



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

[REDACTED]
Hae T.,¹
Complainant,

v.

David L. Bernhardt,
Secretary,
Department of the Interior
(National Park Service),
Agency.

Appeal No. 2019003385

Agency No. DOI-NPS-18-0434

DECISION

On April 27, 2019, 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 March 31, 2019, final decision concerning her 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 REVERSES and REMANDS the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether the Agency subjected Complainant to discrimination on the basis of disability when, on April 2, 2018, her situational telework reasonable accommodation request was denied.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Park Ranger Interpretation, GS-0025-9/5, at the Agency's Natchez Trace Parkway facility in Tupelo, Mississippi.

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.

On July 2, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability (autoimmune disorder – Sjogren’s Syndrome) when on April 2, 2018, her situational telework reasonable accommodation request was denied. Specifically, Complainant requested permission to telework approximately six to eight hours a month, on an as needed basis.²

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 Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant’s request, the Agency issued a final agency decision (FAD) pursuant to 29 C.F.R. § 1614.110(b).

In issuing the decision, the Agency initially found that Complainant was an “individual with a disability” because the record clearly showed that she had an incurable autoimmune disease, specifically, Sjogren’s Syndrome, which limited or restricted her major life activities on an irregular basis due to pain, fatigue, and the inability to concentrate. See FAD at 19. The Agency also found that Complainant was a qualified individual “because she and [her supervisor] attested that she has been performing her duties as required.” Id.

The Agency then turned to management’s articulated reasons for denying the request. In this regard, the Agency found that management could not grant the request “because interacting with visitors and the public is an essential function of Complainant’s position.” See FAD at 19-20. Specifically, the Agency noted that “Complainant’s position requires her to work in visitor centers providing formal and informal interpretive programming and services to a variety of audiences in a variety of setting.” Id. The Agency further emphasized that management’s explanation was “supported by Complainant’s PD [Position Description], which indicated multiple ways in which a Park Ranger is required to interact with members of the public” and be on-site for “conducting on-site research and providing assistance in the event of an emergency.” Id. Citing to Commission case law,³ the Agency concluded that “[w]hile Complainant’s position may include duties that could be performed remotely, a significant amount of her essential duties, as described in her PD, require her to be on-site, and thus the Agency was not required to allow her to telework as requested.” Id.

² Complainant filed her EEO complaint after receiving the “final accommodation agreement” from the Agency on April 2, 2018. The agreement granted all of Complainant’s requested accommodations, except Complainant’s request to telework up to six to eight hours a month. On August 6, 2018, the Agency formally denied Complainant’s reasonable accommodation request to telework up to six to eight hours a month. We note that while Complainant subsequently sought up to two days (16 hours) of telework per month due to an increase in her symptoms, we shall only consider whether the Agency improperly denied Complainant’s request to telework up to six to eight hours a month, as the Agency did not formally deny her subsequent request.

³ The Agency cited the following cases: Humphries v. Dep’t of the Navy, EEOC Appeal No. 0120113552 (Sept. 20, 2013); Sanchez-Baca v. Dep’t of Educ., EEOC Appeal No. 01996465 (Dec. 28, 2001); Complainant v. Dep’t of the Treas., EEOC Appeal No. 0120133355 (June. 19, 2015).

Furthermore, the Agency emphasized that management “engaged in the required interactive process with Complainant” by allowing her to, *inter alia*, “take unscheduled sick or annual leave on short notice as her disability necessitated without providing a doctor’s excuse for sick leave related to her disability.” The Agency found that these reasonable accommodations were effective in addressing Complainant’s disability. For these reasons, the Agency concluded that Complainant failed to establish discrimination as alleged. This appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant explains that while some of her duties include “front line face-to-face visitor interactions,” she only works in that role between 1.5 to 5 hours per week. She asserts that she is rarely the only person working at the visitor desk. She further contends that “if [she] took FMLA [Family Medical Leave Act of 1993] sick leave on a day when [she] was the only one scheduled to work the desk, [she] would be absent anyway.” Complainant also takes issue with the Agency’s argument that it needs to be consistent with its telework policy. She argues that the Agency’s policy is the “antithesis of [th]e purpose of reasonable accommodation.” As for the Agency’s argument that Complainant could take sick leave when needed, she argues that such accommodation “would cause the agency more hardship than if [she] teleworked” because she would still be working rather than on leave. Finally, Complainant disputes the Superintendent’s contention that Complainant never provided medical documentation prescribing telework and points to the FMLA form that she submitted containing her medical information.⁴

The Agency did not submit any contentions on appeal.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency’s decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at 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”).

ANALYSIS AND FINDINGS

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 that 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

⁴ We note that this evidence is contained in the Report of Investigation (ROI) on pages 110 to 113.

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).

Here, we note that the Agency, in its FAD, found that Complainant was an individual with a disability. We concur with this determination, as our review of the record shows that Complainant has been diagnosed with Sjogren's Syndrome, an autoimmune disorder, which causes her to be distracted and sometimes incapacitates her. See ROI at 149-150.

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. Essential functions "are the duties of a job," that is, "the outcomes that must be achieved by someone in that position." Petitioner v. Dep't of Homeland Sec., EEOC Petition No. 0320110053 (July 10, 2014); Ta v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013); Finnegan v. Dep't of the Air Force, EEOC Request No. 05980065 (Sept. 26, 2001). In determining whether an individual is qualified for a job, the Commission asks whether that person can perform the essential functions of the job when at work. Gilberto S. v. Dep't of Homeland Sec., EEOC Petition No. 0320110053 (Jul. 10, 2014). Employers do not have to eliminate essential functions of a position to accommodate an individual with a disability. See Enforcement Guidance on Reasonable Accommodation at "General Principles".

Our review of the Agency's FAD shows that the Agency found that Complainant was a qualified individual with a disability "because she [Complainant] and [her first level supervisor] attested that she has been performing her duties as required." Here, we concur with the Agency's finding because our review of the record confirms that Complainant's first level supervisor unequivocally stated that Complainant could perform the essential functions of her position. ROI at 117.

The record also reflects that the Superintendent of the Natchez Trace Parkway also stated that Complainant was a qualified individual with a disability. Id. at 132. We discern no basis to disturb the Agency's characterization of Complainant's performance and qualifications.

Moreover, we note that Complainant has consistently maintained that she only performs 1.5 to 5 hours of "front line face-to-face visitor interactions" per week. Our review of the record shows that the Agency has not disputed this contention. We agree with Complainant that this infrequent amount of public contact tends to suggest that public contact is not an essential function of the position. In addition, we note that Complainant's request for situational telework was not a request to remove the duty of working the visitor center. Because the record establishes that Complainant was a qualified individual with a disability during the relevant period, we find that the Agency had an obligation to provide reasonable accommodation absent a showing of undue hardship.

Denial of Reasonable Accommodation

Federal agencies are charged with being a "model employer" of individuals with disabilities. See 29 C.F.R. § 1614.203(a). Inherent in this duty is an obligation to break down artificial barriers which 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 ensure that federal employees with disabilities will be able to perform the essential functions of their positions and enjoy all the benefits and privileges of employment enjoyed by non-disabled employees. See Appendix to Part 1630 - Interpretive Guidance on Title I of the Americans with Disabilities Act (Appendix to Part 1630), at § 1630.2(o): Reasonable Accommodation.

After receiving a request for reasonable accommodation, an agency "must make a reasonable effort to determine the appropriate accommodation." 29 C.F.R. Part 1630, app. § 1630.9. Thus, "it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations." 29 C.F.R. § 1630.2(o)(3); see also 29 C.F.R. pt. 1630 app. § 1630.9, Enforcement Guidance on Reasonable Accommodation at Q. 5. The term "reasonable accommodation" means, in pertinent part, modifications or adjustments to the work environment, or to the manner or circumstances under which the position held is customarily performed that enable a qualified individual with a disability to perform the essential functions of the position in question. See 29 C.F.R. § 1630.2(o)(1)(ii). Reasonable accommodations may include but are not limited to: job restructuring; part-time or modified work schedules; reassignment to a vacant position; or acquisition or modifications of equipment or devices. 29 C.F.R. § 1630.2(o)(2)(ii).

While agencies are obligated to provide accommodations to a qualified individual with disability, the Rehabilitation Act allows agencies to raise an affirmative defense that the accommodation would impose an undue hardship. Generalized conclusions will not suffice to support a claim of undue hardship.

Rather, a showing of 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;
- 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.

See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017); Enforcement Guidance on Reasonable Accommodation.

Our review of the record shows that on November 21, 2017, Complainant submitted her initial request for reasonable accommodation due to her recent diagnosis of an autoimmune disorder, namely Sjogren's Syndrome. See Agency's Denial of Reasonable Accommodation Request Letter (Denial Letter), dated August 6, 2018. Her accommodation request encompassed ten distinct topics (and numerous subparts), including her request to telework. In relevant part, she requested permission to "telework from home using [her] government phone and laptop" and "work hours at home when [she] can do suitable work, and take leave for hours [when she] cannot work." Id. The Agency immediately approved some of her requested accommodations. However, a decision on her request to telework was delayed pending further review. Id.

On December 4, 2017, the Agency requested medical documentation from Complainant, which she provided on January 4, 2018. Id. In the same month, the Agency requested clarification from Complainant's physician regarding the current nature of Complainant's condition. Complainant timely provided the requested clarification on January 26, 2018. Id.

Complainant subsequently modified her initial reasonable accommodation request on January 30, 2018. In relevant part, she modified her telework request to expressly state that she could "work between 1-8 hours at home when [she] can do suitable work, and take the balance of 8 hours in leave." Id. The following month, Complainant provided additional medical documentation clarifying her restrictions on driving. Id.

On April 2, 2018, Complainant and the Agency entered into final reasonable accommodation agreement, which granted all of Complainant's reasonable accommodation requests, except her request to telework. Id.

The following day, Complainant filed an informal EEO complaint alleging that she was subjected to discrimination when the Agency denied her request for situational telework. Id. In June 2018, the Agency sought guidance from its Field Solicitor's Office regarding Complainant's request. An attorney there advised management to not grant Complainant's request because "[i]t would be hard to argue in the future that another GS-9 ranger is not eligible [for telework]." ROI at 170.

On August 6, 2018, the Agency issued a denial letter formally denying Complainant's request for situational telework. In its denial letter, the Agency noted that "the park determined that GS-0025-7/9 Park Ranger (Interpretation) positions at the Natchez Trace Parkway were not suitable for telework" because the "[c]ritical duties of the position include the visitor centers and the ability to provide formal and interpretative programming and services to a variety of audiences in a variety of settings." Id. The Agency also noted that "[t]he position is performed in the field and therefore is not suitable for telework under the DOI Telework Handbook (370 DM 226), section 2.2.3). However, the Agency informed Complainant that she had the option of taking "unscheduled leave as needed to accommodate [her] medical needs" and also "take leave under FMLA."

As noted above, the FAD found that the Agency had properly denied Complainant's request. In this regard, while the FAD found that Complainant was a qualified individual with a disability, the FAD concluded that management could not grant her request for situational telework "because interacting with visitors and the public is an essential function of Complainant's position." See FAD at 23. The FAD further concluded that "[w]hile Complainant's position may include duties that could be performed remotely, a significant amount of her essential duties, as described in her PD, require her to be on-site, and thus the Agency was not required to allow her to telework as requested." Id.

Our analysis begins with the Agency's finding that while Complainant was a qualified individual with a disability, management was not required to grant her request for situational telework because a significant amount of her essential duties included face-to-face interaction with the public. As noted above, the Agency expressly found that Complainant was a qualified individual with a disability during the relevant period. Further, Complainant was able to perform the duties including face-to-face interaction with the public. The Agency should have considered and addressed whether the requested reasonable accommodation constituted an undue hardship. We note that the Rehabilitation Act requires federal agencies to provide reasonable accommodation to a qualified individual with a disability absent a showing of undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). We are unable to find any clear analysis in the FAD as to how granting Complainant's request for situational telework would cause undue hardship to the Agency.⁵

⁵ We note that the Agency also did not raise the issue of undue hardship in its August 6, 2018, denial letter.

Having reviewed the record, we find that the Agency has not persuasively shown that providing Complainant her requested accommodation would be an undue hardship. In so finding, we recognize that Complainant's requested accommodation would require her to be away from the park for approximately six to eight hours per month, at which time, she would be unable to engage with the public. However, we note that Complainant has consistently maintained that the bulk of her work during the relevant period was performed "at the computer writing and doing other types of paperwork" in an office area. ROI at 105. Having reviewed the record, we find no evidence that any management official disputed Complainant's characterization of her work duties. As the preponderant evidence demonstrates that Complainant's request for six to eight hours of situational telework a month was so de minimus, and well within the numbers of hours of her non-public facing work, we find that it would not be an undue hardship for the Agency to allow her to telework on a situational basis. We further find that telework would be an effective accommodation, as Complainant's physician opined that Complainant "could telework from home for partial days when she has minor flares and is in physical discomfort." ROI at 113.

In reaching these conclusions, we acknowledge that the Superintendent expressed concern that granting Complainant's request would set a precedent that the agency could not handle, as "on some days, Complainant is the only employee scheduled to work at the Visitor Center." While we acknowledge this concern,⁶ we find it to be speculative as the record clearly shows that Complainant's request for telework was intended to be *situational*. In other words, Complainant only needed to telework when the severity of her flare ups increased to such an extent to prevent her from driving to work 6 to 8 hours per month. Given that Complainant worked approximately 1.5 to 5 hours per week in public facing roles, we are unpersuaded that Complainant's need for six to eight hours of situational telework a month would regularly fall on days when she would be scheduled to work at the visitor centers or engaged in other interpretative programs.

Moreover, to the extent that providing accommodations to disabled employees would implicate the Agency's need to maintain consistency, we find that contention to be meritless, as our guidance clearly states that an employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation, as long as this accommodation would be effective and would not cause an undue hardship. Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Reasonable Accommodation Guidance), EEOC Notice No. 915.002 (as revised, Oct. 17, 2002). In light of our guidance, we find the Superintendent's concern about other employees requesting telework to be unpersuasive and insufficient to constitute an undue hardship.

We also agree with Complainant that the Agency's decision to allow her to liberally take unscheduled leave as needed undercuts the Chief's argument that Complainant's request for situational telework would be an undue hardship. We find no cogent rationale as to how allowing Complainant to telework would pose a greater hardship to the Agency than allowing Complainant to take liberal unscheduled leave.

⁶ We note that the FAD merely summarized the Superintendent's statements and did not expressly address this concern or raise it as the Agency's affirmative defense.

In this regard, we note that Complainant would still be working while on telework, rather than completely off-work while on unscheduled leave. We emphasize that forcing an employee to take leave when another accommodation would permit an employee to continue working is not an effective accommodation. See Denese v. Dep't of the Treasury, EEOC Appeal No. 0120141118 (Dec. 29, 2016). Because the Agency failed to provide Complainant an effective accommodation or demonstrate undue hardship,⁷ we conclude that the Agency violated the Rehabilitation Act in this regard.

In finding in favor of Complainant, we reject the Agency's attempt to rely on our decision in Sanchez-Baca v. Dep't of Educ., EEOC Appeal No. 01996465 (Dec. 28, 2001). According to the Agency, the Commission held in Sanchez-Baca that "it would be an undue hardship for [the] agency to permit the complainant to telework when her essential duties included team gatherings and onsite inspections." Having reviewed Sanchez-Baca, we find that the Agency misinterpreted our case law. In that case, we found that complainant was not a qualified individual with a disability because she could not perform the essential functions of her position. We did not, however, expressly make any finding on undue hardship (*i.e.*, whether the requested accommodation would cause significant difficulty or expense to the Agency).⁸ See Sanchez-Baca, supra ("Assuming for the purposes of analysis that complainant is an individual with a disability, we agree with the AJ's [Administrative Judge] determination that she is not qualified as to her Education Program Specialist position.").⁹ As such, we find the Agency's reliance on Sanchez-Baca to be unpersuasive.¹⁰

Where a discriminatory practice involves the provision of a reasonable accommodation, compensatory 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). While we have concerns regarding the Agency's rigid and inflexible approach to handling requests for telework, we are disinclined to find that the Agency failed to act in good faith, as the record clearly shows that Agency worked with Complainant to quickly grant all of her requests, with the exception of telework. Consequently, we find that Complainant is not entitled to compensatory damages.

⁷ We acknowledge that the Agency offered Complainant a number of in-office accommodations, in addition to liberal leave; however, we find these accommodations to be ineffective because Complainant's physician opined that Complainant could not drive during her flareups and that telework would be an effective alternative. ROI at 12 and 150.

⁸ The agency, however, made the argument that "any accommodation allowing complainant to work from home" would impose an undue hardship on the agency. See Sanchez-Baca, supra.

⁹ We note that the agency in Sanchez-Baca, after finding that complainant was not qualified for her position, reassigned her to another position within the agency. See Sanchez-Baca, supra.

¹⁰ We note that the FAD also cited to Humphries v. Dep't of the Navy, EEOC Appeal No. 0120113552 (Sept. 20, 2013) and Complainant v. Dep't of the Treas., EEOC Appeal No. 0120133355 (June. 19, 2015). However, we find that these cases have no bearing on the undue hardship analysis, as the Commission did not find undue hardship in those cases.

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 her to telework a minimum of six to eight hours per month on a situational, as needed basis.
2. 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 Chief of Interpretation, Superintendent, and Deputy Superintendent. The training shall address the Agency's obligations under the Rehabilitation Act with respect to reasonable accommodation requests.

POSTING ORDER (G0617)

The Agency is ordered to post at the Natchez Trace Parkway facility (Tupelo, Mississippi). 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 (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) within **thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.**

A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted together with the 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).

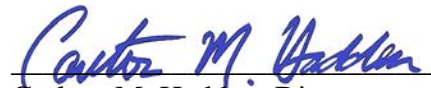
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

September 23, 2020
Date