



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

[REDACTED]
Les B.,¹
Complainant,

v.

Wilbur L. Ross, Jr.,
Secretary,
Department of Commerce
(National Oceanic & Atmospheric Administration),
Agency.

Appeal No. 2019003393

Agency No. 54-2017-00251

DECISION

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 2, 2019 final decision concerning his 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Information Technology (IT) Specialist, GS-2210-11, at the Agency's Operational Monitoring Branch (OMB), National Centers for Environmental Prediction (NCEP), National Weather Service (NWS) in College Park, Maryland. Complainant began in the Agency's employ on October 17, 2016. Complainant experiences complications from the condition of post-traumatic stress disorder. Complainant stated that his condition is exacerbated by stress, hostility, confusion, and anger which results in headaches, neck and back pain, and incidents of depression.

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.

When his condition is triggered, Complainant stated that he is unable to concentrate, and his daily activities are interrupted.

On October 16, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment on the bases of race (African-American), disability (PTSD), age (61), and in reprisal for prior protected EEO activity when:

1. On an ongoing basis, the Director of NCEP Central Operations (Director) and the Chief of OMB (Chief) have treated Complainant unfairly regarding his time and attendance and leave usage, including denying his requests for advanced sick leave or to be placed on Leave Without Pay (LWOP) status, and instead forcing him to record his absences as being Absent Without Leave (AWOL). Examples include:
 - a. On May 4, 2017, Director instructed the office's timekeeper to change Complainant's time and attendance sheet from LWOP to AWOL for the period of March 23 through May 4, 2017. After further discussion, Director approved Complainant's request for LWOP during this period, but failed to remove AWOL from the applicable timesheets;
 - b. On or about July 2, 2017, Director denied Complainant's request for advanced sick leave or LWOP due to a medical flare-up that day, directing him to report his absence as AWOL without providing any justification;
 - c. On or about July 14, 2017, Director refused to approve Complainant's request for advanced sick leave or LWOP covering that day, as well as his request for LWOP covering July 24 and 31, 2017, directing him to change his requests to AWOL;
 - d. On July 31, 2017, Complainant did not receive an expected paycheck for Pay Period (PP) 14. On August 2, 2017, the office's timekeeper advised that Complainant would not be paid for PP 15 unless his leave entries for PP 14 were changed from LWOP to AWOL;
 - e. In August 2017, Director refused to approve Complainant's requests for LWOP covering August 7, 12, 13, and 14, 2017, advising that Complainant would not be paid for PP 16 unless he changed his status from LWOP to AWOL. Complainant was not paid for PP 16. On September 2, 2017, Director again instructed him to change his status from LWOP to AWOL for his leave dates in PP 16 and Complainant complied out of fear of being accused of insubordination; and
 - f. In September 2017, Director and Chief denied Complainant's requests for LWOP covering a period in which he was hospitalized from September 8 through 16, 2017. Chief changed Complainant's requests to AWOL for all days he was absent during this period.
2. On or about July 28, 2017, Director denied Complainant's request to extend for an additional 90 days his reasonable accommodation of working weekend night shifts, approving him for only a 30-day extension, despite his doctor's orders supporting

a 90-day extension. As a result, Complainant was forced to obtain approval from his doctor to work a weekday shift on August 21, 2017;

3. On an ongoing basis, Director and Chief communicated to Complainant in a discriminatory and harassing manner. Examples include:
 - a. On March 28, 2017, Director loudly and condescendingly told Complainant over the telephone, "I need you to work the scheduled shift you were hired for and if you can't do that then you need to contact HR or retire or go out on disability. And if you don't report to work as scheduled I will charge you with AWOL;"
 - b. During a June 9, 2017 mid-term performance review meeting attended by Chief, Director told Complainant in a demeaning tone that he was "lucky" because he had been one day from being fired for being AWOL, expressed concern that Complainant was the "type of person that he was always going to have a problem with" and would regret hiring, and implied in front of Chief that Complainant was not an "honorable worker;" and
 - c. After ongoing discussions regarding scheduling an in-person meeting, on September 8, 2017, Chief informed Complainant of Director's directive that he must attend a meeting at noon that day, despite knowing he needed to rest and had a doctor's appointment that afternoon. Chief advised, "if you do not come, [Director] is going to bring you up on charges of insubordination and terminate you."
4. Chief failed to respond to Complainant's September 14 and 20, 2017, requests for an Office of Workers' Compensation form (OWC-2 form); and
5. On October 3, 2017, Complainant advised Chief that he had been medically cleared to return to work on October 5, 2017, but Chief interrupted him and advised him not to report to work because Chief had terminated Complainant, effective that morning.

On November 15, 2017, the Agency dismissed Claims 1(a) and 1(b) to the extent they constituted discrete acts on the grounds Complainant failed to timely raise the matters before an EEO counselor. The Agency explained that both incidents occurred prior to July 14, 2017, which was 45 days prior to his initial contact with an EEO counselor. The Agency did, however, accept both claims as background evidence to support Complainant's hostile work environment allegations.

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 EEOC 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 partially proved that the Agency subjected him to discrimination as alleged.

In the decision, the Agency concluded that Complainant failed to establish that he was subjected to discrimination or a hostile work environment based on his race or age. However, the Agency found that Complainant demonstrated he was subjected to discrimination as alleged based on his disability with respect to the accepted portions of Claim 1 and with respect to Claim 5. Complainant also established he was retaliated against with respect to Claims 1(d), 1(e), 1(f), 3 and Claim 5, but not with respect to Claim 1(c) or Claim 4. Further, Complainant established a hostile work environment based on disability.

In its analysis, the Agency began with Complainant's requests for reasonable accommodation. The Agency first found no discrimination when management did not advance Complainant sick leave because it was under no obligation to do so for any employee. The Agency then found that management reasonably accommodated Complainant by changing his schedule for an initial 90-day interval, and then additional 30-day intervals with appropriate documentation. However, the Agency was not persuaded by Director's denial that he knew Complainant had a disability. Rather, the Agency found that the AWOL charges were directly related to Complainant's disability and found that AWOL was not an effective accommodation under the Rehabilitation Act.

With respect to Complainant's absence in September 2017, the Agency explained that the events were straightforward. Complainant left work due to a medical condition and remained off work due to that condition. The Agency found that in such circumstances, one would have expected management to take the opportunity to engage in the interactive process to determine how it could best address Complainant's situation; however, the record indicated that communication with Complainant did not seem to be a priority. The Agency rejected the Director's contention that Complainant's absences amounted to a hardship as unsupported by the evidence.

The Agency found that management provided Complainant leave for treatment and/or recovery in several instances. However, Agency management then penalized Complainant for taking the leave, which was of limited duration, and which management officials had authorized. A review of the testimony and the documentation of record made it abundantly clear that Complainant was terminated for his leave taken as a reasonable accommodation for his disability. The Agency also determined that Complainant was subjected to reprisal as he demonstrated that he was subjected to adverse action shortly after requesting reasonable accommodation as alleged in Claims 1(d), (e), (f), 3, and 5. The Agency further rejected management's explanations for its actions.

Based on the preceding analysis, the Agency concluded that Complainant was subjected to a hostile work environment based on his disability and in retaliation for requesting accommodation, as alleged in Claims 1 and 3. Further, liability attached because the harassment resulted in adverse characterizations of his leave and his ultimate termination from the Agency.

The Agency offered Complainant an opportunity to submit evidence supporting damages and other relief. Complainant submitted a personal statement outlining the personal harm he suffered due to Director's conduct. Complainant attested that he felt "fear, anxiety, anger, anxious, ashamed, bitter, confused, concerned, defeated, dejected, depressed, devastated, discouraged, distrustful, trapped, provoked, [and] pressured."

Complainant said that he felt suicidal when he received notice that he was terminated shortly after being released back to work. As a result of the Agency's discrimination, Complainant stated that he separated from his wife and children. Complainant also submitted a statement from his wife attesting to the damage done to their marriage and to his relationship with their children. Complainant's cousin provided a statement describing the change in Complainant's demeanor. Complainant also provided a statement from his physician stating that his mental health status worsened as a result of Complainant's interactions with Director. The Agency concluded that \$65,000 in non-pecuniary compensatory damages was appropriate.

In addition, the Agency further awarded Complainant reinstatement to his position or a substantially equal position; back pay with interest and other benefits due to him; removal of all references to his termination from his official personnel file; and adjustment of his attendance records to reflect LWOP instead of AWOL. Further, the Agency ordered four hours of training to Director, Chief, and two human resources officials involved in the matter on their responsibilities under the Rehabilitation Act and recognizing reasonable accommodation requests; consideration of disciplinary action against Director and Chief; and to post a notice.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant appealed without comment or argument. In its brief, the Agency notes that it is unclear what portion of the Agency's decision Complainant challenges. Regardless, the Agency maintains that its decision is factually and legally sound.

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").

Complainant does not argue that the Agency improperly dismissed Claims 1(a) and 1(b) as untimely raised with an EEO counselor; therefore, those claims will not be addressed herein. As the Agency found in Complainant's favor with respect to Claims 1(d), 1(e), 1(f), 3, 5, we find no basis to disturb the Agency's decision regarding those claims. Accordingly, we will initially analyze the merits of the remaining claims, Claims 2 and 4.

Claim 2 – Change in Schedule as Reasonable Accommodation

An agency is required to reasonably accommodate the known limitations of a qualified individual with a disability, unless it can show that doing so would cause an undue hardship to its operations. See 29 C.F.R. §§ 1630.2 (o) and (p); EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance), EEOC Notice No. 915.002 (Oct. 17, 2002); Barney G. v. Dep't of Agric., EEOC Appeal No. 0120120400 (Dec. 3, 2015). In this claim, the Agency accommodated Complainant by reassigning him to weekend shifts for a 90-day period in accordance with his physician's recommendation. When the 90-day period expired, Complainant sought an additional 90 days. Although Director initially denied the request for one day, Director reversed himself the next day and granted Complainant's request for 30 days, subject to renewal if the medical evidence supported it.

The Agency is not required to provide Complainant with the exact accommodation of his choice; it can select among different accommodations as long as its selection is effective. Kelley v. Soc. Sec. Admin., EEOC Appeal No. 0120080209 (May 18, 2010); 29 C.F.R. § 1630.2(o); Enforcement Guidance on Reasonable Accommodation, at 17. We do not find that the 30-day renewal, instead of 90 days, constitutes a failure to accommodate. Although Director's initial refusal to grant the accommodation may have been questionable, Director ultimately granted the request within a day's time. Accordingly, the Commission finds that the Agency did not deny Complainant reasonable accommodation in violation of the Rehabilitation Act.

Claim 4 – Failure to Respond to OWC-2 Form

To prevail in a disparate treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 at n.13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993).

The record demonstrates that Chief furnished to Complainant the OWC-2 form. Accordingly, the adverse action complained of in Claim 4 did not occur. Because Complainant cannot show an adverse action, he cannot establish a prima facie case of discrimination. See Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Therefore, we affirm the Agency's finding of no discrimination as to Claims 2 and 4.

REMEDIES

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or the Rehabilitation Act may receive compensatory damages for past and future pecuniary losses and non-pecuniary losses. 42 U.S.C. § 1981a(b)(3).

When discrimination is found, the agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore him as nearly as possible to the position he would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., Inc., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). To receive an award of compensatory damages, a complainant must demonstrate that he has been harmed as a result of the agency's discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14. Compensatory damages may be awarded for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) which are directly or proximately caused by the agency's discriminatory conduct. EEOC Notice No. 915.002 at 8. The amount awarded should reflect the extent to which the agency's discriminatory action directly or proximately caused harm to the complainant and the extent to which other factors may have played a part. Id. at 11-12. The amount of non-pecuniary damages should also reflect the nature and severity of the harm to the complainant, and the duration or expected duration of the harm. Id. at 14.

Non-Pecuniary Compensatory Damages

Non-pecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC. Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from Complainant concerning her emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id.

Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

In its decision awarding Complainant \$65,000 in compensatory damages, the Agency referenced prior Commission cases that were decided between 2003 and 2015, all awarding \$60,000 to an aggrieved complainant. We note that the most recent case the Agency cites, Adina P. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120132450 (Dec. 11, 2015) was a partial finding of discrimination where the agency retaliated against the complainant when it told the complainant that leave for a knee surgery would probably not be granted. As a result, the complainant suffered emotional distress, depression, sleeplessness, and anxiety, and her condition eased within months after she found a different job she liked better. Id.

We think Adina P. is not comparable to the instant case. Here, Complainant was subjected to a sustained hostile work environment that lasted nearly nine months, from the time he requested a reasonable accommodation to the time he was terminated. During this time, he was repeatedly denied LWOP. Complainant presented, in great detail, the damage the Agency's conduct inflicted on his mental state and family situation. Complainant's presentation was corroborated by two family members and a physician's report. As a result, we believe that \$65,000 in compensatory damages inadequately compensates Complainant for the harm he suffered and is not supported by Commission precedent.

Instead, we think \$85,000 is more appropriate. In arriving at this conclusion, we find instructive Billy B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120132680 (Nov. 19, 2015). In that case, the complainant's PTSD condition was exacerbated when the agency denied the complainant a reasonable accommodation, resulting in his constructive termination.

As a result of the length of time the complainant suffered discrimination, the Commission agreed with the agency's decision to award \$85,000. Id. See also Cher C. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120140445 (Jan. 9, 2017) (awarding \$95,000 where retaliatory harassment resulted in exacerbation of lupus symptoms for 18 months); Gamez v. Soc. Sec. Admin., EEOC Appeal No. 07A20129 (Oct. 27, 2003) (awarding \$90,000 where the agency's failure to provide reasonable accommodation, resulting in the complainant experiencing emotional distress, damaged relationship with her spouse, became withdrawn and suffered lower self-esteem).

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision.

ORDER

The Agency is ordered to take the following remedial action, to extent it has not already done so:

1. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$85,000.00 in compensatory damages.
2. Within 60 calendar days of the date this decision is issued, the Agency shall offer Complainant permanent employment as an Information Technology Specialist, GS-2210-11, at NCEP, or a substantially equivalent position, retroactive to October 3, 2017. The offer shall be in writing and Complainant shall have 30 calendar days from the date of receipt to accept or decline the Agency's offer. 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 to Complainant. The position offered shall be either (1) located at Silver Spring, Maryland, or (2) located at College Park, Maryland.
3. The Agency shall determine the appropriate amount of back pay, with interest, and all other benefits due Complainant pursuant to 29 C.F.R. § 1614.501 for the period starting on October 3, 2017 and ending when Complainant either refuses the position offered in Paragraph 2 of this Section or when he begins said position. Complainant is entitled to any benefits to which he would have been entitled but for the discrimination, as well as expected promotions throughout the period, i.e., step increases and grade increases. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within sixty (60) 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 enforcement or clarification must be filed with the Compliance Officer at the address referenced in the statement entitled "Implementation of the Commission's Decision."

4. The Agency shall also pay compensation for the adverse tax consequences of receiving back pay as a lump sum. Complainant has the burden of establishing the amount of increased tax liability, if any. Once the Agency has calculated the proper amount of back pay, Complainant shall be given the opportunity to present the Agency with evidence regarding the adverse tax consequences, if any, for which Complainant shall then be compensated.
5. In the event Complainant accepts a position with the Agency as dictated in Paragraph 2, the Agency shall take all steps necessary to ensure that, once Complainant returns to work, he is provided with such reasonable accommodation as he is entitled to by law.
6. Within 60 calendar days of the date this decision is issued, the Agency shall remove all references to Complainant having been terminated from his official personnel file.
7. Within 60 days of the date this decision is issued, the Agency shall adjust Complainant's time and attendance records to reflect the use of LWOP rather than AWOL throughout his time and attendance records from the period of March 27, 2017 through October 3, 2017.
8. Within 90 days of the date this decision is issued, the Agency shall provide to the responsible officials identified as Director, Chief, and the two human resources officials involved in the matter, a minimum of four (4) hours of training regarding their responsibilities under the Rehabilitation Act, particularly regarding reasonable accommodation and being able to recognize "plain English" reasonable accommodation requests, and the use of leave as a reasonable accommodation. Additionally, the Agency shall provide Director and Chief with a minimum of four (4) additional hours of training regarding disability-based disparate treatment and reprisal discrimination.
9. Within 60 calendar days of the date this decision is issued, the Agency consider taking appropriate disciplinary action against Director and Chief. The Commission does not consider training to constitute 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 any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its National Weather Service facilities in Silver Spring, Maryland, and College Park, Maryland 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).

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 (T0610)

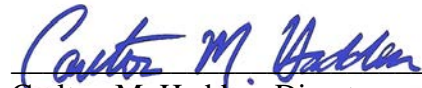
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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 14, 2020
Date