



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

[REDACTED]
Clay W.,¹
Petitioner,

v.

Ryan D. McCarthy,
Secretary,
Department of the Army,
Agency.

Petition No. 2019005317

Request No. 0520180499

Appeal No. 0120161031

Hearing No. 541-2013-00039X

Agency No. ARCARSON12MAY01904

DECISION ON A PETITION FOR ENFORCEMENT

On August 15, 2019, the Equal Employment Opportunity Commission (EEOC or Commission) docketed a petition for enforcement to examine the enforcement of an Order set forth in EEOC Request No. 0520180499 (September 27, 2018). The Commission accepts this petition for enforcement pursuant to 29 C.F.R. § 1614.503. Petitioner alleged that the Agency failed to fully comply with the Commission's Order.

BACKGROUND

At the time of events giving rise to this complaint, Petitioner worked as a Social Services Assistant Coordinator, GS-0101-11, at the Agency's Army Community Services (ACS), Soldier Family Assistance Center located in Fort Carson, Colorado. Petitioner's appointment was for a two-year term, with a not-to-exceed date of February 29, 2012.

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

In June 2012, Petitioner filed a complaint in which he alleged that the Agency discriminated against him on the basis of sex (male) and/or in reprisal for prior protected EEO activity in violation of Title VII of the Civil Rights Act of 1964 (Title VII) when his term appointment was not extended beyond February 29, 2012. An EEOC Administrative Judge (AJ) rendered a judgment against the Agency. On August 26, 2015, the AJ issued an interim bench decision on damages and established a briefing schedule for attorney's fees.² The AJ found Petitioner was entitled to \$49,000 in back-pay for the period of February 29, 2012 through December 31, 2013; \$100,000 in non-pecuniary damages; \$3,025 in pecuniary losses; and \$6,000 in future pecuniary losses to cover five years. On January 15, 2016, the Agency issued a final decision fully implementing the AJ's remedial relief.

Petitioner appealed the Agency's final decision to the Commission. In EEOC Appeal No. 0120161031 (June 21, 2018), request for reconsideration denied, EEOC Request No. 0520180499 (September 27, 2018), EEOC modified the final agency decision.

In pertinent part, the Commission provided the following Order.

To the extent that it has not already done so, the Agency is ORDERED to undertake the following remedial action:

1. Within thirty (30) calendar days of the date this decision is issued, the Agency shall offer to reinstate Petitioner to a GS-11 Social Services Assistance Coordinator position at the Ft. Carson, Colorado Army Community Services, Soldier Family Assistance Center (or some other mutually agreeable position/location). Petitioner shall be given a minimum of thirty (30) calendar days from receipt of the offer to accept or decline the offer. Failure to accept the offer within the time period set by the Agency will be considered rejection of the offer, unless Petitioner can show that circumstances beyond his control prevented a response within the time limit. Petitioner's term position will be for a two-year term, effective the date Petitioner accepts the position. After the two-year term expires, the Agency shall evaluate (in the same nondiscriminatory manner it evaluates all term employees) whether to extend Petitioner's position for another term and whether Petitioner's position should be made permanent.
2. Within sixty (60) calendar days of the date this decision is issued, the Agency shall determine the appropriate amount of back-pay, and other benefits due Petitioner pursuant to 29 C.F.R. § 1614.501. The Agency's determination shall be based on the fact that, absent discrimination, Petitioner would have remained employed as a Social Services Assistance Coordinator and subsequently would have received all step increases and all career ladder promotions to which a fully

² We note, on October 15, 2018, the Agency issued a final decision regarding attorney's fees, which Petitioner appealed. The Commission docketed the appeal as EEOC Appeal No. 2019001846, and the matter is actively being processed by EEOC.

successful employee was entitled. If Petitioner declines reinstatement, the back-pay period shall end on the date he declines the offer. Petitioner 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 Petitioner for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. Petitioner may petition for enforcement or clarification of the amount it believes to be due. The petition for enforcement or clarification must be filed with the Compliance Officer at the address referenced in the statement entitled "Implementation of the Commission's Decision."

3. After the relevant back-pay decisions have been made, the Agency shall request that Petitioner submit his claim for compensation for all additional federal and state income tax liability that he has incurred or will incur. The Agency shall afford Petitioner a minimum of sixty (60) calendar days to submit his claim and supporting documents. The burden of proof to establish the amount of additional tax liability, if any, is on the Petitioner. The calculation of additional tax liability must be based on the taxes Petitioner would have paid had he received the back-pay in the form of regular salary during the back-pay period, versus the additional taxes he paid due to receiving the back-pay lump sum award. Thereafter, the Agency shall issue a final decision on this matter and any amount of proven additional tax liability within one hundred and twenty (120) calendar days of the date this decision is issued in accordance with 29 C.F.R. § 1614.110(b).

On August 15, 2019, Petitioner submitted the instant petition for enforcement. Petitioner contends that the Agency: (1) did not offer him his former Social Services Assistance Coordinator position or a substantially similar position and did not offer an opportunity for renewal of the two-year, term appointment; (2) failed to pay him back-pay through the date of reinstatement to his former position or front pay until the age of 65 years old, and improperly deducted \$9,000 in unemployment compensation from his back-pay, and failed to compensate for health benefits; (3) failed to provide tax liability for lump sum compensation in 2016 and 2018.

Petitioner argued that the Agency hid his former position under a new title, Human Resources Specialist, which is a permanent position. Petitioner stated that the offer did not provide for an evaluation of whether to extend Petitioner's position for another term, and that his peers' positions have changed from "term" to "permanent." Petitioner stated that he hired a Vocational Rehabilitation expert (VR1), who found his former position and the position offered were not substantially equivalent. Petitioner stated that he hired another expert who conducted an economic damage analysis and determined that the Agency owed him \$123,055. Petitioner noted, on November 30, 2018, the Agency paid him \$65,720.95 (less outside earnings, social security and Medicare taxes, and state and federal taxes).

Petitioner stated that the Agency reduced the AJ's back-pay award of \$49,000 through December 30, 2013, and improperly deducted \$9,000 of unemployment compensation from 2012 and failed to provide health insurance. Petitioner requests an additional \$53,334.01 to total \$123,055. Petitioner requests \$43,115 for tax liability for 2016 and 2018 back compensation. (Petitioner stated that he and the Agency agreed upon \$38,000 in tax liability for his 2016 compensation and \$5,115 for his 2018 compensation.) Further, Petitioner stated that the Agency failed to provide training or discipline to correct its unreasonable delay in processing his EEO complaint. Further, he requested expert witness fees.

The Agency stated that Petitioner's former position no longer exists due to a decrease in the wounded warrior population and the changed focus of the program. The Agency noted that Petitioner's former position is series 0101 and the Human Resources Specialist position he cites is series 0201. The Agency stated, on July 25, 2018, it provided Petitioner a conditional offer of employment to a Survivor Outreach Services Support Coordinator (SOSSC), GS-0101-11 position, which is the same series and grade and in the same department as his former position. The Agency stated that the SOSSC position supports the current mission of the Agency and Petitioner declined its offer. The Agency stated that Petitioner's allegations of it hiding his former position under a new title is unsubstantiated. The Agency stated that Petitioner's expert, VR1, did not contact the Agency to discuss the changed position or mission. The Agency stated, on December 20, 2018, it provided Petitioner a draft explanation of its back-pay award to allow Petitioner an opportunity to respond, but he did not. The Agency stated it completed all compliance requirements except for (3) related to tax liability and it has not done so because it is awaiting appropriate tax return documentation (tax returns from 2009 to 2013) from Petitioner to provide to the Defense Finance and Accounting Services (DFAS).

The record contains the documents that follow.

- A letter dated July 25, 2018 offering Petitioner a Survivor Outreach Services Support Coordinator, GS-11, position with the Fort Carson ACS Division in Colorado. The offer was for a term, not-to-exceed two years, full-time position.
- A letter dated August 24, 2018 from Petitioner, declining the conditional offer of employment. Petitioner stated that the offer was untimely and not to his former position.
- A letter dated August 24, 2018, from a Rehabilitation Counselor, VR1, stating that the two positions "are not equivalent." Specifically, VR1 stated, "While there is some overlap in tasks, there are major differences in what the daily work is, extent and intensity of contacts, and how services are provided to the consumer population."
- Photo of bulletin board containing a Notice to Employees, dated September 24, 2018, of finding of discrimination at Fort Carson facility.
- Organizational roster indicating that Petitioner's position is no longer listed, and there are two GS-00201-11 Human Resource Specialist positions in the organization.

- Preliminary Pay Audit for pay period ending (PPE) January 23, 2016 through PPE July 7, 2018 for a total of \$52,961.52. The hourly rate was \$32.22 between PPE January 23, 2016 and PPE December 24, 2016; \$33.17 per hour for PPE January 7, 2017; \$33.93 per hour for PPE January 21, 2017 through PPE January 6, 2018; \$34.58 per hour for PPE January 20, 2018 through PPE July 7, 2018.
- A letter dated August 7, 2018 from the Agency's Deputy Garrison Commander explaining consideration of discipline and determination that discipline is not appropriate under these circumstances.
- Sign-in log dated September 19, 2018, for EEO Petitioner Processing Training for an EEO Specialist and EEO Manager.
- Civilian Leave and Earnings Statement for PPE November 24, 2018 and Pay Date of November 30, 2018. The statement indicated \$144,373.71 for Gross Pay, less Interim Earnings/Outside Earnings of \$58,000³, \$34,478.27 Deductions, and \$65,720.95 Net Pay.
- Office of Personnel Management (OPM) Back-pay Computation Summary Report for pay period beginning February 26, 2012 through pay period beginning August 19, 2018. The OPM report indicates Gross Back-pay of \$86,373.71 and Interest of \$10,822.35.
- Declaration dated June 13, 2019 from ACS Division Chief (S1) stating that the mission of ACS changed between 2012 and 2016 and 2019. S1 stated, "In 2019, the mission of the [ACS] Division is focused on web-based service delivery that provides Soldiers and their Families with information at their finger-tips." S1 stated that the Social Services Coordinator Assistant position was "redundant" in the Division and no longer needed, and that the Human Resource Specialist position has different duties.
- Declaration dated December 19, 2018 from Civilian Pay Operations Settlement Supervisor (S2) stating that the Agency was to pay back-pay for February 29, 2012 through August 24, 2018. S2 stated the Agency based its calculations on entitled pay at GS-11/Step 3 February 29, 2012 through December 29, 2012; at GS-11/Step 4 December 30, 2012 through December 27, 2014; at GS-11/Step 5 December 28, 2014 through December 24, 2016; and at GS-11/Step 6 December 25, 2016 through August 24, 2018.
- A DFAS remedy ticket dated December 19, 2018, providing the information in the tables below.

	GROSS REGULAR EARNINGS/PREMIUMS	\$49,000.00 AJ BACK- PAY AWARD &	
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³ A Civilian Pay Operations Settlement Supervisor stated that the \$58,000 offset was for a \$49,000 lump sum back pay payment to Petitioner on February 22, 2016 by DFAS Vendor pay (consistent with the AJ's award of back pay through December 2013) and \$9,000 in unemployment compensation received by Petitioner from the state of Colorado in 2012.

YEAR	AFTER ACTUAL EARNINGS FROM OTHER EMPLOYMENT	\$9,000.00 UNEMPLOYMENT COMPENSATION PAYMENT	REMAINING GROSS EARNINGS
2012	\$29,678.14	[\$17,575.00]	\$12,103.14
2013	\$17,239.04	[\$8,450.00]	\$8,789.04
2014	\$17,939.10	[\$8,450.00]	\$9,489.10
2015	\$20,690.40	[\$8,775.00]	\$11,915.40
2016	\$20,269.60	[\$8,150.00]	\$12,119.60
2017	\$22,966.37	[\$6,600.00]	\$16,366.37
2018	\$15,591.06	[\$0]	\$15,591.06
Total	\$144,373.71	[\$58,000.00]	\$86,373.71

Remaining Gross Earnings	\$86,373.71
<i>less Lump Sum Leave Debt (155.75 hours)</i>	[\$4,569.71]
Interest on Back-pay	\$10,822.35
Current Pay Period Earnings	\$2,196.54
Retro Earnings based on GS-7 Step discrepancy	\$806.62
<i>less Deductions – Retirement, Medicare, Social Security, Income Taxes, Dental Insurance, Group Life Insurance, Thrift Savings Plan, and Thrift Savings Plan Loan.</i>	[\$29,908.56]
NET PAY	\$65,720.95

ANALYSIS AND FINDINGS

Reinstatement

Pursuant to 29 C.F.R. § 1614.501(b)(1)(i), the Agency is required to offer Petitioner the position he would have occupied but for the discrimination suffered by him, or a substantially equivalent position. A substantially equivalent position is one that is similar in duties, responsibilities, and location. See Patterson v. Dep't of Agriculture, EEOC Request No. 05940079 (October 21, 1994). The burden to prove substantial equivalency rests with the agency. Shaw v. Dep't of the Air Force, EEOC Request No. 05930370 (July 15, 1994).

Petitioner held a position as a Social Services Assistant Coordinator, GS-0101-11, at the ACS, Soldier's Family Assistance Center in Fort Carson, Colorado. The position was a two-year appointment with a not-to-exceed date of February 29, 2012. The Agency did not extend Petitioner's appointment. In a letter dated July 25, 2018, the Agency offered Petitioner a Survivor Outreach Services Support Coordinator, GS-0101-11, position with the Fort Carson ACS Division in Colorado. The offer was for a term, not-to-exceed two years, full-time position. In a letter dated August 24, 2018, Petitioner declined the conditional offer of employment, stating that the offer was untimely and not to his former position. Further, Petitioner stated that a substantially equivalent position would be the Human Resources Specialist, GS-11, position in ACS and that the Agency hid his former position under that new title. Petitioner provided a report from a Rehabilitation Counselor, VR1, stating that the former position and newly offered position are not substantially equivalent. The Agency stated that Petitioner's former position no longer exists due to a decrease in the wounded warrior population and the changed focus of the program. The Agency noted that Petitioner's former position is series 0101 and the Human Resources Specialist position he cites is series 0201, whereas the offered position is the same series, grade, and location as his former position.

Based on the above, we find that the Agency complied with its obligation pursuant to EEOC Appeal No. 0120161031/EEOC Request No. 0520180499 to offer to reinstate Petitioner. Further, we note that our previous decisions found that front pay was not appropriate here.

Back-pay

The purpose of a back-pay award is to restore a prevailing Petitioner to the position he would have occupied absent the discrimination. Albemarle Paper Co. v. Moody, 442 U.S. 405, 418-19 (1975); Davis v. U.S. Postal Service, EEOC Petition No. 04900010 (November 29, 1990). A back-pay claimant under Title VII generally has a duty to mitigate damages. See 29 C.F.R. § 1614.501(d).

The agency is required to make certain deductions from back-pay awards to ensure that the employee does not receive more in total benefits than he would have received in the absence of the personnel action.

The person who has been discriminated against must receive a sum of money equal to what would have been earned by that person in the employment lost through discrimination (gross back-pay) less what was actually earned from other employment during the period, after normal expenses incurred in seeking and holding the interim employment have been deducted (net interim earnings). The difference between gross back-pay and net interim earnings is net back-pay due. Net back-pay accrues from the date of discrimination, except where the statute limits recovery, until the discrimination against the individual has been remedied. Gross back-pay should include all forms of compensation and must reflect fluctuations in working time, overtime rates, penalty overtime, Sunday premium and night work, changing rate of pay, transfers, promotions, and privileges of employment to which the petitioner would have been entitled but for the discrimination. See Ulloa v. U.S. Postal Service, EEOC Petition No. 04A30025 (August 3, 2004)(citing Allen v. Dep't of the Air Force, EEOC Petition No. 04940006 (May 31, 1996)); Perez v. U. S. Postal Service, EEOC Petition No. 04A40041 (March 3, 2005).

The Commission recognizes that precise measurement cannot always be used to remedy the wrong inflicted, and therefore, the computation of back-pay awards inherently involves some speculation. Hanns v. U.S. Postal Service, EEOC Petition No. 04960030 (September 18, 1997). However, uncertainties involved in a back-pay determination should be resolved against the agency which has already been found to have committed the acts of discrimination. Id. The Commission finds that it is reasonable to require the agency to provide a clear and concise “plain language” statement of the formulas and methods it used to calculate petitioner's back-pay. See Vashi v. U.S. Postal Service, EEOC Petition No. 0420060009 (December 5, 2007) (noting that it is the agency's obligation to ensure that its back-pay calculations are clear, supported in the record and in accordance with 29 C.F.R. § 1614.501.)

While unrealistic exactitude is not required in back-pay determinations, uncertainties involved in such determinations usually are resolved against the discriminating employer. Hairston v. McLean Trucking Co., 520 F.2d 226 (4th Cir. 1975); Smallwood v. United Air Lines, Inc., 728 F.2d 614, 616, n. 5 (4th Cir.), cert. denied, 469 U.S. 832 (1984); Harrington v. Tennessee Valley Auth., EEOC Petition No. 04900007 (Dec. 27, 1990).

The Agency's Civilian Pay Operations Settlement Supervisor, S2, stated that the Agency paid Petitioner back-pay for February 29, 2012 through August 24, 2018. S2 stated the Agency based its calculations on entitled pay at GS-11/Step 3 February 29, 2012 through December 29, 2012; at GS-11/Step 4 December 30, 2012 through December 27, 2014; at GS-11/Step 5 December 28, 2014 through December 24, 2016; and at GS-11/Step 6 December 25, 2016 through August 24, 2018. For those periods, the Agency calculated the difference between Petitioner's actual wages in his replacement position at GS-7/Step 10 and his entitled position at the applicable GS-11 step. The Agency provided a Back-pay Computation Summary Report utilizing an OPM Back-pay Calculator, a DFAS Remedy Ticket, and a Civilian Leave and Earnings Statement for its calculations. The provided documents reflect information in the table below, resulting in Net Pay of \$65,720.95.

2012 – 2018 Gross Regular Earnings	\$144,373.71
<i>less AJ back-pay award paid November 2016</i>	[49,000.00]
<i>less Colorado unemployment compensation to Petitioner in 2012</i>	[9,000.00]
Remaining Gross Earnings Total	<u>\$86,373.71</u>
<i>less Lump Sum Leave Debt</i>	[4,569.71]
Interest on Back-pay	10,822.35
Current Pay Period Earnings	2,196.54
Retro Earnings based on GS-7 Step discrepancy	806.62
<i>less Deductions – Retirement, Medicare, Social Security, Income Taxes, Dental Insurance, Group Life Insurance, Thrift Savings Plan, and Thrift Savings Plan Loan.</i>	[29,908.56]
Net Pay	<u>\$65,720.95</u>

We find that the Agency provided a clear and concise calculation of its Net Back-pay award, which we find appropriate, except its deduction of \$9,000 in 2012 state of Colorado unemployment compensation.

Unemployment compensation must not be deducted from back-pay. Dana v. U.S. Postal Service, EEOC Appeal No. 01921641 (June 11, 1993); Wallis v. U.S. Postal Service, EEOC Appeal No. 01950510 (November 13, 1995). Unemployment compensation is an interim source of income, but it is a collateral source in that it comes from the state and not the involved federal employer. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), Chapter 11.III.H (as revised August 2015). An employer cannot offset its damages through a collateral source, such as state unemployment compensation. Id. Recoupment of unemployment compensation is generally a matter between the Petitioner and the state. Id. The Agency must award Petitioner an additional \$9,000, which it improperly deducted from Petitioner's back-pay award.

Tax Liability

An award to cover additional tax liability from a lump-sum payment of back-pay is available to petitioners. Goetze v. Dep't of the Navy, EEOC Appeal No. 01991530 (August 22, 2001); Holler v. Dep't of the Navy, EEOC Appeal Nos. 01982627 and 01990407 (August 22, 2001); Van Hoose v. Dep't of the Navy, EEOC Appeal Nos. 01982628 and 01990455 (August 22, 2001). A petitioner has the burden of establishing the amount of increased tax liability. Id. In the case of a lump sum back-pay award, individuals are compensated for the extra tax they are required to pay as a result of receiving a lump sum award.

The Commission has found that a Petitioner bears the burden to prove the amount to which he claims entitlement, and courts have demanded probative calculations by Petitioners. See Cecile S. v. United States Postal Service, EEOC Petition No. 0420120013 (November 4, 2015); Cottrell v. Dep't of Transportation, EEOC Petition No. 04A30015 (October 12, 2004).

Here, petitioner requests \$43,115 for tax liability for 2016 and 2018 back compensation. Petitioner stated that he and the Agency agreed upon \$38,000 in tax liability for his 2016 lump sum payment and \$5,115 for his 2018 lump sum payment. He submitted a statement from an expert on the difference of his tax liability with and without the lump sum payments. The Agency stated, after conferring with DFAS, it requested Petitioner submit tax returns for 2009 to 2013 to calculate tax penalty. The Agency stated that Petitioner has yet to provide the requested tax returns.

The calculation of additional tax liability must be based on the taxes Petitioner would have paid had he received the back-pay in the form of regular salary during the back-pay period, versus the additional taxes he paid due to receiving the back-pay lump sum award. We find that the Agency should again request the 2009 to 2013 tax returns from Petitioner and allow him an opportunity to submit the returns to the Agency for calculation of tax liability by DFAS.

Other Requirements

Petitioner stated that the Agency failed to consider discipline or provide training to management officials responsible for the delay in investigating his EEO complaint and failed to pay his expert witness fees. We deny Petitioner's request with respect to these matters and conclude the Agency fulfilled its obligations as to considering discipline and providing training. The Agency provided a letter from its Deputy Garrison Commander explaining consideration of discipline and determination that discipline is not appropriate under these circumstances, as well as a sign-in log for EEO Petitioner Processing Training in September 2018. Further, the Commission, in its previous decision declined to award past expert witness fees due to Petitioner's failure to present to the EEOC AJ as appropriate. Any expert witness fees accrued due to the Order in EEOC Request No. 0520180499/EEOC Appeal No. 0120161031 should be requested as part of recoverable attorney's fees.

CONCLUSION

We GRANT the petition for enforcement in part and REMAND the matters of improper deduction of unemployment compensation from the back-pay award and additional tax liability to the Agency to comply with this decision and the Order below.

ORDER

Within sixty (60) calendar days of the date this decision is issued, the Agency shall pay Petitioner an additional \$9,000.00 for the improper deduction of unemployment compensation from his back-pay award.

Within thirty (30) calendar days of the date this decision is issued, the Agency shall request that Petitioner submit his claim for compensation (with tax return support) for all additional federal and state income tax liability that he has incurred or will incur. The Agency shall afford Petitioner a minimum of sixty (60) calendar days from the date the Agency request is issued to submit tax returns for 2009 through 2013. Petitioner shall cooperate in the Agency's efforts to compute the amount of additional tax liability for the 2016 and 2018 lump sum payments and shall provide all relevant information requested by the Agency. The burden of proof to establish the amount of additional tax liability, if any, is on the Petitioner. The calculation of additional tax liability must be based on the taxes Petitioner would have paid had he received the back-pay in the form of regular salary during the back-pay period, versus the additional taxes he paid due to receiving the back-pay lump sum award. Thereafter, in accordance with 29 C.F.R. 1614.110(b), the Agency shall issue a final decision on this matter and pay any amount of proven additional tax liability within one hundred and twenty (120) calendar days of the date this decision is issued.

ATTORNEY'S FEES (H1016)

If Petitioner has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), 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 the date this decision was issued. 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 Petitioner and his/her representative.

If the Agency does not comply with the Commission's order, the Petitioner may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Petitioner 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 Petitioner 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 Petitioner 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.

PETITIONER'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 Petitioner's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

February 25, 2020

Date