



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Carlton T.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2019005495

Agency No. 4G-780-0184-18

DECISION

On August 12, 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 July 23, 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. For the following reasons, the Commission MODIFIES the Agency's final decision, in part, and REMANDS the complaint for further processing.

ISSUE PRESENTED

The issue presented concern whether the Agency subjected Complainant to discrimination on the basis of reprisal.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Letter Carrier at the Harlingen Post Office in Harlingen, Texas.

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 September 5, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On June 19, 2018, Complainant's immediate supervisor (S1) conducted a street observation of his route, in which he attempted to intimidate him by standing close to him;
2. On or about June 1, 2018,² S1 sent him inappropriate text messages;
3. On June 21, 2018, S1 denied him a copy of his street observation, raised his voice while he was talking to the union steward and stood next to his case, making laughing noises; and
4. On June 21, 2018, Complainant's coworker made an inappropriate remark,³ calling Complainant a "f***ing wimp."

On October 4, 2018, the Agency accepted claims 1 to 4 for investigation. Thereafter, Complainant filed two requests to amend his complaint, which the Agency accepted for investigation on November 19, 2018 and December 18, 2018. The accepted allegations of discrimination based on reprisal consisted of the following:

5. On October 29, 2018, Complainant was issued a Letter of Warning; and
6. On unspecified dates, S1 sent him text messages and pictures about S1's involvement with cartels from Mexico in an attempt to intimidate Complainant.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

In finding no discrimination, the Agency first analyzed claim 5 concerning the letter of warning, which management had issued to Complainant on October 29, 2018. Having reviewed the record, the Agency determined that management had legitimate, nondiscriminatory reasons for issuing Complainant the letter, namely Complainant's failure on October 17, 2018, to timely report to work as scheduled or notify management. The Agency concluded that Complainant could not persuasively show that this explanation was pretext for discrimination, as Complainant failed to "refute the testimony that he was late and did not call in to notify management."

² Complainant clarified during the EEO investigation that this incident occurred on June 1, 2018, not June 19, 2018, as reflected in the Notice of Acceptance and Final Agency Decision. ROI at 00180.

³ Though the Final Agency Decision characterized the individual who made the alleged comment as Complainant's supervisor, the reflect reflects that this individual was Complainant's coworker. ROI at 00013 and 00438-39.

Moreover, while the Agency acknowledged that Complainant had named a comparator, whom Complainant alleged had been treated more favorably, the Agency found that Complainant was not similarly situated to the comparator because Complainant held a different position than the comparator. Furthermore, the Agency emphasized that management had previously disciplined other employees, including one who held the same position as Complainant, for similar time and attendance issues. For these reasons, the Agency concluded that Complainant could not prevail on claim 5.

The Agency then considered all of the claims under the legal standard for harassment. For claims 1, 2, and 3, the Agency found that Complainant established that he had been subjected to unwelcome conduct. Final Agency Decision at 24. However, the Agency concluded that the alleged conduct was not based on his protected status and was not sufficiently severe or pervasive to constitute a hostile work environment. *Id.* The Agency reached the same conclusion for claims 4, 5, and 6, but also found that Complainant failed to show that he had been subjected to unwelcome conduct. *Id.* The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that the ROI is inadequate because it fails to include any information regarding the internal investigation that the Agency undertook into his allegations of harassment. In this regard, Complainant contends that the internal investigation was conducted in reprisal for his prior protected EEO activity. As for the merits of his complaint, Complainant contends that the Agency is liable for harassment because S1 sent him inappropriate text messages to instill fear in him. He maintains that the Agency failed to “offer preventative or corrective opportunities that would resolve said issues.” Furthermore, Complainant contends that the Agency’s general denials of his allegations are insufficient to constitute a legitimate, nondiscriminatory reason for its actions.

The Agency did not submit any contentions in opposition to the 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

Preliminary Matters

As a preliminary matter, we will address in depth Complainant's concerns regarding the adequacy of the Agency's investigation into his complaint. In his appellate brief, Complainant asserted that the record failed to include any information about the internal investigation into his allegations of harassment, which Complainant alleged was conducted in reprisal for his prior protected EEO activity. Complainant explained that the internal investigation occurred at the beginning of 2019, prior to the Agency "entering into the investigative affidavits for this case." Complainant stated that he met with the Postmaster of the San Antonio Post Office a total of three times concerning the internal investigation; however, none of this evidence was included in the ROI. Complainant maintained that "the harassment from [his] postmaster and supervisors never stopped," as they continued to display disrespectful body language and facial expressions towards him. Complainant also contended that his supervisor would, on a daily basis, make comments and then deny making said comments. He alleged that the Agency's failure to include the internal investigation "goes to show there is a cover up" and he "wonders how deep the Mexican cartels have entered" the Post Office at Harlingen.

As for the alleged deficiencies in the ROI, we note that Complainant did not request a hearing before an EEOC Administrative Judge. Had he done so, the hearing process would have afforded him the opportunity to conduct discovery and to cure any alleged defects that he believes are in the record. Because Complainant did not request a hearing, we can only evaluate the facts based on the weight of the evidence presented to us. While we acknowledge Complainant's concerns regarding the internal investigation, we note that Complainant could have amended his EEO complaint to allege discrimination when he was subjected to an internal investigation. Because Complainant failed to do so, we will not review his claim for the first time on appeal. Having reviewed the record, we find the case file to be complete, as all files pertaining to the EEO investigation appear to be present. We note that Complainant did not supplement the record on appeal to address the alleged deficiencies in the record. Accordingly, we turn now to the merits of the complaint.

Disparate Treatment

Our analysis begins with claim 5, wherein Complainant alleged he was subjected to discrimination based on reprisal when he was issued a letter of warning on October 29, 2018.

For Complainant to prevail, he must satisfy the three-part evidentiary scheme fashioned by the U.S. 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. Co. 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 804 n. 14.

To establish a prima facie case of disparate treatment on the basis of reprisal, Complainant must show that: (1) he engaged in a protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the Agency;⁴ and (4) a nexus exists between the protected activity and the adverse treatment. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120132503 (Aug. 28, 2014), citing Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000).

The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 253 (1981). Complainant must ultimately prove, by a preponderance of the evidence, that the agency's explanation is pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Burdine, 450 U.S. at 256.

Assuming arguendo that Complainant established a prima facie case of discrimination on the basis of reprisal, we find that the Agency has articulated a legitimate, nondiscriminatory reason for issuing him the letter of warning. As explained in the letter, Complainant's second level supervisor (S2) issued the letter because "[o]n the morning of October 17, 2018, [Complainant] failed to report to work as scheduled and there is no record of [Complainant] calling in or notifying any member of management regarding not coming in on such day." ROI at 00544.

As the Agency has articulated a legitimate, nondiscriminatory reason for its action, Complainant now bears the burden of establishing that the Agency's stated reason was merely a pretext for discrimination. See, e.g., Shapiro v. Soc. Sec. Admin., EEOC Request No. 05960403 (Dec. 6, 1996). Indicators of pretext include, but are not limited to, discriminatory statements or past personal treatment attributable to those responsible for the personnel action that led to the filing of the complaint, comparative or statistical data revealing differences in treatment across various protected-group lines, unequal application of Agency policy, deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015).

During the EEO investigation, Complainant maintained that the Agency's articulated reason was pretextual because he did in fact show up to work on October 17, 2018. While Complainant acknowledged that he arrived to work late, Complainant stated he tried to call the day before, but management did not answer. ROI at 00215. Furthermore, Complainant asserted that his untimely arrival was covered under the Family and Medical Leave Act of 1993 (FMLA). Complainant emphasized that "[n]o other employee has experienced similar circumstances as [him]." Id. at 00216.

⁴ Reprisal claims are considered with a broad view of coverage. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 67-68 (2006). Retaliatory actions which can be challenged are not restricted to those which affect a term or condition of employment. Id. Rather, a complainant is protected from any discrimination that is reasonably likely to deter protected activity. Id.; see also, Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000).

Having reviewed the record, we find no persuasive evidence that the Agency's articulated reason was pretext for discrimination. The Commission has long held that agencies have broad discretion to set policies and carry out personnel decisions and should not be second-guessed by the reviewing authority absent evidence of unlawful motivation. See, e.g., Vanek v. Dep't of the Treasury, EEOC Request No. 05940906 (January 16, 1997). Given the facts in this case, we find that Complainant has failed to show by the preponderant evidence that he was subjected to discrimination, as the record clearly reflects that the Agency had a legitimate, nondiscriminatory reason for issuing him a letter of warning (i.e., for his failure to report to work as scheduled/on time). We are unpersuaded by Complainant's proffer of pretext.

In reaching this conclusion, we acknowledge Complainant's contention that he attempted to call management to inform them that he would be unable to report to work as scheduled. However, by Complainant's own admission, management was left unaware about his whereabouts due to his inability to get through to anyone. We find that the probative record fails to demonstrate that management acted in a discriminatory manner in warning Complainant for his failure to report to work as scheduled. We also considered Complainant's contention that the letter of warning was given because of his prior protected EEO activity. However, we note that the Commission has long held that employers remain free to discipline or terminate employees for poor performance or improper behavior, even if the employee made an EEO complaint. See EEOC's Questions and Answers: Enforcement Guidance on Retaliation and Retaliation Issues at q. 7. Because the record clearly shows that Complainant failed to report to work as scheduled and did not succeed in informing management about his late arrival, we conclude that the Agency did not act discriminatorily in issuing him a letter of warning.

To the extent Complainant believes that the Agency violated the FMLA by issuing him a letter of warning, we note that the Commission does not generally have jurisdiction over alleged violations of the FMLA, as such matters fall under the regulatory ambit of the U.S. Department of Labor's Wage and Hour Division. Alamillo v. U.S. Postal Serv., EEOC Appeal No. 0120101789 (Aug. 6, 2010). The Commission may only review claims where a complainant alleges discriminatory application of FMLA provisions based on the employee's membership in a protected class. See Watkins v. U.S. Postal Serv., EEOC Appeal No. 0120102905 (Nov. 29, 2010). Here, however, we find that the record clearly shows that Complainant has not alleged disparate treatment with regard to the application of FMLA provisions. To the contrary, we note that Complainant has unequivocally stated that "[n]o other employee has experienced similar circumstances as [him]." ROI at 00216. For these reasons, we are unable to review whether the Agency discriminatorily violated the FMLA.

Hostile Work Environment Claims

To establish a claim of harassment, Complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating

an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the Agency. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994). Further, the incidents must have been "sufficiently severe and pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993); see also Oncale v. Sundowner Offshore Services, Inc., 23 U.S. 75 (1998).

To ultimately prevail on a claim of retaliatory harassment, Complainant must show that he was subjected to conduct sufficient to dissuade a "reasonable person" from making or supporting a charge of discrimination. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 015.004, § II(B)(3) & n. 137 (Aug. 25, 2016). Only if both elements are present, retaliatory motivation and a chilling effect on protected EEO activity, will the question of Agency liability for reprisal-based harassment present itself. See also Janeen S. v. Dep't of Commerce, EEOC Appeal No. 0120160024 (Dec. 20, 2017).

Claims 4 and 5

As an initial matter, we find that Complainant failed to prove that the alleged incident in claim 4 occurred, as the record reflects that Complainant's coworker denied calling Complainant a "f***ing wimp." ROI at 00439. Complainant bears the burden to prove, by a preponderance of the evidence, that the alleged discrimination occurred. When the evidence is at best equipoise, Complainant fails to meet that burden. See Brand v. Dep't Of Agric., EEOC Appeal No. 0120102187 (Aug. 23, 2012). As for claim 5, we find that a finding of harassment is precluded by our determination that Complainant failed to establish that the action taken by the Agency was motivated by discriminatory animus. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01932923 (Sept. 21, 2000).

Claims 1 and 3

In claim 1, Complainant alleged that he was subjected to a hostile work environment when S1 conducted a street observation of his route and attempted to intimidate him by standing close to him. In this regard, Complainant maintained that S1 came "right up next to [him]" while he was delivering mail and said to him, "how much more do you have to go on the route?" With regard to claim 3, Complainant maintained that in accordance with the Agency's policies, S1 should have given him a street observation form (PS-Form 4585) within 24 hours of the street observation; however, S1 failed to do so and did not provide Complainant with a copy of the street observation form until the union got involved. Complainant also alleged that S1 raised his voice when he was talking to a coworker (union steward) and stood next to his case, making laughing noises.

Our review of the record shows that S1 denied conducting a street observation on Complainant, and he stated that he merely asked Complainant whether Complainant “was going to make the truck.” ROI at 00264. S1 emphasized that he did not initially give Complainant a street observation form because he did not conduct a street observation. Id. at 00265-266. S1 maintained that he only gave Complainant a street observation form when Complainant demanded one through his union representative. Id. at 00274. S1 also denied raising his voice and making laughing noises. Id. at 00278.

With regard to Complainant’s allegation that he was subjected to discrimination on the basis of reprisal when S1 conduct a street observation and failed to give him a street observation report, we will assume *arguendo* that the alleged events occurred as Complainant described and were unwanted. However, we find that Complainant has not shown that S1 acted with retaliatory motivation or shown that such conduct would be sufficient to dissuade a “reasonable person” from making or supporting a charge of discrimination. As for whether S1 raised his voice at Complainant and made laughing noises, we note that there is a dispute as to whether such events occurred; however, even assuming *arguendo* that the alleged incidents occurred in the manner described, we nevertheless find the allegations to be insufficient to constitute retaliatory harassment.

Claim 2

We turn now to claim 2, wherein Complainant alleged that on June 1, 2018, S1 sent him text messages characterizing Complainant as “stupid” and “a few other things” for filing an EEO complaint against S1’s supervisor. Complainant contended that S1’s actions constituted reprisal for engaging in protected EEO activity. We agree.

As discussed above, the statutory anti-retaliation provisions prohibit any adverse treatment that is based on a retaliatory motive and is likely to deter a reasonable employee from engaging in protected activity. Burlington N. and Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006). Although petty slights and trivial annoyances are not actionable, adverse actions or threats to take adverse actions such as reprimands, negative evaluations, and harassment are actionable. Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004 (Enforcement Guidance on Retaliation), at § II. B. (Aug. 25, 2016)

Given the importance of maintaining “unfettered access to [the] statutory remedial mechanisms” in the anti-retaliation provisions, we have found a broad range of actions to be retaliatory. For example, we have held that a supervisor threatening an employee by saying, “What goes around, comes around” when discussing an EEO complaint constitutes reprisal. Vincent v. U.S. Postal Serv., EEOC Appeal No. 0120072908 (Aug. 3, 2009), req. for recons. den., EEOC Request No. 0520090654 (Dec. 16, 2010). We have also found that a supervisor attempting to counsel an employee against pursuing an EEO complaint “as a friend,” even if intended innocently, is reprisal. Woolf v. Dep’t of Energy, EEOC Appeal No. 0120083727 (June 4, 2009) (violation found when a Labor Management Specialist told the complainant, “as a friend,” that her EEO claim would polarize the office)

Our review of the record here shows that on June 1, 2018, S1 criticized the manner in which Complainant filed EEO complaints. ROI at 00018-19. Specifically, S1 told Complainant that he thought it was “pretty sad” that Complainant made up stories about people. Id. S1 stated that this was why Complainant’s EEO complaints never went anywhere, as nobody believed Complainant. Id. S1 also stated to Complainant, “you think you’re a specialist[,] but they reject all your [EEO complaints] because they’re all misspelled and have a lot of run-on sentences.” Id. Furthermore, S1 took umbrage at Complainant’s attempt to encourage a coworker to file an EEO complaint against S2. Id. In this regard, S1 told Complainant, “[t]he one who [is] stupid is you because you were pushing him [Complainant’s coworker] to file an EEO [complaint] against [S2][;] just because you can’t beat him you want somebody else to join in.” S1 characterized Complainant’s actions as “pathetic.” Id.

After careful consideration, we find that S1’s criticism of Complainant’s EEO activity, which accused Complainant of making up stories about people and making “pathetic” complaints, would be likely to deter a reasonable employee from engaging in protected EEO activity. See Ludie M. v. U.S. Postal Serv., EEOC Appeal No. 0120170459 (May 9, 2019) (finding reprisal where supervisor told complainant that if complainant spent more time working and less time filing complaints, complainant “would not...have to worry about any actions...”), req. for recons. den., EEOC Request No. 2019005427 (Dec. 12, 2019).

Here, S1 denied having a record of the alleged text messages. However, we note that during the EEO investigation, Complainant submitted screenshots of his communications with S1. These screenshots are contained in the ROI. See ROI at 00018-19. Having reviewed the screenshots, we find that the screenshots unequivocally show that S1 intentionally sent the alleged messages disparaging Complainant’s protected EEO activity. For the above reasons, we find that Complainant was subjected to unlawful reprisal by S1 as alleged in claim 2.

Claim 6

While in claim 6, like claim 2, Complainant alleged that S1 sent inappropriate messages to Complainant, we are disinclined to find that S1 acted with retaliatory motive here. Our review of the record shows that S1 did indeed send Complainant text messages referencing cartel activity in Mexico. However, we find that the probative evidence persuasively shows that Complainant was a willing participant in the conversations, even going so far as referring to S1 as “Cartel Golfo Capitan” (Captain of the Gulf Cartel). ROI at 00110-114. Having reviewed the record, we find that the probative record fails to persuasively support Complainant’s contention that the alleged messages and articles alleged in claim 6 were intended to intimidate him or dissuade him from engaging in protected EEO activity.

CONCLUSION

Based on a thorough review of the record, we MODIFY the Agency's final decision. We AFFIRM the Agency's final decision with respect to claims 1, 3, 4, 5, and 6. However, we REVERSE the Agency's final decision with respect to claim 2 and REMAND the matter to the Agency for further processing in accordance with the ORDER below.

ORDER

The Agency shall take the following actions:

1. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due Complainant in a final decision with appeal rights to the Commission.
2. The Agency shall pay this amount to Complainant within **thirty (30) calendar days** of the date of the determination of the amount of compensatory damages. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
3. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to S1.⁵ The required training shall address S1's responsibilities with regard to eliminating discrimination in the workplace.
4. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall consider taking disciplinary action against S1. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.
5. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

⁵ S1 is identified on page 00263 of the ROI.

POSTING ORDER (G0617)

The Agency is ordered to post at the Harlingen Post Office in Harlingen, Texas. 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).

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 (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 (T0610)

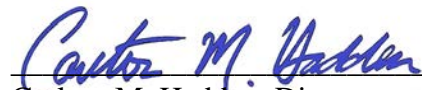
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from

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

November 16, 2020

Date