



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

[REDACTED]
Colene M.,¹
Complainant,

v.

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

Appeal No. 2020002054

Hearing No. 460-2016-00059X

Agency No. 4G-770-0118-15

DECISION

Following its January 29, 2019, notice of final action, 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. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ. Complainant also timely filed an appeal with the Commission regarding the Agency's refusal to implement the AJ's decision. For the following reasons, the Commission **MODIFIES** the Agency's notice of final action.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisor, Customer Service, EAS-17, at the Agency's Friendswood Post Office in Friendswood, Texas. During the relevant time, Person A was the Postmaster of the Friendswood Post Office and Complainant's direct supervisor.

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.

In January 2015 Complainant began a 90-day higher level detail as a Manager, Customer Services at Foster Place Post Office working for Person B, Customer Service Operation Manager (CSOM). In March 2015, the Postmaster requested Complainant return to her assigned Supervisor position at the Friendswood Post Office to help complete Postal Service Form 3999, Inspection of Letter Carrier Route. This is a yearly requirement for all Post Offices and must be completed for each carrier route. This requires a Supervisor ride along with the carrier and inspect the route and the carrier's performance. The Postmaster informed Complainant and Person B that Complainant could continue in her detail if a replacement was sent in Complainant's place. Complainant returned to the Friendswood Post Office in March because her 90-day detail was complete and the Postmaster asked for her return.

Complainant had been on five previous details. The Postmaster informed Complainant that she (the Postmaster) would be on leave for a couple months due to surgery, and that she wanted Complainant at a higher-level detail (higher than her position at the time) at the Friendswood Post Office in her absence.

Comparative 1, Carrier Technician (Hispanic/male), was on detail as a Supervisor, Customer Services Friendswood Post Office, while Complainant was on her higher-level detail at Foster Place Post Office. When Complainant returned from Foster Place, the Postmaster informed all supervisors of an opportunity to go to the District and work with the Route Inspection Team learning how to conduct proper 3999s. Complainant turned down the opportunity and Comparative 1 accepted. Comparative 1 trained with the Route Inspection Team for three months and then the Postmaster had him return so he could conduct 3999s at the Friendswood Post Office.

The Officer in Charge at the League City Post Office asked the Postmaster if Comparative 2, City Carrier (Hispanic male), could work a higher-level detail as Supervisor at the League City Post Office. The Postmaster initially refused, but a week later Person E, the Manager Post Office Operations at the time, informed her that she would be receiving a replacement so that Comparative 2 could be released to the League City Post Office. A City Carrier was loaned to the Friendswood Post Office first from the Pasadena Post Office and a month later from the Dickinson Post Office. Later, Comparative 2 voluntarily stepped down from his higher-level detail and returned to his position as City Carrier at the Friendswood Post Office.

In 2013, Complainant, Person X (Hispanic, female, EEO activity unknown), who was a letter carrier and subordinate to Complainant, and the Postmaster met to discuss ongoing problems between Complainant and Person X. During the meeting, Complainant asked if she could go "free willy," as in speak freely during the meeting. The Postmaster did not object to Complainant doing so. While speaking, Complainant used the "f-word" once during their conversation. After the incident, Person X filed a zero-tolerance complaint because of Complainant's language. Person X alleged she felt threatened. As a result, Complainant was sent on a detail and required to move away from Person X.

On March 6, 2015, Person X was loud on the workroom floor, argued with a clerk, and told the clerk, "you better not come back down here."

On March 7, 2015, Person X was loud and disruptive again. On March 7, 2015, Complainant gave Person X a 14-day suspension for improper conduct that took place on March 6 and March 7, 2015.

After Complainant issued the 14-day suspension, she learned that Person X had several Driving While Intoxicated (DWI) arrests.

When Complainant arrived at work on April 28, 2015, Clerk 1 approached her and asked if “she was okay.” Clerk 1 explained that Person C, Supervisor, Friendswood Post Office, had met with a group of clerks the previous day. During the meeting, Person C told the clerks to “watch out for” Complainant and make sure that she safely got out of her vehicle. Person C also instructed the clerks that if Complainant did not get to work on time, that a clerk should call and check on her.

This meeting was in response to a statement Person X submitted to the Postmaster stating that she was fearful of Complainant. Person X stated that the Postmaster allows Complainant to disrespect her (Person X) and call her names. Person X stated she expected bodily harm and injury from Complainant.

On May 1, 2015, Complainant sent an email to the Postmaster stating she was, “fearful for [her] life working . . . with [Person X].” She noted that clerks at the Friendswood Post Office were instructed to monitor her arrival and departure and to make sure she got into her personal vehicle safely at the end of the day. Complainant believed that Person X might get upset about the recent discipline that she received from Complainant. Complainant requested an immediate transfer for her safety.

Complainant also submitted a statement to the Postmaster that was signed by Clerk 1 and Clerk 2 stating they were instructed to be aware of Complainant’s surround and departure, “in fear of retaliation by carrier [Person X].” Clerk 3 and Clerk 4 received the same instructions. Clerk 4 noted that the last day he saw Complainant in the office, she asked him to follow her to her car as she left for the day and he stated that he did so.

The Postmaster submitted all statements to Labor Relations, so that a proper determination could be made whether a joint investigation would be conducted by Labor Relations and the Union on both the complaints by Complainant and Person X. An investigation was not conducted. Person X left work on April 30, 2015, and Complainant left work on May 4, 2015. Ultimately, neither party returned to work. Complainant resigned from the Agency on September 16, 2015.

Despite multiple requests to transfer, Complainant was not allowed to transfer to another station for her safety. Instead, she was required to compete for open positions.

EEO Activity

On March 23, 2015, Complainant made initial contact with the EEO Office regarding a claim that she was forced to leave her higher-level detail as Manager of Foster Place and return to her position as Supervisor at Friendswood Post Office. The record reveals Complainant's initial interview occurred on May 5, 2015. The EEO Dispute Resolution Specialist's (DRS) Inquiry Report is signed by the EEO DRS on July 21, 2015. The DRS Report reveals that the Postmaster and Person D, who at the time was Manager of Operations Program Support, were interviewed prior to completion of the report.

Subsequently, Complainant contacted the EEO Office again on June 17, 2015, regarding a claim that she felt threatened and in danger based on Person X's erratic and aggressive response and past behavior. Complainant stated she had made the Postmaster and Person D aware of the danger, but they did nothing in response and did not grant her request to transfer.

On July 6, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her. The Agency framed Complainant's complaint as containing the following two allegations:

1. Complainant alleged discrimination on the bases of race (African-American) and sex (female) when on March 23, 2015, she was forced to leave her higher-level detail position as Manager of Foster Place Station and return to her position as Supervisor at Friendswood Post Office.
2. Complainant alleged discrimination based on race (African-American), color (black/brown), and in reprisal for the current complaint when beginning in May 2015 and continuing, she has been subjected to a hostile work environment in that she has felt threatened by a subordinate employee, when she reported her concerns to upper management they have not responded appropriately and denied her requests to transfer to another station.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing and the AJ held a hearing on May 22-23 and December 7, 2017. The AJ issued a decision on December 20, 2018. On January 31, 2019, the AJ, via email to the parties, issued her final order on Complainant's Motion for Award of Fees and denied attorney's fees. On February 1, 2019, the AJ issued an Amended Order Entering Judgment and Corrected Decision (correcting a scrivener's error).

Regarding claim 1, the AJ found no discrimination. The AJ noted that Comparative 1 and Comparative 2 were not properly named as such because their circumstances were not identical. The AJ found no evidence of discriminatory animus on the Agency's part regarding Complainant's return to her position of record.

Regarding claim 2, the AJ found the evidence supported a finding of a hostile work environment on the bases of race, color, and retaliation. The AJ found the Agency subjected Complainant to a pervasive pattern of hostile work environment after her filing of the subject claims of discrimination. The AJ found the Agency's reasons for its actions are without credence. The AJ noted that when Complainant had asked for permission to "free willy" and used the f-word once in Person X's presences, that action was deemed sufficient to form the basis for Complainant's immediate transfer. In contrast, the AJ noted that despite Person X's volatile behavior, misconduct, and DWIs, neither she nor Complainant were transferred. The AJ pointed out that Complainant made it clear that she was afraid of Person X, based in part, on a meeting where the clerks were advised to monitor Complainant for her well-being. The AJ noted that Person X's behavior and personality were no secret to management. Despite Complainant's repeated requests to be transferred, she was informed she would be forced to return to the station where Person X worked to keep her position. The AJ noted that even Complainant's attempt at a demotion failed. The AJ determined the bar to movement away from Person X is indicative of a hostile work environment based on race, color, and retaliation.

The Agency subsequently issued a notice of final action rejecting the AJ's finding that Complainant proved that the Agency subjected her to discrimination as alleged. The Agency also rejected the remedies awarded by the AJ.

As relief, the AJ ordered the Agency to pay Complainant \$60,000 in nonpecuniary, compensatory damages as compensation for mental anguish and pain and suffering. The AJ also ordered the Agency to calculate and compensate Complainant for interest on the nonpecuniary damages awarded, accruing at the maximum legal rate from July 6, 2015, through the date the Agency pays all damages awarded. Further, the AJ ordered the Agency to post a notice and to provide training for all employees ranked supervisor (including 204B) and above at the Friendswood Post Office.

On April 19, 2019, the Agency submitted its Agency Brief in Opposition to Complainant's Appeal and Agency Brief in Support of Agency Counter-Appeal. Complainant submitted a brief in support of her appeal dated February 24, 2020. We note that both briefs appear untimely, but find that even if timely filed, they do no change the outcome of our decision.

ANALYSIS AND FINDINGS

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.

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).

Generally, claims of disparate treatment are examined under the tripartite analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978).

Once a complainant has established a prima facie case, the burden of production then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Com. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 509 (1993); U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 715-16 (1983).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Complainant v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990).

Regarding claim 1, we find the Agency articulated legitimate, nondiscriminatory reasons for its actions. Specifically, the Postmaster noted the Friendswood Office needed to complete 3999s for every carrier route, which is a yearly requirement for all Post Offices. Comparative 1 accepted the opportunity to go to the District and work on the Route Inspection Team for additional training on conducting 3999s. Complainant refused the offer. Comparative 2's detail was allowed to continue because city carriers were loaned as his replacements. We find no evidence of discriminatory animus regarding the Agency's action in returning Complainant to her position of record.

With regard to Complainant's hostile work environment claim, to establish a claim of hostile environment harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she 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 her 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. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).

Regarding claim 2, Complainant alleged that she was subjected to a hostile work environment based on her race, color, and in reprisal for her protected EEO activity and that management did not respond appropriately to her allegations of harassment/safety issues. Complainant stated that the Postmaster and Person D denied her request to transfer to another station. The record reveals that the Postmaster and Person D were aware of Complainant's race and color prior to the allegations at issue.

Regarding her EEO activity, the record reveals that Complainant initiated contact with the EEO Office on March 23, 2015, regarding claim 1. The Postmaster testified she was not aware of Complainant's EEO activity because she had been on leave for surgery from June 2, 2015, through July 27, 2015, and did not become aware until she returned to work and received an email from the EEO Specialist informing her. However, we note that the DRS report completed on July 21, 2015, showed that the Postmaster was interviewed prior to the completion of the report. This contradicts the Postmaster's testimony that she did not learn of Complainant's EEO activity until after she returned to work on July 27, 2015. Moreover, we note at the hearing the Postmaster stated she did not recall if she knew about Complainant's prior EEO activity when she contacted Labor Relations for a potential investigation regarding Complainant's allegations against Person X. Person D also testified that he was not aware of Complainant's prior EEO activity until he was contacted to submit an affidavit in the EEO investigation. However, we again note that the DRS Report reveals that Person D was interviewed prior to completion of the report on July 21, 2015. Thus, we find that both the Postmaster and Person D knew of Complainant's EEO activity at the latest on July 21, 2015.

Upon review, we find substantial evidence supports the AJ's finding that Complainant was subjected to a hostile work environment and that the Agency failed to take appropriate action when it was informed of Complainant's allegations. Specifically, we find that the record showed Person X exhibited volatile behavior, misconduct, and had several DWI arrests. Complainant clearly expressed her fear to management, which was based in part on the meeting held by a Supervisor (Person C) in which the clerks were advised to monitor Complainant for her well-being as a result of the actions by Person X. Person X's behavior and personality were well-known to management. The record reveals that previously Complainant had been moved around in different positions, serving at least five details prior to the incidents at issue. However, when Complainant asked to transfer to another station for her safety beginning May 1, 2015, management took no action to move her.

We find the Agency failed to conduct an appropriate investigation into Complainant's allegations. We note on May 1, 2015, the Postmaster spoke with Clerk 1 and Clerk 2 who signed the statement confirming that Person C asked Clerk 1 and Clerk 2 to be on the lookout for Person X. However, no formal investigation occurred. The Agency noted that no investigation was conducted because Person X left work on April 30, 2015, and Complainant left work on May 4, 2015.

While neither party returned to work, we note that there is no claim by the Agency that either Complainant or Person X were contacted for an investigation and refused to participate. Moreover, the record reveals that after Complainant left work on May 4, 2015, she continued to seek a transfer to another station and participated in the Agency's reasonable accommodation process as another means of securing a position at a different location. Ultimately, Complainant resigned from the Agency on September 16, 2015. However, we find the Agency still had not taken appropriate action into investigating Complainant's claim of a hostile work environment by the time Complainant resigned or gave notice of her resignation. Thus, we find Complainant established by a preponderance of evidence that she was subjected to a hostile work environment based on her protected status.

Remedies

Nonpecuniary damages are available to compensate an injured party for actual harm, even where the harm is intangible. Carter v. Duncan-Higgins, Ltd., 727 F.2d 1225 (D.C. Cir. 1984). Emotional harm will not be presumed simply because complainant is a victim of discrimination. Guidance at 5. The existence, nature, and severity of emotional harm must be proved. Id. We note that for a proper award of nonpecuniary damages, the amount of the award should not be "monstrously excessive" standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. See Ward-Jenkins v. Department of the Interior, EEOC Appeal No. 01961483 (March 4, 1999) (citing Cygnar v. City of Chicago, 865 F.2d 848 (7th Cir. 1989)).

In Carle v. Dep't of the Navy, the Commission explained that evidence of nonpecuniary damages could include a statement by complainant explaining how she was affected by the discrimination. EEOC Appeal No. 01922369 (January 5, 1993). Complainant could also submit documentation of medical or psychiatric treatment related to the effects of the discrimination. Id. However, evidence from a health care provider is not a mandatory pre-requisite to establishing entitlement to nonpecuniary damages. Sinnott v. Dep't of Defense, EEOC Appeal No. 01952872 (September 19, 1996).

In the present case, we recognize, as did the AJ, that Complainant failed to offer testimony regarding her damages at the hearing. However, we note the record contained other evidence in support of Complainant's nonpecuniary damages request. Specifically, in her affidavit Complainant noted that the conduct at issue made her work environment unbearable, that the whole situation caused her great distress, and that she was afraid to be at work. Complainant stated she had to seek professional help and take prescribed medications to deal with the pain, stress, and inability to sleep. In her EEO Investigative Affidavit for Compensatory Damages, Complainant stated that she, "suffered from and still suffer with headaches, body aches, [insomnia], and great emotional stress [and] worried about this situation." Complainant also explained she started receiving professional mental health services and counseling in May, shortly after she feared returning to work.

The record contains a March 3, 2016 letter from Doctor A, of Pearland Psychiatry who stated that Complainant was seen that day and is diagnosed with Major Depressive Disorder, recurrent.

In an April 11, 2016 letter, Doctor A stated that she has been treating Complainant since June 8, 2015, to the present. Doctor A noted Complainant has been compliant with office visits and medication prescribed to her. Doctor A stated that Complainant has been diagnosed with Major Depressive Disorder, recurrent. Doctor A noted that Complainant has been unable to perform her duties at the Friendswood Post Office “due to perceived threats made against her, which in turn have incapacitated her ability to function and feel secure at this place of employment.” Doctor A explained the threats against Complainant have caused her to suffer from stress which led to depression. The Doctor stated Complainant was currently doing well on her medication and could possibly return to work “if she were to be transferred to a different location.”

The record showed that Complainant was also seen by Doctor A on June 9, 2016 and August 11, 2016, and that her diagnosis stayed the same. Doctor A reiterated that Complainant be transferred to a different location so she may be able to function and work effectively and not work in fear.

In an August 25, 2016 letter, Doctor A stated that Complainant was diagnosed with Major Depressive Disorder recurrent and Post Traumatic Stress Disorder (PTSD). Doctor A noted that Complainant is stable on her current medications and is able to return to full-time work.

After careful consideration of the evidence of record, we find the AJ’s award of \$60,000 for nonpecuniary, compensatory damages was appropriate. This amount takes into consideration the severity of the harm suffered, the length of time Complainant suffered the harm, and is consistent with prior Commission precedent. See Roxanna B. v. U.S. Postal Service, EEOC Appeal No. 0120143067 (November 7, 2016) (awarding \$60,000 in nonpecuniary damages for denial of reasonable accommodation and a hostile work environment where complainant experienced exacerbation of pre-existing medical condition, increased visits to a psychologist, weight gain, embarrassment, fear of losing job, and where doctor stated complainant suffered significant anxiety symptoms). Accordingly, we conclude that an award of \$60,000 will adequately compensate Complainant for the harm she suffered as a result of the Agency’s actions. In the present case, we find no reason to award pre-judgment interest on the award of nonpecuniary, compensatory damages.

We note the AJ did not award pecuniary damages. On appeal, Complainant does not request pecuniary damages. Thus, we do not address Complainant’s entitlement to pecuniary damages.

Moreover, we note that the AJ declined to award attorney’s fees in this case. On appeal Complainant does not challenge the AJ’s denial of attorney’s fees; thus, we do not address the AJ’s decision on attorney’s fees in our decision.

CONCLUSION

Accordingly, the Agency's finding of no discrimination on claim 1 is **AFFIRMED**. The Agency's finding of no discrimination on claim 2 based on race, color, and in retaliation for protected activity is **REVERSED**. The Agency shall comply with the Order herein.

ORDER

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

1. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$60,000 in nonpecuniary, compensatory damages.
2. Within 90 days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive EEO training for all supervisors and management officials at the Friendswood Post Office facility in Friendswood, Texas. The training shall emphasize management officials' obligations under Title VII, especially as they relate to a hostile work environment/harassment.
3. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against the responsible management officials. 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 Friendswood, Texas 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).

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 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

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

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

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

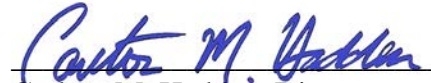
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from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

RIGHT TO REQUEST COUNSEL (Z0815)

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

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 17, 2020
Date