



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

[REDACTED]  
Cecille W.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120181915

Hearing No. 410-2016-00216X

Agency No. 4K-300-0257-15

**DECISION**

On May 14, 2018, 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 April 12, 2018, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES and REMANDS the Agency's final order for further processing.

**ISSUE PRESENTED**

The issue presented is whether the Agency subjected Complainant to discrimination on the bases of race (African-American), color (black), disability (injury on duty), and reprisal for prior protected EEO activity when since July 11, 2015, her requested accommodation of light duty has been denied.

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

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier, RCS-00/12, at the Douglasville Post Office in Douglasville, Georgia.

On October 20, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), color (black), disability (injury on duty), and in reprisal for prior protected EEO activity arising under Title VII and the Rehabilitation Act when since July 11, 2015, her requested accommodation of light duty has been denied.

During the investigation, Complainant averred that she started her career in 1997 and has had medical restrictions since 2001 after sustaining injuries in a motor vehicle accident. Complainant stated that these restrictions limited her ability to lift in excess of 20 pounds, bend, twist, and reach above the shoulders. She asserted that despite these restrictions, she was able to successfully perform her job by taking steps such as utilizing a collapsible hand truck to carry heavy items, using a wooden platform to case mail, and cutting/reorganizing heavy trays into smaller more manageable trays. Complainant emphasized that she performed her job well from 2001 to 2010 with minimal assistance, and that none of her supervisors during that period had any objections to those accommodations. See Hearing Transcript, Vol. 1., pgs. 19-28.

In August 2010, Complainant sustained injuries in another motor vehicle accident and took leave until early 2011 to recover from her injuries. When Complainant returned, she learned that a new Postmaster was in charge of the Douglasville Post Office. Complainant averred that her situation changed drastically under the new Postmaster. She alleged that the Postmaster informed her that due to her medical restrictions, she could not run her route because there was no assistance available on the route, and that she needed to be able to run her entire route without assistance. The Postmaster also allegedly took issue with Complainant not getting out of the office soon enough because of how she cased her mail. Complainant alleged that the Postmaster began harassing her when she told him that the collective bargaining agreement allowed Rural Carriers to case their mail, and the Postmaster subsequently placed her on modified duty. Complainant emphasized that she successfully performed various modified duty assignments from 2011 to May 2015. Hearing Transcript, Vol. 1., pgs. 28-32.

In May 2015, Complainant went on Family Medical Leave Act (FMLA) leave for 8 weeks for ankle surgery. Complainant alleged that when she returned in July 2015, management told her that she could not resume her limited duty assignment because her Office of Workers' Compensation Programs (OCWP) claim had terminated.<sup>2</sup> Management then referred Complainant to the District Reasonable Accommodation Committee (DRAC) to determine whether an accommodation could be provided.

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<sup>2</sup> During the hearing, the Agency representative stated that management was unaware that Complainant's OWCP benefits had terminated in April 2014.

On August 31, 2015, the DRAC concluded that Complainant was not a qualified individual because she could not perform the essential functions of the Rural Carrier position due to her medical restrictions.<sup>3</sup> The DRAC also found that there were no vacant funded positions that Complainant could be reassigned to, as available positions such as Mail Handler, required individuals to lift up to 70 pounds. ROI, pg. 00037. Complainant subsequently appealed the DRAC decision to the Manager of Human Resources, who denied the appeal on December 9, 2015.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing. The AJ held hearings into the matter on November 16, 2016, December 19, 2016, and January 23, 2017. On April 19, 2017, the AJ assigned to the case issued a bench decision in favor of the Agency, which another AJ, to whom the case had been reassigned, finalized on March 19, 2018. In issuing the decision, the AJ cited to prior decisions that found carriers with similar 20-pound restrictions to not be qualified individuals for the purposes of the Rehabilitation Act. The AJ adopted the Agency's argument that Complainant's medical restrictions would constitute an undue hardship because the Agency would need to provide significant assistance to Complainant and would have to reduce its production standards. The AJ also found that there were no vacant funded positions for Complainant that were within her medical restrictions. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

### CONTENTIONS ON APPEAL

On appeal, Complainant contends that the AJ erred in finding that the Agency did not improperly deny her reasonable accommodation. In this regard, Complainant asserts that she was able to perform the essential functions of her position despite the 20-pound restriction. Furthermore, Complainant contends that the Agency imposed a discriminatory qualification standard with no business justification. She asserts that the Agency's misuse of the lifting qualification standard had a detrimental effect on the search for a vacant funded position, as the Agency excluded many potential positions due to her physical limitations. Finally, Complainant contends that the AJ erred in failing to find discrimination on the bases of race and disability despite direct evidence to the contrary.

In response, the Agency requests that the Commission affirm its final decision, which adopted the AJ's finding of no discrimination. The Agency reiterates its contention that Complainant was not a qualified individual with a disability because her medical restrictions precluded her from performing the essential functions of the Rural Carrier position (*i.e.*, heavy lifting and carrying). The Agency emphasizes that it had no obligation to alter or modify the lifting and carrying standards, as these activities are essential functions of the position.

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<sup>3</sup> The Chair of the DRAC testified during the hearing that in her opinion, Complainant's medications and driving and lifting restrictions were the main factors that prevented Complainant from working as a Rural Carrier. Hearing Transcript, Vol. II., pg. 55.

Furthermore, the Agency asserts that Complainant's requested accommodations would constitute an undue hardship because the Agency would need to provide significant assistance to Complainant, which would ultimately affect its production standards. The Agency also asserts that its District Reasonable Accommodation Committee explored the possibility of reassigning Complainant to a vacant funded position but was unsuccessful due to the nature of Complainant's medical restrictions.

### 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. National Labor Relations Board, 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 Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, (EEO MD-110), Chapter 9, at § VI.B. (Aug. 5, 2015).

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). To establish the Agency denied Complainant a reasonable accommodation, Complainant must show that: (1) she was an individual with a disability; (2) she was a qualified individual with a disability; and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

#### *Individual with a Disability*

The threshold question is whether a complainant is an individual with a disability within the meaning of the regulations. An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; and the operation of a major bodily function. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(1)(ii).

In the instant case, while the AJ and Agency did not directly address whether Complainant was an individual with a disability, the record clearly shows that Complainant has continually had limitations in lifting and reaching since 2001, which as noted above, are considered major life activities. Consequently, we find that Complainant was an individual with a disability.

*Qualified Individual with a Disability*

Having found that Complainant meets the threshold requirement which would entitle her to the protections of the Rehabilitation Act, Complainant must also show that she was a “qualified” individual with a disability within the meaning of 29 C.F.R. § 1630.2(m). The regulation defines such an individual as a disabled person who, with or without a reasonable accommodation, can perform the essential functions of the position in question.

Though the AJ found that Complainant’s 20-pound carrying restriction rendered Complainant not qualified to perform the essential functions of the Rural Carrier position, we find such determination to be inconsistent with the record and unsupported by substantial evidence. The record clearly shows that Complainant has continually had medical restrictions since 2001, after sustaining injuries in an on-duty motor vehicle accident. By all accounts, Complainant was able to successfully case and deliver her assigned mail from 2001 to 2010 by taking informal accommodative steps such as utilizing a collapsible hand truck to carry heavy items, using a wooden platform to case mail, and cutting heavy trays into smaller more manageable trays. There is no indication in the record that Complainant’s performance between 2001 and 2010 was deficient or subpar. We also note that when Complainant returned to duty after her August 2010 motor vehicle accident, she was able to successfully perform her modified duty assignments.

Based on our review of the record, we conclude that substantial evidence does not support the AJ’s findings, as Complainant’s demonstrated performance from 2001 to 2010 clearly shows that she was capable of performing the essential functions of the Rural Carrier position with reasonable accommodation. In reaching this conclusion, we acknowledge that the position description for the Rural Carrier series lists as essential functions the ability to lift up to 70 pounds and carry items weighing 45 pounds and up; however, the record in this case clearly shows that Rural Carriers at the Douglasville Post Office rarely lifted 70-pound packages, and if a Rural Carrier did receive a 70-pound package, he or she could ask for assistance. See Hearing Transcript, Vol. 1., pgs. 124 and 157. Furthermore, the record also shows that custodial staff at the Douglasville Post Office would deliver heavy packages to customers on behalf of the Rural Carriers. Id. at 124 and 137. It is apparent from the record that the primary outcome of the Rural Carrier position is not to lift up to 70 pounds and carry items weighing 45 pounds, but to case and deliver mail. See Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013) (finding that the agency’s blanket 70 pound lifting requirement was not carefully tailored to measure the complainant’s actual ability to perform the essential functions of her position).

We find that Complainant has persuasively shown, through her past demonstrated performance, that she could continue to case and deliver mail if given the same reasonable accommodations as provided in the past (e.g., utilizing a collapsible hand truck to carry heavy items, using a wooden platform to case mail, cutting heavy trays into smaller more manageable trays, etc.). See Hearing Transcript, Vol 1. pgs. 19-28 and 150-151. Moreover, we note that while there were some changes to Complainant's medical restrictions between 2001 to 2015, to include the addition of a driving restriction in August 2015, the record clearly shows that following the Agency's request for clarification, Complainant's physician opined in October 2015, that Complainant's medications would not affect Complainant's ability to drive or perform her job. ROI, pg. 00048.<sup>4</sup> Because Complainant's demonstrated performance clearly establishes that she was a qualified individual with a disability, we find that the Agency had an obligation to provide reasonable accommodation absent a showing of undue hardship.

#### *Denial of Reasonable Accommodation*

The federal government is charged with being a "model employer" of individuals with disabilities. See 29 C.F.R. § 1614.203(c). Inherent in this duty is an obligation to break down artificial barriers that preclude individuals with disabilities from participating on an equal footing in the work force. Accordingly, the Rehabilitation Act requires federal agencies to make various types of "reasonable accommodation" for federal employees who have disabilities. This requirement helps federal employees with disabilities perform the essential functions of their positions and enjoy all the benefits and privileges of employment enjoyed by individuals without disabilities. See Appendix to Part 1630 - Interpretive Guidance on Title I of the Americans with Disabilities Act ("Appendix to Part 1630").

An employer does not have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;

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<sup>4</sup> As noted above, the Chair of the DRAC testified during the hearing that in her opinion, Complainant's medications and driving and lifting restrictions were the main factors that prevented Complainant from working as a Rural Carrier. Hearing Transcript, Vol. II., pg. 55.

- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and
- the impact of the accommodation on the operation of the facility.

After careful review of the record, we find that the Agency failed to demonstrate undue hardship with regard to the denial of Complainant's requested accommodation of light duty. While we acknowledge the Agency's contention that accommodating Complainant's medical restrictions would require the Agency to provide Complainant with significant assistance that would impact the Agency's production standards, we find such reasoning to be speculative at best and inconsistent with the record. As noted above, Complainant was able to successfully perform her duties as a Rural Carrier from 2001 to 2010, despite her medical restrictions.<sup>5</sup> The record further reflects that at no time during that period did any of Complainant's previous supervisors take issue with her performance or raise any concerns regarding the informal accommodative steps that she used to perform her duties.<sup>6</sup>

We also find no evidence to support the Agency's contention that Complainant would require assistance in the field. Indeed, our review of the testimony from Complainant's colleague reveals that Complainant was able to perform as a Rural Carrier from 2001 to 2010 without assistance by downsizing mail to whatever worked for her and using a platform/step. Hearing Transcript, Vol. 1., pg. 151. Furthermore, we note that the record clearly establishes that custodial staff would assist Rural Carriers with lifting and delivering heavy packages to customers on their behalf. *Id.* at 124-125.

To the extent that Complainant's requested accommodations would require multiple trips to deliver mail,<sup>7</sup> we note that Rural Carriers, unlike City Carriers, work evaluated routes and are not paid on an hourly basis. Hearing Transcript, Vol. III, pgs. 97-98.

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<sup>5</sup> While the record reflects that Complainant received some assistance in loading her postal vehicle, we note that the Supervisor of Customer Service at the Douglasville Post Office testified that management encouraged all employees to seek assistance in lifting heavy items. Hearing Transcript, Vol. 1., pgs. 124-125.

<sup>6</sup> The record reflects that management had concerns regarding Complainant's attitude, but there is no evidence of any deficiencies in her ability to case and deliver mail. Hearing Transcript, Vol. 1., pg. 127.

<sup>7</sup> See Hearing Transcript, Vol. III, pg. 56.

Therefore, we are unable to find that the Agency would sustain undue hardship with regard to overtime. Moreover, we find no evidence in the record to show that accommodating Complainant's disabilities would result in delayed mail or impose significant costs on the Agency. In light of the financial resources and size of the United States Postal Service, we find that the Agency has not persuasively shown that accommodating Complainant's disabilities would cause undue hardship. We therefore conclude that the Agency violated the Rehabilitation Act by failing to reasonably accommodate Complainant's disabilities.<sup>8</sup>

### *Compensatory Damages*

Where a discriminatory practice involves the provision of a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for his or her disability. 42 U.S.C. § 1981a(a)(3); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). In this case, we find that the Agency did not act in good faith. We are particularly troubled by the Postmaster's decision to deny Complainant the accommodations that she had from 2001 to 2015. In so doing, the Postmaster appears to have overlooked Complainant's demonstrated satisfactory performance in favor of his own unwarranted assumptions about Complainant's abilities. Moreover, while we acknowledge the Agency's contention that the Postmaster was not the ultimate decision-making authority with regard to the accommodation requests, we find that the denial of Complainant's requests for accommodation in 2015 would not have happened but for the Postmaster's 2011 decision to revoke Complainant's informal accommodations. Consequently, we find that compensatory damages are warranted.

### CONCLUSION

We REVERSE the Agency's final decision finding no discrimination and we REMAND the case to the Agency. The Agency shall comply with the relief in the following Order.

### ORDER

The Agency shall take the following actions.

1. The Agency shall immediately take all steps necessary to provide Complainant with effective reasonable accommodation, to include allowing Complainant to utilize a collapsible hand truck, use a wooden platform to case mail, and cut/reorganize mail trays. If Complainant is no longer employed with the Agency, the Agency shall, within 30 calendar days of the date this decision is issued, offer Complainant reinstatement into her prior position as a Rural Carrier, RCS-00/12, retroactive to the date of her resignation or removal. The offer shall be made in writing and include a written position description. Complainant shall have 15 calendar days from receipt of the offer to accept or decline.

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<sup>8</sup> We decline to consider whether the Agency subjected Complainant to discrimination on the remaining bases, as no additional relief is available for Complainant.

Failure to accept the offer within 15 calendar days will be considered a declination of the offer, unless Complainant can demonstrate that circumstances beyond her control prevented a timely response. Should Complainant accept, the Agency shall allow her to bid for available routes in accordance with Agency policies and/or collective bargaining agreement or assign her to a mutually agreed route.<sup>9</sup>

2. Within 90 calendar days of the date of this decision, the Agency shall determine the appropriate amount of back pay (if any) with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within 30 calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
3. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages incurred as a result of the Agency's discriminatory actions. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (January 5, 1993). Complainant shall cooperate with the Agency in this regard.
4. The Agency shall issue a final decision on compensatory damages no later than 90 days after the date this decision is issued. The Agency shall pay Complainant the compensatory damages as determined by the Agency within 30 days from the date of the Agency's decision on compensatory damages. The Agency shall submit a copy of the final decision on compensatory damages to the Compliance Officer at the address set forth herein.
5. Within 90 calendar days of the date this decision is issued, the Agency shall provide eight hours of training to the responsible management officials, namely the Postmaster of the Douglasville Post Office, Manager of Human Resources, and members of the District Reasonable Accommodation Committee who denied Complainant's requests for reasonable accommodation. The training shall address the Agency's obligations under the Rehabilitation Act with respect to reasonable accommodation requests.

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<sup>9</sup> The record reflects that the Agency put Complainant's assigned route up for bid because Complainant was on modified job duty for more than two years. Because the record shows that such action was in accord with the collective bargaining agreement and not attributable to discrimination, we decline to reinstate Complainant into her original route.

6. Within 90 days from the date this decision is issued, the Agency shall consider disciplining the Postmaster of the Douglasville Post Office. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the Postmaster of the Douglasville Post Office has left the Agency's employ, the Agency shall furnish documentation of his departure date.

#### POSTING ORDER (G0617)

The Agency is ordered to post at the Douglasville Post Office (Georgia) 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 thirty (30) calendar days of the date this decision was issued, and shall remain posted for sixty (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 ten (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 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 (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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

August 6, 2020  
Date