



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

[REDACTED]
Miquel G.,¹
Complainant,

v.

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

Appeal No. 2020000182

Hearing No. 541201200139X

Agency No. 4E800005912

DECISION

Following its October 7, 2019 Final Order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) pursuant to 29 C.F.R. § 1614.403(a). The Agency implemented a finding that it engaged in discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), as amended, 29 U.S.C. § 791 et seq. However, the Agency requests that the Commission modify the remedies ordered by the EEOC Administrative Judge (“AJ”).

BACKGROUND

At the time of events giving rise to this complaint, Complainant was employed by the Agency as the Manager, Customer Service, EAS-18, for Dillon Post Office, in Dillon, Colorado.

On March 6, 2012, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of sex (male) and disability (hearing impairment, speech impediment) when:

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.

1. On January 23, 2012, his disability was not accommodated when he was interviewed via telephone for the position of Postmaster, Dillon Colorado, and,
2. On January 27, 2012, he was notified that he was not selected for the position of Postmaster, Dillon, Colorado.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (“AJ”). Complainant timely requested a hearing, an AJ was assigned, and the parties engaged in discovery.

On November 1, 2016, the AJ partially granted a motion by the Agency, and subsumed Complainant’s disability non-selection claim into Hubbard, et al. v. United States Postal Service, Civil Action No. 031062, a class action that was pending before the U.S. District Court for the District of Columbia.² The AJ denied the Agency’s motion to subsume Claim 1 as well as sex discrimination as related to Claim 2, or alternately place them in abeyance pending the outcome of the Hubbard Class Action.

On June 20 and 21, 2019, a hearing was held. In accordance with the AJ’s November 1, 2016 Order, the parties stipulated that Claim 2 concerned discrimination based on sex only. The AJ issued a bench decision in favor of Complainant on July 11, 2019.

With respect to Claim 1, the AJ determined that Complainant provided the Selecting Official (“SO”) for the Postmaster position with sufficient notice that he required an accommodation for his hearing impairment. SO was already aware of Complainant’s hearing impairment when she scheduled the phone interviews, and Complainant referenced his concern about interviewing by phone due to his “hearing” in an email to SO prior to his interview. The AJ properly found this sufficient to constitute a request for a reasonable accommodation, and SO’s failure to provide one, a violation of the Rehabilitation Act.

With respect to Claim 2, the AJ determined that Complainant demonstrated by a preponderance of the evidence that his non-selection was motivated by discrimination based on evidence that his qualifications were demonstrably superior to those of the selectee.

² Hubbard v. Donahoe, 958 F. Supp. 2d 116 (D.D.C. 2013) (approving proposed class action settlement agreement awarding current and former deaf and hearing-impaired United States Postal Service (“USPS”) employees alleging that the USPS failed to provide reasonable accommodations in violation of the Rehabilitation Act, \$4.55 million to a class of 6,000 employees, with \$910,000 attorney fees, \$114,216.69 for expenses, \$10,000 to each class representative, base payment of \$250 to all remaining class members, with the rest of the common fund to be distributed, based on severity of harm suffered, for an estimated average award of \$927.)

He emphasized that the disparity in qualifications was “of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen [the selectee] over [Complainant] for the position of Postmaster, EAS-20, in Dillon Colorado.” Unlike the selectee, who had not held an EAS-20 level detail, and worked exclusively in smaller facilities, Complainant had spent three years as Officer in Charge (“OIC”) and Acting Postmaster, EAS-20, at the Dillon Post Office, which encompassed three facilities and involved managing large numbers of employees. Also, unlike the selectee, Complainant was familiar with the Agency’s time-keeping system, TACS. The AJ also found Complainant more credible than SO, who, among other things, provided several transparently post hoc explanations for choosing the selectee over Complainant. Although SO’s most recent hires included 18 men and 8 women, the AJ noted, “that fact is not evidence, let alone proof, that [SO] is somehow constitutionally incapable of sex discrimination or that sex did not motivate the selection decision at issue. The fact remains, [SO] selected a woman over a man for Dillon Postmaster and her purported legitimate, nondiscriminatory reasons for doing so do not withstand scrutiny.”

The AJ determined that in addition to reasonable attorneys’ fees and costs,³ Complainant was entitled to back pay (plus interest) to compensate him for the difference between what he would have earned had he been selected for the Dillon Postmaster, EAS-20 position, with a start date of February 25, 2012, through his voluntary retirement on January 31, 2014. The AJ also ordered that “[SO] shall receive at least four hours of training on reasonable accommodations of disabilities and the interactive process and at least four hours of training on the Agency’s selections policies, practices, and procedures.”

Finally, the AJ determined that Complainant was entitled to past pecuniary and non-pecuniary compensatory damages, which are at issue in the instant appeal.

Past Pecuniary Damages

Following his non-selection, Complainant’s position as the Manager, Customer Service, EAS-18, for the Dillon Post Office (Silverthorne location) was abolished due to a Reduction-In-Force (“RIF”). As a result, he was laterally transferred to the position of Postmaster, EAS-18, in Black Hawk, Colorado. However, Complainant did not report to Black Hawk, as he was serving an EAS-20 detail in Breckenridge, Colorado. In or around October 2012, Complainant interviewed with SO for a Postmaster, EAS-20, position in Evergreen, Colorado (in this instance he was offered interpreter services and the interview was in person), but was not selected. Complainant applied to two more Postmaster EAS-20 vacancies, one in Craig, Colorado, the other in Avon, Colorado.

³ On August 28, 2019, the AJ issued an Order awarding Complainant \$57,595.21 (plus post judgment interest) in attorneys’ fees and costs, which reflects the AJ’s decision to adopt the Agency’s proposed twenty percent “across-the-board reduction” of attorney fees incurred between June 14, 2012, and November 1, 2016, to account for the portion of Complainant’s complaint subsumed by Hubbard.

On December 2, 2012, Complainant was selected for position in Craig, Colorado. In August 2013, Complainant was granted reassignment to the position of Postmaster, EAS-20, in Edwards, Colorado, and retired on January 31, 2014.

Complainant and his wife testified that accepting the Craig, Colorado position caused a huge financial burden. Whereas Complainant's commute from his home in Central City, Colorado to the Dillon Post Office was 43 miles each way, his commute to the Craig Post Office was 177 miles each way, amounting to an additional 268 mile round trip. Due to the long commute, Complainant rented an apartment in Craig for \$450 per month with a \$750 deposit, plus utilities. He stayed there during the week, and returned home on weekends. According to Complainant's wife, Complainant, "felt he had to take the Craig job because it was a Level 20. He had a goal to reach Level 23 or 24 management, and Craig was a step [up]."

The AJ determined that Complainant "proved by a preponderance of the evidence that had it not been for his discriminatory nonselection, he would not have taken the assignment in Craig, Colorado." Based on receipts furnished by Complainant, the AJ ordered the Agency to pay \$4000.13 in expenses associated with renting the Craig, Colorado apartment from November 2012 through July 2013. The AJ further ordered the Agency to calculate mileage for the 268 miles added to his round trip commute "using the then current rate per mile allowed by the Internal Revenue Service," and pay Complainant that amount for each week he worked at the Craig Post Office.

Non-Pecuniary Damages

With respect to denial of accommodation in Claim 1, the AJ found Complainant credibly testified that he was "extremely nervous" and sweating, while trying to do the best he could. After the interview, Complainant was "exhausted" and "overwhelmed," aware that it was not his best interview.

As for his discriminatory non-selection in Claim 2, the AJ found that Complainant experienced much more long term and deep emotional distress. The AJ noted that "[a]n otherwise articulate and confident man throughout his testimony, [Complainant] observably experienced trouble speaking and finding the words to express himself when asked about the emotional aspects of this case. The change in his speech and demeanor told of the emotional suffering brought on particularly by the non-selection, which hurts him deeply to this day."

Complainant credibly testified that soon after learning of his non-selection, he drafted a suicide note and walked to a mineshaft intending to end his life, but his love of his wife stopped him, and he threw out the note. Complainant testified that the impact of the non-selection was ongoing, as he experienced depression, argued with his wife like he never had before almost ending their marriage of 35 years, and stopped participating in family activities. He went to the doctor at his wife's insistence and was prescribed blood pressure medication.

Complainant's wife credibly testified that Complainant changed from a man who rarely got angry to one who had "explosive outbursts." She explained that his change in character permanently impacted their marriage, stating, "we won't get back to where we were because there's this crack in our relationship [and] 95 percent of this is the non-selection." At the time of her testimony, she and Complainant had been married for 40 years, yet she said the impact of the rejection and resulting emotions were still present in Complainant. Even after Complainant's voluntary retirement, his wife testified that his mood did not fully improve.

While the AJ noted that Complainant had not been clinically diagnosed with depression, and there was no documentary evidence of his doctor visit and blood pressure medication, he found Complainant and his wife's testimony sufficiently credible to establish both conditions existed and arose from his non-selection. Given the severity and duration of Complainant's emotional distress, the AJ awarded \$150,000 in non-pecuniary compensatory damages.

The Agency subsequently issued a Final Order adopting the AJ's finding that Complainant proved that the Agency subjected him to discrimination as alleged, as well as the AJ's order of equitable relief, back pay, and reasonable attorneys' fees and costs. The Agency simultaneously appealed the portion of the AJ's order regarding non-pecuniary and past pecuniary compensatory damages.

ANALYSIS AND FINDINGS

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. Nat'l Labor Relations Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a *de novo* standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

Here, the Agency has conceded that the AJ's finding of discrimination is correct and we affirm that finding. The only issue before the Commission is whether the AJ's award of compensatory damages is supported by substantial evidence. To receive an award of compensatory damages, a complainant must demonstrate that she has been harmed as a result of the agency's discriminator's action: the extent, nature and severity of the harm; and the duration or expected duration of the harm. See Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), recon. denied, EEOC Request No. 05940927 (Dec. 11, 1995); EEOC's Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 at 11-12, 14 (July 14, 1992).

A complainant is required to provide objective evidence that will allow an Agency to assess the merits of his request for damages. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Non-pecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.002 at 10 (July 14, 1992).

As a preliminary matter, we are not convinced by the Agency's argument on appeal that because the AJ granted a twenty percent across-the-board reduction in attorneys' fees incurred between June 14, 2012 and November 1, 2016, in consideration of the disability nonselection portion of Claim 2, subsumed by the Hubbard Class Complaint, the same reduction ("at a minimum") should apply to Complainant's compensatory damages award. In his August 28, 2019 "Order Awarding Complainant Attorney Fees and Costs," the AJ explained that Complainant should not recover the portion of attorney fees dedicated to the disability non-selection claim once it "was no longer part of the case before [him] and not at issue in the hearing on June 20 and 21." The AJ's July 11, 2019 Bench Decision specifies that the past pecuniary and non-pecuniary damage amounts arise from his findings on the issues before him, denial of a reasonable accommodation, and non-selection based on sex. As these amounts were not also based on the subsumed portion of Complainant's complaint, it would be inappropriate to use that as a basis for reducing the amount of Complainant's compensatory damages award.

Past Pecuniary Damages

On appeal, the Agency argues that the AJ's past pecuniary damages award of \$4000.13 associated with rent for an apartment in Craig, Colorado, plus mileage expenses, was improper because it was related to a "promotional opportunity" that Complainant voluntarily applied for in October 2012, months after his non-selection. However, we conclude the record supports the AJ's finding that Complainant would not have withstood the financial burden of a Postmaster, EAS-20 position in Craig, Colorado, but for his discriminatory non-selection for the Postmaster, EAS-20 position in Dillon. Obtaining a Postmaster, EAS-20 position was an essential step in Complainant's career plan. The Agency acknowledges that Complainant sought out Postmaster, EAS-20, positions at multiple facilities, and transferred to a facility closer to home when it became available. We also find the amount of past pecuniary damages was properly determined as the AJ based it on receipts and used google maps to confirm mileage.

Non-Pecuniary Damages

After establishing entitlement to an award of compensatory damages, there is no precise formula for determining the amount of damages for non-pecuniary losses, except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). It should likewise be consistent with amounts awarded in similar cases. See Hogeland v. Dep't of Agriculture, EEOC Appeal No. 01976440 (June 14, 1999).

Moreover, the Commission points out that non-pecuniary compensatory damages are designed to remedy a harm and not to punish the Agency for its discriminatory actions. Furthermore, compensatory damages should not be motivated by passion or prejudice or “monstrously excessive” standing alone but should be consistent with the amounts awarded in similar cases. See Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (March 4, 1999).

The Commission has held that evidence from a health care provider is not a mandatory prerequisite for recovery of compensatory damages. See Carpenter, EEOC Appeal No. 01945652 (Jul. 17, 1995). Courts also have held that “expert testimony ordinarily is not required to ground money damages for mental anguish or emotional distress.” Sanchez v. Puerto Rico Oil Co., 37 F.3d 712, 724 (1st Cir. 1994), citing Wulf v. City of Wichita, 883 F.2d 842, 875 (10th Cir. 1989). A complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his/her burden in this regard. Nonetheless, the absence of supporting evidence may affect the amount of damages deemed appropriate in specific cases. See Lawrence v. United States Postal Serv., EEOC Appeal No. 01952288 (April 18, 1996).

It is undisputed that Complainant is entitled to non-pecuniary compensatory damages, however the Agency argues that the AJ’s award of \$150,000 is “excessive and inconsistent with the amounts awarded in similar cases.” Specifically, the Agency identifies prior non-pecuniary damages awards where the complainant obtained medical treatment, including hospitalization and psychiatric care as evidence of complainants suffering more “severe” harm than Complainant yet receiving less compensation. The Agency also notes that unlike some of the prior complainants to receive awards of \$150,000, Complainant remained employed after his non-selection, and, while they had marriage troubles resulting from his emotional distress caused by the non-selection, ultimately Complainant and his wife did not get a divorce.

Upon review, we find that the AJ’s compensatory damages award is supported by the substantial evidence of the record and is consistent with case precedent. We have previously awarded \$150,000 in non-pecuniary damages for emotional distress without documentary evidence of medical treatment or diagnosis. See Franklin v. United States Postal Serv., EEOC Appeal No. 07A00025; 01A03882 (Jan. 19, 2001) (\$150,000 for emotional distress and caused by denial of reasonable accommodation, despite lack of diagnosis of documentation testimony by Complainant, his friends, and family, including testimony of his wife on the break-up of their marriage, established that the agency’s action caused complainant to become depressed, which affected his relationships and his personality, and decreased his enjoyment of life, and experienced humiliation at not being able to find a comparable job which caused him such shame and despair that interaction with his family became strained); Goodridge v. Soc. Sec. Admin., EEOC Appeal No. 0720050026 (Nov. 15, 2006); Estate of Nason v. United States Postal Serv., EEOC Appeal No. 01A01563 (Jun. 21, 2001).

The AJ explains that in this case, \$150,000 was warranted because Complainant’s distress was severe, noting that he contemplated ending his life and that the manifestations of his emotional distress nearly resulted in the dissolution of a 35-year marriage.

Significantly, the AJ took into consideration that Complainant had no prior medical condition or pre-existing marital problems, and had not experienced the mood swings, depression and high blood pressure until his non-selection. See Booker v. Dep't of Def., EEOC Appeal No. 07A00023 (Aug. 10, 2000) (decreasing award of \$195,000 to \$150,000 in non-pecuniary damages where, based on credible testimony from Complainant, his brother, and coworker, the AJ determined that as a result of agency's actions, complainant experienced severe depression, increased alcohol consumption, three suicide attempts resulting in hospitalization, and a troubled home life, taking into account preexisting conditions and personal problems). In assessing severity, the AJ also considered the prolonged nature and impact of the emotional distress. See Emiko S. v. Dep't of Transp., EEOC Appeal No. 0120161130 (Jul. 19, 2016) (increasing non-pecuniary damages from \$50,000 to \$150,000 where the denial of reasonable accommodation resulted in the complainant not receiving a position for which she had been conditionally selected, causing her to suffer severe, long-term emotional, social, and financial hardship, including loss of enjoyment of life and damage to her relationships over seven years) (citing Franklin and Booker); Furch v. Dep't of Agriculture, EEOC Appeal No. 07A40094 (Aug. 5, 2005) (\$150,000 in non-selection case where complainant suffered from depression, loss of enjoyment of life, interference with family relationships, "permanent diminishment in quality of life" and physical symptoms); see also Russel v. United States Postal Serv., EEOC Appeal No. 0720110025 (Nov. 17, 2011) (\$175,000 for emotional distress, without evidence from a health provider or expert, but based on sworn statements from Complainant and her husband, mother, and daughter, that Complainant was formerly a cheerful, outgoing, energetic, and fun-loving person but, because of the Agency's actions, she suffered severe emotional distress and is now quick to anger, moody, depressed, and not trusting of others. Further, the AJ found that Complainant was "forever changed" by this ordeal and that, therefore, some of her symptoms may persist indefinitely.) We find the record evidence and the AJ's explanations support an award of \$150,000 in non-pecuniary compensatory damages.

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 implementation of the AJ's decision finding discrimination. We REVERSE the Agency's decision regarding the award of compensatory damages and REMAND the matter in accordance with the ORDER below.

ORDER (C0618)

To the extent it has not done so already, the Agency is ordered to take the following remedial action within **ninety (90) calendar days** from the date this decision was issued, unless otherwise indicated:

- I. 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, from

February 25, 2012, through his voluntary retirement on January 31, 2014.⁴ 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 the Complainant for the undisputed amount within **sixty (60) calendar days** of the date the Agency determines the amount it believes to be due. The 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."

- II. The Agency shall pay Complainant \$150,000 in non-pecuniary compensatory damages.
- III. The Agency shall pay Complainant \$4000.13 in past pecuniary damages. In addition, the Agency shall calculate mileage for the 268 miles added to his round-trip commute using the then-current rate per mile allowed by the Internal Revenue Service and pay Complainant that amount for each week he worked at the Craig Post Office.
- IV. The Agency shall pay Complainant the \$57,595.21, plus post judgment interest, in attorney's fees and costs ordered by the AJ. Complainant may also file a petition for additional attorney's fees and costs for work on this appeal as detailed in the paragraph below entitled, "ATTORNEY'S FEES (H1016)".
- V. The Agency is directed to provide SO with at least four (4) hours of training on reasonable accommodations of disabilities and the interactive process and at least four (4) hours of training on the Agency's selections policies, practices, and procedures.
- VI. The Agency shall consider taking disciplinary action against SO and report its decision. 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.
- VII. 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).

⁴ The Agency shall also report the increase in pay during this period of time to the appropriate office responsible for Complainant's retirement pension so that the increase can be considered in any adjustment needed, if any, to the amount of his pension.

- VIII. 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. The report must also include evidence of compliance with the Posting Order, and Attorney's Fees sections of this Decision.

POSTING ORDER (G0617)

The Agency is ordered to post at the Dillon Post Office in Dillon, Colorado 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 (H1016)

If Complainant 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 Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (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

March 4, 2020
Date