension, issued on November 20, 2017.⁴ ROI at 163-5.

On March 8, 2018, Complainant's grievances on his two suspensions were resolved. Regarding the 7-day suspension, Complainant was found to have not incurred a penalty overtime on November 4, 2017. For the 14-day suspension, S1 was asked on three separate occasions to provide the documents he relied upon for the suspension, which he failed to do, and the union contended that Complainant did not violate any Agency policy. Both suspensions were rescinded and immediately removed from Complainant's files. ROI at 302,327.

EEO Complaint

On December 12, 2017, Complainant filed an EEO complaint alleging that the Agency subjected him to discriminatory harassment on the bases of race (Asian) and in reprisal for prior protected EEO when:

1. on November 1, 2017, he was given an investigative interview, and subsequently issued a Letter of Warning on November 6, 2017;
2. on November 4, 2017, he was placed on the "deems desirable list";
3. on November 4, and 6, 2017, he was given investigative interviews, and subsequently issued a Notice of Seven (7) Calendar Day Suspension on December 2, 2017; and
4. on November 6, 2017, his supervisor followed him wherever he went and instructed him to take his "DPS"⁵ straight out without checking it, and he was subsequently given another investigative interview on November 7, 2017.

³ This suspension was a no time-off suspension, and Complainant did not lose any pay as a result of the suspension. However, the suspension would be considered to have the same degree of seriousness as a time-off suspension.

⁴ The suspension document is dated November 20, 2017, but it was issued on December 2, 2017.

⁵ We take judicial notice that DPS apparently stands for Delivery Point Sequence.

On January 3, 2018, Complainant contacted the Agency because he alleged “discriminatory harassment/hostile work environment,” and the Agency only noted that Complainant alleged “discriminatory harassment.” Complainant also noted that he stated that he was subjected to disciplinary action “including, but not limited to,” which the Agency omitted. Additionally, Complainant stated that the Agency stated that “your supervisor...instructed you to take your DPS straight out without checking it,” but that he did not state this in his formal complaint. Complainant argued that these discrepancies were “of major import.” ROI at 54-5. On January 9, 2018, the Agency responded that the issues in Complainant’s complaint were properly framed, and that the claims will remain as originally framed. ROI at 53.

On January 23, 2018, the Agency amended the complaint and added the following incidents of harassment:

5. on December 14, 2017, Complainant’s supervisor embarrassed him in front of his peers, and argued about the amount of overtime; and he was subjected to another investigative interview and subsequently issued a 14-day suspension on December 26, 2017; and
6. on December 16, 2017, Complainant’s supervisor refused to accept his signed form 3971, and insisted that he sign the 3971 form that he filled out.

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

The Agency found that Complainant satisfied the essential requirements of a prima facie claim of retaliatory animus in relation to S1. However, the Agency found that Complainant did not establish a prima facie case of race discrimination because he did not show how his provided comparators were treated more favorably. The Agency then found that management officials provided legitimate, nondiscriminatory reasons for their actions.

For claim 1, S1 stated that he held an investigative interview, and subsequently issued Complainant a Letter of Warning, because the District Attendance Control notified him that Complainant had reached the threshold of normal standards on his attendance. Regarding claim 2, S1 stated that he never placed Complainant on a “deems desirable list.” For claim 3, S1 stated that he conducted an investigative interview, and that Labor Relations made the decision that discipline was warranted because Complainant failed to follow instructions.

Regarding claim 4, S2 stated that all carriers are instructed to check DPS mail to make sure that it belongs to their assigned routes. S2 attested that no manager followed Complainant, or informed him to take his DPS, without checking it. S1 stated that he witnessed S2 instructing Complainant to not leave without checking his DPS mail, and that Complainant was not

followed. For claim 5, S2 stated that Complainant requests instructions every day, and that she did not recall this particular incident. S1 stated that he gave Complainant an instruction, which he refused to follow. S1 also stated that Complainant implied that he and S2 were liars. Another supervisor (S3) stated that she concurred with the 14-day suspension. The Agency then found that Complainant did not show that the managers' reasons were pretext for discrimination. The Agency concluded that Complainant's allegations were not supported by the totality of the record, and that he did not present any plausible evidence that would demonstrate that management's reasons for their actions were factually baseless, or not their actual motivation.

Regarding Complainant's harassment claim, the Agency noted that for incident 6, S1 stated that he did not refuse to accept Complainant's 3971 form, and that Complainant then failed to follow his instructions. The Agency found that in reviewing the totality of the evidence, the record did not support a finding that Complainant was subjected to unwelcome verbal or physical conduct as alleged. Moreover, the Agency determined that the record was devoid of any evidence that management singled him out, or they treated him unfairly, because of his protected classes. The Agency noted that the vast majority of the actions were within the normal scope of industrial relations. The Agency concluded that Complainant did not show that the incidents were severe, or pervasive, enough to constitute a hostile work environment.

ANALYSIS AND FINDINGS

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 Chap. 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").

As an initial matter, we find that the Agency properly accepted, and investigated Complainant's claims and that the complaint is properly defined. Additionally, we find that the investigative record is adequate with sufficient information to make a fair and reasoned determination on Complainant's claims.

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976).

For Complainant to prevail, he 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. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is his obligation to show 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); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

Only claims 1, 2, 3, and 5 are discrete claims of discrimination.

We find that Complainant has not established a prima facie case of race discrimination. Complainant may establish a prima facie case of race discrimination by providing evidence that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; and (3) either that similarly situated individuals outside his protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted). While Complainant is a member of a protected class due to his race, and suffered from adverse employment actions, he did not provide any evidence showing that similarly situated employees, outside of his protected class, were treated more favorably, or that the circumstances surrounding the employment actions gave rise to an inference of race discrimination. Accordingly, we find that Complainant has not established that the Agency discriminated against him based on his race.

However, we find that Complainant established a prima facie case of discrimination based on reprisal for his prior EEO complaint. In accordance with the burdens set forth in McDonnell Douglas, and Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997), a complainant may establish a prima facie case of reprisal by showing that: (1) he engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he was 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). The record shows that Complainant engaged in prior EEO activity, and that S1 was aware of his prior EEO complaint. ROI at 173.

We also find that Complainant was subjected to adverse actions. The Commission has stated that adverse actions need not qualify as "ultimate employment actions," or materially affect the terms and conditions of employment to constitute retaliation. Complainant v. United States Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999). Instead, claims based on statutory retaliation clauses are reviewed "with a broad view of coverage."

Under Commission policy, a complainant is protected from any retaliatory discrimination that is reasonably likely to deter... complainant or others from engaging in protected activity.” Complainant v. United States Postal Serv., EEOC Appeal No. 0120070788 (Mar. 29, 2007). We find that the Agency’s conduct would reasonably likely deter an employee from engaging in protected EEO activity, and are adverse actions.

When establishing a prima facie case of retaliation under Title VII, close temporal proximity is sufficient to infer a causal nexus between an employee's protected activity and an adverse action on the part of an employer. See Clark County School Dist. v. Breeden, 532 U.S. 268, 273 (2001) (noting that “cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be ‘very close’”). The Commission has found that a nexus is established when an agency action followed a complainant's participation in protected activity by approximately four (4) months. See Whitmere v. Dep’t of the Air Force, supra. In this case, Complainant filed a formal EEO complaint on October 4, 2017, and he alleged that S1 retaliated against him starting on November 1, 2017, through December 2017. We find that this is close temporal proximity to establish a nexus between Complainant’s EEO activity and the alleged discrimination. As such, we find that Complainant established a prima facie case of discrimination based on reprisal for prior EEO activity.

We find that the Agency proffered legitimate, nondiscriminatory reasons for their actions. We find that Complainant has not shown that the Agency’s reasons for the LOW in claim 1 was a pretext for retaliation and therefore we find no retaliation regarding claim 1.

We find that Complainant established that the reasons for claims 2, 3, and 5 were pretext for retaliation. For claim 2, S1 stated that he “never” placed Complainant on a deems desirable list; however, the record contains a copy of the notice placing Complainant on the deems desirable list on November 4, 2017, with S1’s signature. ROI at 140.

Additionally, we find that the reasons provided for Complainant’s suspensions are not consistent, based on the evidence in the record. For the 7-day suspension, S1 stated that he suspended Complainant because he failed to follow instructions in two instances. ROI at 182. However, as noted in the grievance settlement, Complainant did not incur an unauthorized penalty on November 4, 2017. ROI at 302. Complainant was issued a 14-day suspension for unacceptable job performance on December 13, 2017, when he curtailed mail without approval. The suspension notice stated that Complainant’s response to the charge was that S2 instructed him to leave, without filling out the proper form. ROI at 163. In her affidavit, S2 stated that she gave Complainant instructions “on several occasions,” and that he requested instructions “everyday.” S1 stated that he issued the suspension due to Complainant’s failure to deliver and failure to follow instructions, while S3 stated that Complainant was suspended for irregular attendance and failure to follow instructions. ROI at 220,198,228.

However, the management officials' responses are unworthy of credence because they are internally inconsistent. We find that S2's response was vague and did not support the charge that Complainant failed to follow instructions on December 13, 2017, and we note that S2 did not deny Complainant's claim that she instructed him to leave when he asked her about filling out the necessary form. Further, S3 stated that she concurred with suspending Complainant for irregular attendance, even though the suspension did not include a charge for irregular attendance. We find that Complainant established that the Agency's reasons were pretext for discrimination, and that the Agency retaliated against Complainant when it placed him on a "deems desirable list," and issued him 7-day and 14-day suspensions. We conclude that Complainant was retaliated against regarding claims 2, 3, and 5.

Hostile Work Environment

Harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of the Complainant's employment. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002, at 3 (Mar. 8, 1994). To establish a claim of harassment a complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) 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) there is a basis for imputing liability to the employer. See Humphrey v. United States Postal Service, EEOC Appeal No. 01965238 (Oct. 16, 1998). We find that there is no evidence to show that the Agency's conduct was based on Complainant's race and therefore we find no discrimination regarding the race based hostile work environment claim.

We find that Complainant was subjected to retaliatory harassment. We find that the record shows that S1 was aware of Complainant's prior EEO complaint, which was sufficiently close in time to the actions in the instant complaint to establish a nexus between his EEO activity and the complained of conduct. In this case, Complainant was subjected to numerous investigative interviews; placed on a "deems desirable list," and instructed to submit documentation for every absence through February 4, 2018; and issued 7-day and 14-day suspensions, all within a two-month period. We find that taken together, this conduct was sufficiently material to deter protected activity and constitute a hostile work environment. We note that the two suspensions, issued approximately three weeks apart, were especially chilling because they were not substantiated. We further note that an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Burlington Industries, Inc., v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998). As such, we find that Complainant was subjected to retaliatory harassment by his supervisor.

CONCLUSION

The Agency's decision finding no race discrimination is AFFIRMED. The Agency's decision finding no retaliation (and no race) discrimination regarding claim 1 is AFFIRMED. The Agency's decision finding no retaliation for claims 2, 3, and 5 and finding no retaliatory hostile work environment is REVERSED. The Agency shall comply with the Order herein.

ORDER

The Agency shall:

1. Within 60 days of the date this decision is issued, to the extent that it has not already done so, the Agency shall remove the following from Complainant's personnel file: (1) the notice placing Complainant on a "deems desirable list," dated November 4, 2017; (2) the 7-day suspension, dated November 20, 2017; and (3) the 14-day suspension, issued on December 26, 2017.
2. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages within 30 days after the completion of the investigation.
3. Within 90 days of the date this decision is issued, the Agency shall provide 8 hours of in-person or interactive EEO training for S1 and all other responsible employee with respect to an Agency's duties to not to retaliate against persons for engaging in EEO activity and to ensure that similar violations do not occur.
4. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1 and all other responsible employees. 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).
5. Within 60 days of the date this decision is issued, the Agency shall determine the amount of back pay with interest and other benefits (if any) due Complainant for the suspensions which were found to be discriminatory. Within 60 days from the date of the Agency's determination on the amount of back pay due, the Agency shall pay Complainant the back pay and/or benefits due.

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 showing that the relevant documents have been removed from Complainant's personnel files, and that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Crossroads Post Office in Las Vegas, Nevada 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.

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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, **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

January 15, 2020
Date