



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

[REDACTED]
Emery S.,¹
Complainant,

v.

Jelena McWilliams,
Chairman,
Federal Deposit Insurance Corporation,
Agency.

Appeal No. 2020001130

Hearing No. 570-2015-00218X

Agency No. FDICEO-14--030

DECISION

Following its November 26, 2019, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of 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 REVERSES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Economic Analyst, CG-12 at the Agency's Division of Insurance and Research (DIR) in Washington, District of Columbia. On December 15, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Caucasian), sex (male), disability (perceived mental disability, 60% disabled veteran), age (48), and reprisal for prior protected EEO activity when:

1. On or about February 27, 2014, Complainant was not selected for a position as a Senior

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.

Financial Economist, advertised under vacancy announcement numbers 2013-HQD-B0941 and 2013-HQ-B0939; and

2. On or about February 27, 2014, the Agency informed Complainant that he did not score high enough to be included on the roster for the Senior Financial Economist position, advertised under vacancy announcement numbers 2013-HQD-B 1005 and 2013-HQ-B 1004.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. AJ1 held a hearing on December 15, 2016, and on February 9 and 10, 2017; and issued a preliminary decision in favor of Complainant on July 24, 2019.

AJ1 found that the FDIC did not select Complainant for a position as a Senior Financial Economist, advertised under vacancy announcement numbers 2013-HQD-B0941 and 2013-HQ-B0939 because of his sex, age, and in reprisal for EEO activity; and did not include him on the roster for the Senior Financial Economist position, advertised under vacancy announcement number 2013-HQD-B 1005 because of Complainant's sex, age, and in reprisal for EEO activity. The AJ also found that Complainant failed to prove by the preponderance of the evidence that the Agency unlawfully discriminated against him because of his race or disability.

Following is a summary of the undisputed facts as laid out in the AJ's decision:

Complainant is a qualified individual with a disability for the position of Senior Financial Economist and Financial Economist (i.e. with his disability, he can perform the essential functions of the positions at issue with or without an accommodation). Complainant's resume contains the term "veteran preference CPS" which indicates that he is a veteran with a thirty percent disability rating.

Complainant held a doctorate degree in economics; and during his time at the University, he served as an Instructor for courses in the following areas of study: economics; statistics; and econometrics. Prior to beginning his tenure at the Agency in 2008, Complainant served as a Teaching Assistant for several courses in economics and politics; as a Visiting Assistant Professor of Economics; as Director of Academic Affairs; and he had served on active duty in the U.S. Army as an Associate Professor of Military Science and Leadership.

Complainant previously filed a grievance complaining of discrimination based on EEO protected activity. In July 2012, Complainant filed an EEO complaint against the Agency, and in 2013 he filed a lawsuit in federal court alleging the Agency, among other things, discriminated against him because of his race, sex, age, disability, and reprisal.

Regarding Claim 1, Complainant timely applied for the advertised position under both announcements. He was deemed qualified for the Senior Financial Economist position, and

referred to the selecting official for consideration. The Chief of the Banking and Regulatory Section in DIR, CM-2, served as the selecting official (SO) for this position. Complainant participated in a telephonic interview for the Senior Financial Economist position. Complainant was the only candidate who participated in a telephonic interview for the position; the other candidates were interviewed in person.

In the hiring process, the interview panel consisted of three panelists: the SO (P1, P2, and P3). P1 was aware of Complainant's approximate age, sex, and prior grievance filing. There is no evidence that he was aware of Complainant's race. The panel interviewed six candidates, including Complainant, who was not selected for the position. The selectees were two females (S1, who was 21 years younger than Complainant; and S2, who was one year older than him). S1 had only a bachelor's degree at the time of her interview; and had only taken two courses in economics and statistics as part of an MBA program. Her first two years at the FDIC were in an entry-level Economic Research Assistant position; and P2, who previously supervised her, had encouraged her to apply for the position. He also testified that someone, who he did not identify, told him not to hire Complainant.

The position at issue, for which Complainant was not selected, entailed primarily doing regulatory analysis for rule making, such as cost benefit analysis and legal compliance. While Complainant was working on his graduate degrees, he was teaching economics, econometrics, statistics, and micro and macroeconomics, including teaching undergraduate students like S1. One of his fields of expertise was in public economics, which specifically uses cost benefit analysis, and is something that he taught to his undergraduate students.

According to the findings of the AJ, in his various previous positions, Complainant not only evaluated policies, but had written policies as well. He received top ratings throughout his military and academic careers. He had extensive communication skills, had received teaching awards, and received an award whereby he was selected as the top graduate by the 212 peers in his military leadership school. Complainant's resume extensively details the quality and complexity of his research and experience in financial analysis, which was relevant to the position's regulatory analysis for rulemaking duties.

With respect to the interview process, the AJ found that Complainant's answers to each of the interview questions he was asked did meet the benchmarks for each question for the CG-13 level Senior Financial Economist position that is the subject of Claim 1. The AJ found that the interview panel did not give Complainant proper credit for each of his answers. For example, Complainant was marked down for one answer not including "collaboration tools" used in the landfill example that he discussed, even though meetings he conducted during the project he described as a collaboration tool. The AJ further noted that "collaboration tools" are a specific benchmark for a CG-14 position, not the CG-13 position Complainant applied for.

None of the interviewers' notes state that they found Complainant arrogant. The interviewers did not state in their affidavits what they found off-putting about anything he said in the interview. At

the hearing, P2 conceded that what they called “arrogance” could have been confidence, and P1 testified that he did not find him to be arrogant during the interview.

P1 and P2 testified that S1 was “poised” and “confident.” The AJ found that although the interviewers testified that Complainant gave vague answers in his interview, their notes do not support this conclusion. The interviewers inflated the quality of the interview answers and importance of the projects described by S1, and discounted the quality of the interview answers and importance of the projects described by Complainant.

Regarding Claim 2, on February 12, 2014, Complainant applied for the advertised position at issue under both announcements. His application under announcement 2014-HQ-B1004 was rejected for being untimely but Complainant's application under announcement 2014-HQD-B1005 was accepted because of his disabled veteran status.

The FDIC, like most Federal agencies, uses an on-line automated recruitment process through USAJobs. Applicants for the Financial Economist position were required to respond to a vacancy announcement questionnaire with information regarding the applicant's skills and expertise. Each candidate's application was electronically accepted by the automated on-line system, which scored the answers to the assessment questions to determine the ranking of the applicant.

In accordance with applicable legal requirements, the Agency utilized category rating procedures in connection with this selection. Under category rating, applicants who meet basic minimum qualification requirements for the position are ranked by being placed in one of two or more quality ranking categories instead of being ranked in numeric score order. The Agency established three quality categories in connection with this position. The Agency referred all candidates in the highest quality category (Category A) to the SO for consideration.

In a “category rating system,” all disabled veterans who make it to the highest quality category are automatically put to the top of the referral list. The agency would not be allowed to select any non-veteran without receiving pass-over authority from the Office of Personnel Management (OPM). For this position, a Subject Matter Expert (SME) conducted a review of each applicant who was ranked among the top candidates to ensure the candidate met minimal qualifications and to verify that the applicant's answers to the vacancy announcement questions were substantiated by the information in the candidate's application. Once the SME review was complete, certificates of qualified candidates for each announcement were prepared. Complainant's self-rated score placed him in Category A.

A Senior Financial Economist served as the SME (SME1) for Complainant's application. SME2, who was aware of Complainant's sex and approximate age from his resume, reviewed applications for this position as well. There is no evidence that she was aware of Complainant's race or disability. Upon reviewing Complainant's application materials, SME1 reported that his responses to four of the assessment questions (questions 4, 5, 6, and 9) were not supported by his application materials. She marked these with X's, and marked some responses with “?” where she was not sure. As a result of SME1's review, the responses to these questions were adjusted.

The Chief of the Administrative Program Management Section (CAPMS) within the DIR serves as a conduit between DIR and HR. CAPMS admitted that she took SME1's assessment at face value and made the adjustments as she interpreted SME1's notes, with Xs meaning "not supported," without having any follow-up conversations with SME1. CAPMS explained that for other applicants HR would ask the SME if there were questions. She however did not do this for Complainant because she had been involved in his prior EEO activity. In fact, CAPMS intentionally did not go through any pages of Complainant's application because she had provided an affidavit for an EEO case he had filed in the past. An HR contract employee (HR1) would then recalculate Complainant's score based on CAPMS's "not supported" notation meaning that the SME did not find the questionnaire response to be supported by the resume.

The AJ determined that Complainant's responses to questions 4, 5, 6 and 9 were in fact supported by his application. By a candidate having a Ph.D. in economics and having extensive experience teaching in economics, any other Ph.D., such as SME1, would have known, for example, that that candidate would have necessarily had experience in multi-variant linear and logistic regressions, non-parametric tests, presenting research, and developing theoretical economic or econometric financial models. SME1 also had Complainant's transcripts which had much of the substantiating information. As a result of the adjustments, Complainant's score placed him in Category B. SME1 also downgraded three other applicants from Category A to Category B. Three of the four downgraded were males over 40.

The AJ also found that SME1 made assumptions in favor of applicants outside of Complainant's protected classes where she was unable to point to support in those candidates' resumes for the questionnaire responses that she did credit, but made no assumptions in favor of Complainant. SME1 downgraded Complainant's questionnaire responses but did not downgrade the responses of candidates outside of Complainant's protected classes that she would have had to have similarly considered "unsubstantiated", had she reviewed them consistently.

SME1 testified that the hiring calendar for economists at the FDIC correlates with the Ph.D. candidates' academic calendars and Ph.D. candidates' recruiting conference meetings, and the chosen candidates "typically begin working on a negotiated basis, based on when they feel comfortable finishing their dissertation." The AJ asserted that this testimony is tantamount to an admission that most economist hires at the FDIC are new Ph.D.s and Ph.D. candidates, not seasoned or older applicants. Someone, who was not identified, had told SME1 that Complainant had applied for the same position before. The HR Officer, (HRO), who is not an economist and whose education background was in theater, communications and psychology, testified that because Complainant complained that he was not being treated fairly, she did perform a reconsideration of the downgrading of his application. She testified that she looked at the changes made by the SME and looked at Complainant's resume to see if the SME marked down answers that were supported within the resume. She found no evidence that the SME marked down answers that were supported within the resume. She did admit that she had no knowledge of what some of the terms describing the experience he was marked down for allegedly not having even meant. For example, she did not know what the terms "multivariate linear and logistic regression" meant, and

would not be able to identify what tasks would use those types of analyses. She therefore deferred to the judgment of the SME.

Complainant was not referred to the SO for consideration because only those applicants in Category A after the SMEs evaluation were so referred. In 2015, Complainant was selected for a CG-13 Senior Financial Economist in DIR. The duties for this position are identical to the position for which he interviewed in December 2013 and for which he was not selected. In 2016, Complainant was promoted to a CG-14 Senior Financial Economist.

On October 17, 2019, AJ2 issued a final Decision, awarding damages and attorney fees to Complainant but he was not awarded placement into one of the positions at issue because he had been promoted to a Senior Financial Economist position shortly after the non-selections. In its August 13, 2019, response to Complainant's Petition for Attorney's fees, Pursuant to 29 C.F.R. § 1614.501(e) and AJ1's July 4, 2019, preliminary decision, the Agency challenged Complainant's request for reimbursement of \$806.00 in fees because several items of work identified in the Fee Petition were not reasonably necessary for the processing of his complaint. The Agency also objected to Complainant's request for reimbursement of \$3,000.00 in expert witness fees because the witness was not approved to testify at hearing, and his input was not reasonably necessary to the case. In response to the Agency's objections, AJ2, in her October 17, 2019, decision denied those items of work that were not reasonably necessary for the processing of Complainant's complaint. She also denied his request for reimbursement of \$3,000.00 in expert witness fees.

The Agency subsequently issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected him to discrimination as alleged, stating that it will not implement the AJ's Decision finding discrimination in this case. The Agency also stated that it will not provide interim relief (including back pay, compensatory damages, and attorneys' fees payments) pending the outcome of its appeal, asserting that if the Commission upholds the AJ's Decision, the Agency will pay the amount due together with interest from the date of the original Decision as provided by the Commission's regulations. The instant appeal followed.

CONTENTIONS ON APPEAL

In its Appeal Brief, among other things, the Agency states its explanations for the non-selection decisions, asserting that the AJ's findings of discrimination are not supported by substantial evidence and should be reversed. The Agency contends that though Complainant was qualified, unlike S1 and S2, Complainant was unable to demonstrate that he possessed the requisite communication and collaboration skills to function effectively in the Senior Financial Economist position at issue in Claim 1; and that he was not referred for consideration for the Financial Economist position at issue in Claim 2 because his score placed him in Category B, and only those candidates in Category A were referred to the SO. The Agency requests that judgment be found in its favor, asserting that Complainant's request for additional compensatory damages lacks merit.

In his Appeal Brief, among other things, Complainant reiterates his allegations, requesting that the Agency's appeal be summarily denied; that his appeal of the Agency's final order, which he asserts

is legally deficient on its face, be granted; and that the AJ's decision be affirmed with modifications to allow for a finding of additional compensatory damages to which he is entitled.

STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

ANALYSIS AND FINDINGS

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

After a careful review of the record in the instant appeal, we find that the AJ correctly determined that Complainant was subjected to discrimination when he was not selected for the two positions to which he applied. We also find that the Agency did not present any persuasive evidence to support a different outcome because record evidence supports an inference that discrimination occurred; and the AJ's findings of discrimination are supported by substantial evidence.

A prima facie case of discriminatory nonselection may be established by showing: (1) the complainant is a member of a protected group; (2) the complainant applied and was qualified for a position for which the employer was seeking applicants; (3) that complainant was not selected for the position; and (4) that an applicant not in complainant's protected group was chosen for the position under circumstances that, if explained, would support an inference of discrimination. See McDonnell Douglas, 411 U.S. at 802.

In the instant complaint, Complainant was a 48-years old male at the time of the events giving rise to his allegations. As the Agency acknowledged, Complainant was qualified, and applied for two separate positions; and he was not selected for either of those positions. Two females, including S1 who was 21 years younger than Complainant, were selected for one of those positions. He also engaged in protected EEO activity that at least some of the agency officials who participated in the selections were aware. Under these circumstances, therefore, Complainant has established a prima facie case of discriminatory non-selection with respect to his age, gender and reprisal.

We further agree with the AJ that Complainant showed that the legitimate, nondiscriminatory reasons set forth by the Agency were in fact pretext for age and gender discrimination as well as retaliation. We find that the Agency's assertions that Complainant lacked the requisite

communication and collaboration skills for the position at issue in Claim 1 and that he deserved to be downgraded to Category B in Claim 2 lack credibility.

The AJ correctly found that with respect to the position in Claim 1, Complainant's qualifications, including a Ph.D. degree in the relevant field and many years of related experience, are superior as compared to those of S1, an entry level Bachelor's degree holder who had only taken two relevant courses as part of an MBA program. These basic facts demonstrate pretext. In a non-selection case, pretext may be demonstrated by a showing that Complainant's qualifications are observably superior to those of the selectee. See Complainant v. United States Postal Serv., EEOC Doc. No. 0120120519, (Apr. 10, 2014) (citing Williams v. Dept. of Educ., EEOC Request No. 05970561 (Aug. 6, 1998)).

Moreover, we find that the Agency's contentions that, despite his qualifications, Complainant was unable to demonstrate that he possessed the requisite communication and collaboration skills to function effectively in the Senior Financial Economist position at issue shows pretext for discrimination. Complainant possessed many years of experience as an instructor, including teaching three of the pertinent courses required for the position. The contention is also weakened, as the AJ aptly noted, by SO's testimony that he was told not to hire Complainant; and by the fact that the interviewers' notes did not support their conclusions regarding Complainant's interview responses.

Regarding the position at issue in Claim 2, SME1 determined that various experiences Complainant stated in his answers that he possessed were not supported by his application materials. Her determination resulted in Complainant's scores being downgraded. However, based on Complainant's statements, those determinations were inaccurate because his questionnaire responses were supported by his resume and other application materials. The Agency presented no persuasive evidence to refute Complainant's statements. Rather, it contended that Complainant was not referred for consideration for the Financial Economist position because his score placed him in Category B. Those contentions are however defeated by testimonies provided by HR staff, including CAPMS who did not question SME1's assessment, which she would have done for other applicants, because she had provided an affidavit in Complainant's prior EEO complaint. Moreover, the Agency did not dispute that SME1 also downgraded three other male applicants over age 40 (inside of Complainant's protected sex and age groups) from Category A to Category B. This indicates a preference for younger female applicants.

As the AJ noted, from the significant irregularities in the interview process, to SME1's statements indicating that she was looking for recent graduates to pass on to the final selection process, sufficient evidence was presented to show that Complainant's age, gender and reprisal played a motivating role in his nonselection for both positions.

With respect to Complainant's race and disability bases, as the remedies would not differ under these bases, we see no need to address them in this decision.

On appeal, Complainant requested that the AJ's damages award in his favor be modified to allow for a finding of additional compensatory damages to which, he asserted, he is entitled. This includes an amount higher than \$10,000 for his pain and suffering, stating that his emotional distress manifested in insomnia and depression.² Complainant contended that the AJ's decision should be further modified to render an award of appropriate interest on his back pay award at the maximum allowable rate; requested an additional lump sum payment as reimbursement for his increased tax liability stemming from the lump sum back pay; and his out of pocket costs in hiring a CPA to calculate such increased tax liability. Complainant also requested leave to file a new petition for attorney fees and expenses should the Agency's appeal be denied or should his appeal be granted.

We agree that Complainant's request for additional compensatory damages lacks merit because he presented no persuasive evidence to show that he suffered any additional tangible harm beyond those considered by the AJ in her decision for which the Agency should be held liable. We grant Complainant leave to submit to the agency a request for additional attorney's fees for pursuing this appeal. Complainant may also submit to the agency calculations for additional tax consequences for his backpay award.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's finding of discrimination, and REVERSE the Agency's final order rejecting it.

ORDER (C0618)

The Agency is ordered to take the following remedial action:

1. The Agency shall tender to Complainant non-pecuniary compensatory damages in the amount of TEN THOUSAND DOLLARS AND 00 CENTS (\$10,000.00). The Agency shall tender that amount to Complainant no later than thirty calendar days after the Agency issues or should have issued the final action within the meaning of 29 C.F.R. § 1614.110.
2. The Agency shall determine and pay the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the Agency. The Agency shall make any such request for information no later than thirty calendar days after the Agency issues or should have issued the final action within the meaning of 29 C.F.R. § 1614.110, and shall tender the backpay amount to Complainant no later than thirty calendar days after Complainant provides any needed information relevant to making a back pay determination requested by the Agency or thirty calendar days after the Agency issues or should have

² The AJ awarded compensatory damages as a result of the finding of sex discrimination and reprisal under Title VII.

issued the final action within the meaning of 29 C.F.R. § 1614.110, if the Agency makes no such request.

3. Complainant's request for attorneys fees is GRANTED in the amount of \$70,594.00. Complainant's is also granted leave to submit to the agency a request for additional attorney's fees for pursuing this appeal.
4. Within 90 days of the date this decision is issued, the Agency shall provide 8 hours of in-person or interactive EEO training for SME1, P2, and HR1 on Title VII and the ADEA. The training shall emphasize the Agency's obligations under those statutes to conduct a selection process free of discrimination or bias.
5. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against SME1, P2, and HR1. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).

POSTING ORDER (G0617)

The Agency is ordered to post at its Division of Insurance and Research (DIR) in Washington, District of Columbia facility 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).

The Agency is directed to submit a report of compliance evidencing the Agency's actions to implement the Orders herein. The report shall be filed within ninety calendar days after the Agency issues or should have issued the final action within the meaning of 29 C.F.R. § 1614.110, and shall include documentation verifying that the corrective actions have been implemented.

The Agency is 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.

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/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- not to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

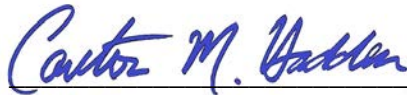
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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 11, 2020

Date