



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

[REDACTED]  
William B.,<sup>1</sup>  
Complainant,

v.

Robert Wilkie,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2019003149

Agency No. 200400012017100080

**DECISION**

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's February 25, 2019, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission **AFFIRMS** in part, and **REVERSES** in part the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Senior Counsel, GS-15, at the Agency's Board of Veterans' Appeals (BVA) facility in Washington, D.C. Complainant was hired on June 26, 2016. His employment was contingent upon successful completion of a one-year probationary period.

Complainant is a disabled veteran. Complainant has a service-connected disability as a result of an injury that occurred while he was performing maintenance on a hydraulic strut of a Navy F-18 Hornet aircraft. Complainant's disability is retinitis pigmentosa. Complainant is legally blind with a limited and restricted field of vision. Complainant uses a walking stick as his disability limits his mobility. He describes his vision loss as a permanent loss of peripheral vision, tunnel vision, night blindness, and sensitivity to light and glare.

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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.

Complainant explains his vision as "tunnel vision" looking through stars. He states that he can see straight ahead but he is unable to see from side to side or below him. Complainant adds that his vision impairment impacts his ability to read signs and prints because of glare sensitivity. As his disability impacts his ability to commute, Complainant relies on public transit to get to and from work. Complainant disclosed his disability during the hiring process and his disability was apparent to the hiring committee as he walks with a white walking stick.

In order to perform the essential functions of the Supervisory Senior Counsel position, Complainant requested reasonable accommodations in the form of the following: flexible work schedule due to his reliance on public transit (Metro Access); a laptop with a backlit keyboard; ZoomText software; Dragon software; a large monitor; a scanner; extra desk lighting; a book stand; a CD-ROM copy of the Veterans' Benefits Manual; and an ergonomic chair.

On June 26, 2016, Complainant emailed his first-level supervisor, Chief Veterans Law Judge (hereafter S1), informing her that he was legally blind and needed reasonable accommodations for his disability. Complainant stated with these reasonable accommodations, he could perform the essential functions of the Supervisory Senior Counsel position. S1 was not on the interview panel that hired Complainant and first learned of Complainant's disability from his email. Complainant's second-level supervisor was the Deputy Vice Chairman of the BVA (hereafter S2). Prior to starting with the Agency, Complainant also advised the on-boarding coordinator of his need for reasonable accommodations. The on-boarding coordinator informed the Agency's IT Department of the need as well as connected Complainant with the IT Department to address his needs. Complainant was never instructed to contact the reasonable accommodation coordinator and S1 never contacted the Agency's accommodation coordinator regarding Complainant's reasonable accommodation request.

On June 29, 2016, during a conversation with S1, Complainant verbally requested a flexible work schedule as a reasonable accommodation due to his reliance on public transit (Metro Access) which can be unreliable and inconsistent. S1 verbally agreed to allow Complainant to work late if he arrived late and to leave work early if he arrived to work early. S1 stated that when Complainant arrived late, he needed to let her know how he was going to make up the time. Complainant stated S1 was bothered by leave request changes and instructed Complainant only to submit leave after he used it, or if he knew with certainty how much leave was necessary.

Complainant first met S1 in the beginning of July when he reported to his assigned office.<sup>2</sup> Complainant also met his coworker, another Supervisory Senior Counsel, GS-15 (hereafter CW), who was hired the same date as Complainant as a lateral supervisory counsel to Complainant, working under S1 to supervise BVA attorneys. Complainant stated on his first day in the office he reiterated his request for reasonable accommodations to S1. S1 stated she never objected to his accommodation requests. Complainant was provided with large monitors on or about July 12, 2016.

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<sup>2</sup> The record establishes Complainant was hired June 26, 2016 but did not start at the BVA facility until approximately July 5, 2016.

CW and IT employees stated that there was delay in obtaining an operational laptop with ZoomText software for Complainant. Complainant was initially provided with a damaged surplus laptop without the necessary software or features to accommodate his disability.

On July 29, 2016, Complainant was injured at work and had to attend medical appointments for his injuries. Complainant stated most of his appointments were Tuesday and Thursday mornings following the accident. Complainant stated that from the end of July through September he used approximately 30 hours of sick leave to cover time off for his medical appointments.

On August 15, 2016, Complainant emailed S1 and CW that his laptop with backlit keyboard finally arrived but the Agency failed to provide a docking station compatible with the laptop. The Agency then ordered a universal docking station so Complainant could use the requested laptop with a monitor as his reasonable accommodation specified. The record does not specify when Complainant received the docking station but Complainant stated it was the end of August before he was given a fully operational laptop with the ZoomText software and backlit keyboard with a monitor that accommodated his disability, approximately two months after his initial request for reasonable accommodation on June 26, 2016.

On September 21, 2016, S1 issued a Counseling on Conduct and Suitability for Continued Employment memorandum to Complainant. The counseling memo stated Complainant had exhibited a tendency to disregard S1's direction and lack of candor on his timecards. S1 detailed Complainant failed to show command of basic, material facts regarding overtime for his subordinates. As an Acting Veterans Law Judge, Complainant sought a treatise on Veterans law and requested that a BVA member be assigned to review his work before signing a case. S1 stated Complainant's behavior indicated that he was not familiar with the substantive law required for his position. Complainant stated he received the counseling memo the afternoon before he went on leave to attend a two-day preplanned Continuing Legal Education (CLE) training at his own personal expense and used leave during his absence. Complainant's first day back in the office after the training was September 26, 2016.

On September 26, 2016, Complainant submitted a response to the memorandum. Complainant explained that many of the grounds cited by S1 were in fact directly due to the Agency's failure to provide him with the accommodations necessary for him to perform his job. For example, Complainant cited S1's assertion that he did not know the substantive law was in fact Complainant's reasonable accommodation request for a CD-ROM version of the Veteran's Benefits Manual as his disability prevents him from using the paper copy of the manual like other attorneys in the office. Complainant requested a copy from S1, CW, as well as the Agency's library but never received a digital version of the manual. With regard to S1's assertion that Complainant was unable to track his employees' overtime, Complainant asserted despite his repeated requests for someone to demonstrate how the program works as well as the change in policy regarding the overtime program in mid-September, no one walked him through the overtime spreadsheet. Complainant alleged he needed someone to show him on the computer rather than tell him because the spreadsheet is hard to view with the ZoomText on his monitors and he needed guidance to operate it effectively.

With regard to S1's assertion he failed to follow her instructions three times by placing a sign on his closed door, Complainant stated due to his disability he was unable to use the office printer and his personal printer was not connected to his computer despite his requests to IT to route it correctly. Complainant stated he kept his door closed due to his vision issues, but at S1's request, kept his office door open in accordance with the unofficial office policy S1 stated existed at BVA. Moreover, with regard to S1's lack of candor claim which references failure to report leave on September 20<sup>th</sup>, Complainant explained he worked late that day to cover his late arrival in accordance with the agreement S1 made with him about flexibility in his work schedule due to his disability. Complainant stated he requested a demonstration of the overtime spreadsheets and technical assistance with structuring a Board decision as an Acting Veterans Law Judge as reasonable accommodations for his disability.

On September 28, 2016, Complainant's first day back in the office after taking leave to attend training, S1 informed him the Agency decided to terminate his employment. S1 provided Complainant with a Termination during Probationary Period letter issued by S2 to Complainant. The termination letter was dated September 26, 2016. S2 informed Complainant that he failed to qualify for employment during his probationary period and that his termination, to be effective on September 30, 2016, was due to unacceptable conduct and concerns about his suitability to serve as Supervisory Senior Counsel. Complainant stated he was escorted from S1's office to his office, where his cases and his PIV badge were taken before he was escorted from the building.

In lieu of termination, on September 28, 2016, Complainant submitted a resignation, effective on September 30, 2016, during his probationary period. Complainant stated he resigned because he had no other choice since the Agency revoked his security clearance and was terminating him effective the end of September. As of the date of his resignation, the Agency admits it failed to provide Complainant with adequate desk lighting, a bookstand, and a CD-ROM Veterans' Benefits Manual. Complainant also did not receive an ergonomic chair as of the date of his resignation.

On January 5, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment on the basis of disability when:<sup>3</sup>

1. On June 29, 2016, Complainant's verbal request for reasonable accommodation was not granted.
2. On September 21, 2016, S1 counseled Complainant for Conduct and Suitability for Continued Employment.
3. On September 26, 2016, S2 terminated Complainant during his probationary period, effective September 30, 2016.

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<sup>3</sup> On March 9, 2017, the Agency dismissed the complaint for failure to file the complaint within the applicable time limit. On appeal, the Commission reversed the Agency's dismissal of the complaint. Dino V. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120171955 (September 8, 2017).

4. On September 28, 2016, he was subjected to constructive discharge when he learned he was being terminated effective September 30, 2016.
5. On an unidentified date, Complainant was denied training on how to create a Board decision.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant proved by a preponderance of the evidence that he was discriminated against regarding reasonable accommodation of his disability. As of the date of his resignation, the Agency admitted it failed to provide Complainant with adequate desk lighting, a bookstand, and a CD-ROM Veterans' Benefits Manual. The Agency found its failure to provide an ergonomic chair was not a violation of the Rehabilitation Act. The Agency found the actions taken by the Agency show a lack of good faith in obtaining reasonable accommodations for Complainant and, therefore, the Agency was liable for compensatory damages.

The Agency's final decision also found Complainant established by a preponderance of the evidence that he was discriminated against based on disability regarding the Letter of Counseling and the Letter of Termination; however, the Agency showed by clear and convincing evidence that it would have taken these actions even absent the discrimination. The decision also found Complainant failed to establish by a preponderance of the evidence that he was subjected to constructive discharge or a hostile work environment. As relief, the Agency found Complainant was entitled to pay for leave taken in association with the delay in receiving reasonable accommodations as well as compensatory damages. The Agency advised it would conduct a supplemental investigation and engage in an interactive process with Complainant to determine the amount of pecuniary and nonpecuniary, compensatory damages. Complainant was also entitled to attorney's fees and costs. The decision also directed S1 and S2 would have three hours of EEO training and potential disciplinary actions. The decision would also be posted at the BVA facility and on the BVA's intranet.

Complainant filed the instant appeal. On appeal, Complainant argues there should be a finding of discrimination on the entire complaint. Complainant argues he was an outside hire selected for this position based on over 13 years of experience in Veterans law, his previous management of an office of five appellate attorneys, and because he oversaw a network of over 1,000 veterans service officers. Complainant argues he was more than capable of performing, if not excelling, at this position had the Agency provided the reasonable accommodations necessary for his disability. Complainant argues S1's change in reasoning for his termination and deliberate ignorance of Complainant's accomplishments, despite not receiving his accommodations, establish that the Agency's actions were based on his disability.

In response, the Agency requests this Commission affirm their finding of failure to provide reasonable accommodation and their finding that there was clear and convincing evidence that the same actions would have been taken against Complainant if he did not have a disability.

The Agency argues as a probationary employee in the highest level of the GS scale, Complainant was not entitled to any improvement period and his lack of candor and failure to follow instructions were legitimate, nondiscriminatory grounds for termination.

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

Neither party disputes that Complainant is disabled, that the Agency failed to provide Complainant with a reasonable accommodation, and that the delay in providing an accommodation was not in good faith. We turn to the remaining claims at issue on appeal. We point out the Agency’s own insight in its final decision:

Here, the record reflects that Complainant satisfies the requisite skill, experience, education, and other job-related requirements as the Agency hired him for the Supervisory Counsel position. In this case, the record is clear that Complainant's work performance was assessed in large part during the time when he was not provided with effective reasonable accommodations to enable him to perform the essential functions of his position. Further, we are not persuaded by S1 or S2's testimony that Complainant's ability to perform the essential functions of his

position was not related to his disability. We are persuaded by Complainant's testimony that without reasonable accommodation, he is hindered in his ability to perform his job. We note that despite this hindrance, the record shows that Complainant's team statistics composed of the 19 attorneys assigned to his supervision met or exceeded the production quota and out-produced (CW)'s team during the August 26, 2016, through September 23, 2016, timeframe.

Despite the Agency's own perceptive view of Complainant's claims and the responsible management officials' lack of clarity in justifying actions taken against Complainant, the Agency juxtaposed this belief in finding the actions taken against Complainant in Claims 2-5 do not lead to relief. The Agency reasoned that the record established by clear and convincing evidence that the Agency would have taken the same actions had Complainant not been disabled and, therefore, he was not entitled to relief.

We find Complainant established a prima facie case of disability discrimination with regard to the complaint. Complainant asserted the grounds for termination or denied training, and ultimately his constructive discharge, were all rooted in the Agency's failure to provide him the reasonable accommodations he requested to perform the essential functions of the position.

The Agency argues its legitimate, nondiscriminatory reason for its actions were Complainant's "unacceptable conduct" and failure to meet the expectations of the position. We find that Complainant has shown the Agency's reasons for the actions it took were a pretext for disability discrimination. As a basis for her recommendation for termination, S1 stated Complainant lacked substantive knowledge and failed to provide professional development for his subordinates. S1 could not list any of Complainant's subordinates who had failed to be mentored or advised by Complainant when requested. S1 stated despite her "repeated training and guidance" of Complainant, he failed to show improvement. However, S1 could not detail what training or guidance she provided Complainant. Rather, S1 stated she relied on CW to assist Complainant, who was CW's peer and was hired the same day as Complainant. CW also failed to provide specifics regarding what training and guidance or mentorship she provided to Complainant.

As of the date of his resignation, the Agency had still failed to provide Complainant with all of the reasonable accommodations requested which the Agency admitted were reasonable and necessary to accommodate his disability. The record establishes Complainant was not even provided with the necessary laptop with ZoomText software to view on a large monitor until the end of August. It is significant to note that it is only from this point that Complainant had *some* of the reasonable accommodations necessary to perform the essential functions of his position. Yet, by September 21, 2016, S1 stated he was failing to meet the expectations of the position. Excluding the one example on September 20<sup>th</sup> of Complainant's time and attendance issue, S1 failed to specify when the actions leading to his grounds for termination occurred. Without this information, this Commission notes these grounds for poor performance could have been well before Complainant received some of his accommodations.

With regard to S1's assertions of Complainant's lack of candor with regard to his timesheets, S1's own emails in the records show S1 instructed Complainant to hold off on submitting leave until after he knew whether he could work off time lost due to his reliance on public transportation. Accordingly, we find the Agency has failed to provide a legitimate, nondiscriminatory reason for its actions.

On appeal, the Agency argues that it would have taken the same action, absent the discrimination. Cases where there is evidence that discrimination was one of multiple motivating factors for an employment action, that is, the employer acted on the bases of both lawful and unlawful reasons, are known as "mixed motive" cases.

Mixed-motive analysis applies to cases in which there is a finding that discrimination was one of multiple motivating factors for an employment action, i.e., in which the agency acted on the bases of both lawful and unlawful reasons. EEOC Revised Enforcement Guidance on Recent Developments in Disparate Treatment Theory, EEOC Notice No. 915.002 § III.B.2 (July 14, 1992), as modified EEOC Notice No. 915.002 (Jan. 16, 2009). Under Title VII, a violation is established "when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice." 42 U.S.C. § 2000e-2(m). Once a complainant demonstrates that discrimination was a motivating factor in the employer's action, the burden shifts to the employer to prove, by clear and convincing evidence, that it would have made the same decision, even if it had not considered the discriminatory factor. Price Waterhouse v. Hopkins, 490 U.S. 228, 249, 258 (1989); Tellez v. Dep't of the Army, EEOC Request No. 05A41133 (Mar. 18, 2005). If the agency makes this demonstration, a complainant is not entitled to personal relief such as damages, reinstatement, hiring, promotion, and back pay but may be entitled to declaratory relief, injunctive relief, attorney's fees, and costs. DeArmas v. Dep't of the Treasury, EEOC Appeal No. 0720060085 (July 26, 2007); Walker v. Soc. Sec. Admin., EEOC Request No. 05980504 (Apr. 8, 1999). Here, we apply this Title VII principle to the Rehabilitation Act. Henry S. v. Dep't of Defense, EEOC Appeal No. 0120170020 (Mar. 28, 2018).

In this case, the Agency argues that it would have taken the same actions in Claims 2-5, absent any discrimination based on their failure to accommodate Complainant. However, we find that the Agency did not provide objective evidence that it would have taken the same actions. For example, the Agency stated Complainant showed a lack of candor in his time sheets; however, S1 could only point to one incident the day before his notice of potential termination. With regard to that incident, Complainant claimed he had worked late in accordance with his agreement with S1 about his reliance on public transportation. S1 vaguely references a communication issue between Complainant and his notification to employees of a voluntary committee opportunity. However, this incident occurred before Complainant even had ZoomText on his computer in order to send and receive emails as referenced by S1.



The Agency stated Complainant did not establish substantive knowledge of the law. However, despite Complainant qualifying for the position by the hiring board and receiving praise from a BVA Administrative Judge, Complainant was never provided with the digital version of the Veterans Manual used by BVA attorneys or shown how to utilize the Agency's database with his requested laptop and ZoomText to use the templates for board decisions or operate the overtime spreadsheets. The record showed that S1 did not provide substantive assistance to Complainant to improve his performance or even assist in the reasonable accommodation process. Despite Complainant's purported "unacceptable conduct" and the Agency's failure to provide his reasonable accommodations in good faith, his team of BVA attorneys exceeded production goals during his short supervisory period. We find that the Agency failed to show it would have taken the same actions in Claims 2-5 absent its discrimination in failing to accommodate Complainant. Therefore, we find that Complainant has proven he was discriminated against on the basis of disability for the entire complaint and we shall order the Agency to provide remedial relief for the entire complaint.

### CONCLUSION

We AFFIRM in part and REVERSE in part the Agency's final decision and direct the Agency to comply with this decision and the Order herein.

### ORDER

To the extent it has not already done so, the Agency shall take the following remedial actions:

1. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation on compensatory damages. The Agency shall allow Complainant to present evidence in support of his compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than 30 days after the completion of the investigation.
2. Within 30 days of the date this decision is issued, the Agency shall offer to reinstate Complainant to his former position of Supervisory Senior Counsel, GS-0905-15, or a substantially equivalent position at an accessible facility. Complainant has 15 days to accept or decline the Agency's offer of reinstatement. Upon acceptance, the Agency shall engage in the interactive process with Complainant to determine what reasonable accommodations are necessary and effective. If Complainant elects reinstatement, Complainant will be subject to the same probationary status he previously was subjected to. If Complainant should decline the Agency's offer of reinstatement, the date of his declination shall be the end date for any back pay due Complainant.
3. Pursuant to 29 C.F.R. § 1614.501, the Agency shall determine the appropriate amount of back pay with interest, leave, and other benefits due the Complainant for such benefits lost between September 30, 2016, effective of date of his resignation, and the date of his

reinstatement or his declination of the offer of reinstatement. Complainant shall cooperate with the Agency's efforts to compute the amount of back pay and benefits due, and he shall provide all relevant information requested by the Agency. The Agency shall pay the amount within 60 days from the date of that determination of the appropriate amount. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall pay Complainant the undisputed amount within 60 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."

4. Within 90 days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive EEO training for S1 and S2. The training shall emphasize management officials' obligations to provide reasonable accommodations and not to discriminate with regard to the prohibitions against disability discrimination under the Rehabilitation Act.
5. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1 and S2. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Board of Veterans' Appeals (BVA) facility in Washington, D.C. 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 (T0610)

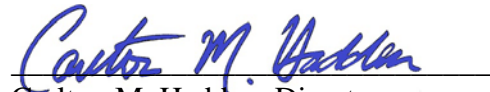
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.**

The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

September 17, 2020

Date