



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

[REDACTED]
Thomasina B.,¹
Complainant,

v.

Lloyd J. Austin, III,
Secretary,
Department of Defense
(Defense Logistics Agency),
Agency.

Appeal No. 0120141298

Agency No. DLAR-12-0064

DECISION

On February 14, 2014, 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 January 15, 2014, final decision concerning her 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUES PRESENTED

The issues presented are: (1) whether the preponderance of the evidence in the record establishes that Complainant was subjected to a hostile work environment based on sex (female, sexual orientation), national origin (Hispanic), and/or disability; and (2) whether the preponderance of the evidence in the record establishes that there is a basis for imputing liability for the harassment to the Agency.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Inventory Management Specialist, GS-2011-09, at the Agency's Commodities Material Management Branch of DLA Aviation at the Agency's facility at Tinker Air Force Base in Oklahoma City, Oklahoma. Complainant's position required her to work with various Air Force maintenance shops on the base in order to determine what parts the mechanics needed, and then to order the correct part and ensure that the mechanics received the part.

Around July 2010, Complainant's ex-husband, who worked at the facility, began to spread rumors that Complainant was gay and was dating a female Air Force coworker (CW1). The record establishes that rumors about Complainant's sexual orientation and relationship with CW1 spread throughout the work place, even though Complainant did not disclose her sexual orientation or relationship status. When Complainant's first-line supervisor (S1), second-line supervisor (S2), and the head of the Commodities Material Management Branch (S3) heard the rumors of Complainant and CW1, they allegedly made "a big issue" out of the rumored relationship. For example, S1 walked into CW1's office where Complainant was going over a parts listing with CW1. S1 told her to leave, and when she showed him the work they were doing, he told her to go to his office when she was done. When Complainant went to his office, S1 reprimanded Complainant for spending too much time in CW1's shop and not enough time at her desk.

In July 2010, Complainant asked to adjust her work hours to report to work one hour later for child-care needs. S1 and S3 denied her request. Once Complainant pointed out that a male coworker was allowed to change his schedule so he could ride to work with his wife, S1 allowed her to change her schedule but moved her to another building, away from CW1's building, stating she was being moved to the CSD building because if she stayed in her original location the schedule change would result in her working alone which raised safety concerns. The male coworker was never required to move to another location.

In early 2011, Complainant was reassigned to CW1's shop based on her seniority. In March 2011, she was notified that she would be reassigned back to her original location and would no longer work in the CSD building. Complainant's new first-line supervisor (S4) noted that one of the reasons she was removed was because she was seen socializing with CW1, and this was a joint concern and ultimate decision among S2, S3, and S4. The Air Force flight chief of the CSD building felt that the service deteriorated after Complainant was removed from the building and requested that S4 move Complainant back to the building. S4 told the flight chief, "It's not going to happen."

In May 2011, Complainant requested to adjust her schedule for three months for child-care issues. Her hardship request was granted. Unlike her request in July 2010, Complainant was allowed to work alone for one hour at the end of her shift.

In June 2011, Complainant disagreed with comments that S4 included in her performance appraisal indicating that Complainant needed to learn to communicate better. Complainant asked S4 for examples, and S4 allegedly could not provide any. Complainant asked S4 to remove the comment and, as a result, Complainant never received a performance evaluation for that period. S4 stated that she submitted Complainant's unsigned performance appraisal with a "fully satisfactory" rating.

Complainant alleged that, between June 2011 and July 2012, she was verbally harassed by a coworker (CW2), which created a hostile work environment. Complainant alleged that CW2 told her many times about her (CW2's) negative feelings towards homosexuality, that it was wrong, and that it went against her religious beliefs. During one confrontation, CW2 told Complainant that she was going to hell, and that her kids were going to grow up to be gay. Another coworker (CW3) stated in the record that he heard CW2 say that she would pray for Complainant because she was gay, and that she (CW2) believed homosexuality was an abomination in the eyes of God. CW3 also stated that sometimes CW2's harassment was so bad that he would intercede to try to calm the situation. Another coworker (CW4) stated that CW2 said that Complainant was going to hell because homosexuality was against God's will, and that Complainant needed to be saved. CW4 stated that CW2 "harangued" Complainant about her sexuality and insisted that Complainant was harming her children because of her sexual orientation. CW2 admitted in the record that she told Complainant that she did not agree with "that particular lifestyle."

Around August 2011, Complainant reported the incidents to a supervisor (S5), including the anti-gay comments made by CW2. Complainant requested that they be separated and that CW2 be the person to be moved. S5 asked CW2 if she wanted to be moved, and she declined. S5 took no further action. After Complainant notified S5, the harassment allegedly continued, and CW2 proceeded to interfere with Complainant's work. Complainant also told her acting second-level supervisor (S6) about the offensive remarks about Complainant's sexual orientation. On an undisclosed date, S6 held a meeting with the entire unit regarding what behaviors were acceptable and unacceptable, but there is no evidence in the record that he spoke with CW2 directly. Complainant stated the harassment did not stop until after July 2012, when, without the help of management, she and CW2 were able to work out their differences and agreed to work together.

In June 2011 Complainant and another senior co-worker agreed to divide up the workload, leaving Complainant to work in the shop where CW1 worked. S5 did not approve and assigned the shop to a new, less-experienced coworker, CW3. When CW3 was struggling to perform his duties and asked Complainant to help him, Complainant was told by S5 to leave the building and received a reprimand for providing assistance. CW3 stated in the record that he really needed Complainant's assistance because of his inexperience, but she was prohibited by supervisors from helping him.

On November 15, 2011, Complainant hurt her finger while carrying out an assignment at work. She reported the injury the next day. The on-site clinic diagnosed the injury as a fracture.

When a supervisor (S7) signed her Workers' Compensation Form, he stated on the form that he thought the injury was questionable because Complainant had waited a day to report the accident even though he was at the facility at the time the accident occurred. Soon after Complainant injured her finger, S7 and S5 decided not to choose Complainant to be part of a group conducting a study of the Commodities Material Management Branch to determine staffing needs, purportedly because she had injured her finger and the study would require her to use her hands.

In January 2012, Complainant was told by S3 that she was going to be moved again to another location, even though based on seniority she should not have been moved. Complainant filed a grievance and the move was cancelled. During this process, the Agency would not grant her request to view her personnel file, and told her that it was lost. Eventually, the Agency found the file and let her view it.

On January 13, 2012, Complainant filed a formal EEO complaint alleging that the Agency subjected her to a hostile work environment on the bases of national origin (Hispanic), sex (female, sexual orientation), and physical disability when she was subjected to the conduct described above.

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 EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency found that Complainant did not establish that she was subjected to a hostile work environment on the bases of national origin or disability. However, the Agency did find that Complainant established that she was subjected to a hostile work environment on the basis of sex when her female coworker harassed her because of her sexual orientation. The Agency also found that it was not liable for the harassment because management took appropriate action once it learned of the harassment.

CONTENTIONS ON APPEAL

On appeal, Complainant concedes that she did not establish that she was subjected to harassment on the bases of disability and national origin, and as a result she is not pursuing those claims on appeal. However, Complainant contends that she established by a preponderance of the evidence that she was subjected to harassment on the basis of sex. Complainant contends that rumors about her sexual orientation and relationship with CW1 permeated the workplace and created a hostile work environment, and that she never told her supervisors about her sexual orientation, but they all admitted in the record to learning about her sexual orientation through rumors spread by others in the workplace. Complainant contends that the Agency is liable for the harassment by CW2 because she told management about the harassment and they did not adequately address the situation. Complainant also contends that her supervisors harassed her when they reprimanded her for talking to CW1 and when they constantly moved her location away from CW1's building.

The Agency does not offer any new contentions on appeal.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Complainant alleged that she was subjected to harassment based on sex and sexual orientation.² To establish a claim of hostile work environment, Complainant must show that: (1) she is a member of 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 the 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 employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); EEOC’s Enforcement Guidance on Harris v. Forklift Sys. Inc., EEOC Notice No. 915.002 (March 8, 1994).

Elements 1-4 of the Hostile Work Environment

The Agency found that Complainant established elements 1-4 of a hostile work environment based on the harassment Complainant was subjected to by CW2. We agree with the Agency’s findings that Complainant established that she was subjected to a hostile work environment on the basis of sex when for a year CW2 made repeated offensive comments about Complainant’s sexuality.

We also find that Complainant established that she was subjected to harassment on the basis of sex due to the rumors that were spread around the facility about her sexual orientation and about her relationship with CW1. We note that the Commission has previously held that an ongoing pattern of comments and rumors referring to a complainant’s sexual orientation can be severe or pervasive enough to rise to the level of unlawful sexual harassment. See, e.g., Brooker v. U.S. Postal Service, EEOC Request No. 0520110680 (May 20, 2013); Brown v. Dep’t of Veteran’s

² In Bostock v. Clayton County, the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. ___, 140 S. Ct. 1731 (2020); see also Baldwin v. Dep’t of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

Affairs. EEOC Appeal No. 0120090291 (Feb. 19, 2009) (allegations of harassment, including coworkers spreading rumors that the complainant was gay stated a claim of harassment). Here, rumors were rampantly spread around the facility that Complainant was gay and that she was having a relationship with CW1. These rampant rumors were based on the perception by her coworkers and supervisors that she did not conform to societal sex-based stereotypes that women should only be attracted to men. Castello v. U.S. Postal Service, EEOC Request No. 0520110649 (December 20, 2011). We find that Complainant established that 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. The rumors continued for over two years and virtually everyone in the workplace heard the rumors. The rumors affected the way coworkers and management officials viewed Complainant and interacted with her. As a result, Complainant established that these rumors caused a hostile work environment.

Additionally, Complainant also established that supervisors subjected her to sex-based harassment. Many of the supervisors' actions were based on their knowledge of the rumors that Complainant was gay and was having a relationship with CW1. The record shows that, after supervisors became aware of the rumors, they became very concerned about the time Complainant spent with CW1. Supervisors began taking employment actions against Complainant based on these rumors and concerns. For example, S1 stated that he "wrote up" Complainant because the time away from her desk and in CW1's building was affecting her work. He also acknowledged that he did not write up anyone else for this type of behavior. The Agency acknowledged in the final decision that management failed to present any documentation in the record to support their statements that Complainant was spending too much time in CW1's building, or that Complainant's work was somehow affected by her speaking with CW1. Additionally, the Agency acknowledged in its final decision that Complainant received a "fully successful" performance appraisal for the period in question. The record also shows that supervisors frequently moved Complainant's work locations away from CW1's building. Supervisors also reprimanded Complainant if she was in CW1's building, such as when she was working on parts lists with CW1 and when she went to the building to help CW3 at his request. The record establishes that the supervisors' actions were often motivated by the supervisors' desire to keep Complainant and CW1 apart due to the rumors of Complainant's sexual orientation and their relationship.³

There is nothing in the record that would indicate that Complainant or CW1 ever acted unprofessionally, nor that their rumored relationship affected Complainant's or CW1's ability to do their jobs or perform at a level other than satisfactory.

³ We note that Complainant was often moved to and from other buildings because of staff shortages. However, when it came to Complainant working in CW1's building, the record establishes that she was moved and prohibited from working in this building because of the rumors about her sexual orientation and relationship with CW1.

Additionally, CW1's Air Force supervisor, who observed the interactions between CW1 and Complainant, did not find anything inappropriate about their relationship and requested that Complainant be allowed to come back to their building because of her outstanding performance there. There is evidence in the record that other employees, who were not rumored to be gay, socialized with each other during work and were not reprimanded or forced to move locations because of the socialization. As a result, we find that Complainant established that supervisory officials subjected her to a hostile work environment on the basis of her sex.

While we find that the supervisor's excuse that Complainant could only change her schedule if she changed work locations to be pretextual, we find that this went to the supervisors' desire to keep Complainant away from CW1 and did not actually affect Complainant's request for changes to her schedule, as her requests were eventually granted. Additionally, there is no evidence in the record that Complainant's performance evaluation was discriminatory, as the record reflected that S4 included comments in other employees' evaluations that were similar to the comments in Complainant's evaluation. There is no evidence that Complainant was temporarily prohibited from accessing her personnel file based on any of her protected bases. Further, there is no evidence in the record that S7's comments on Complainant's Workers' Compensation form or his subsequent decision not to include her in an office study were based on discriminatory animus.

Finally, we find that there is no evidence in the record that would support a finding of harassment on the bases of national origin or disability.

Agency Liability for Coworker Harassment

As to element (5), in the case of co-worker harassment, an agency is responsible for acts of harassment in the workplace where the Agency (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. 29 C.F.R. § 1604.11(d); Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, No. 915.002 (June 18, 1999). What is appropriate remedial action will necessarily depend on the particular facts of the case, such as the severity and persistence of the harassment and the effectiveness of any initial remedial steps. See Taylor v. Dept. Of Air Force, EEOC Request No. 05920194 (July 8, 1992). However, when an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. Policy Guidance on Current Issues of Sexual Harassment, N-915-050 (March 19, 1990). The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, make the victim whole by restoring lost employment benefits or opportunities, and prevent the misconduct from recurring. *Id.* Disciplinary action against the offending supervisor or employee, ranging from reprimand to discharge, may be necessary. Generally, the corrective action should reflect the severity of the conduct. *Id.*

Here, the record establishes that supervisors were aware that CW2 was harassing Complainant and making offensive remarks about her sexual orientation as early as August 2011.

The Agency asserts that the supervisors effectively handled the situation because S5 asked Complainant and CW2 if they wanted to move, and they both declined. After a review of the record we find that S5 did not act effectively when he did not separate Complainant and CW2 immediately after he learned of the allegations of harassment. S5 should have moved CW2, the harasser, regardless of her desire to stay in her location. Additionally, there is no evidence in the record that S5 conducted an investigation into the claims of harassment in order to determine what would be an appropriate effective action. The record establishes that the harassment continued after S5 was notified. Further, while the record establishes that, after S6 was notified of the harassment, he spoke to the unit in a meeting about inappropriate conduct, there is no indication in the record that he spoke directly to CW2 about her inappropriate and offensive behavior, or that he conducted any investigation into the matter to determine what actions would be appropriate to stop the harassment. There is no evidence that CW2 was ever counseled or disciplined for her offensive behavior. The record establishes that the harassment continued until Complainant and CW2 decided on their own to put aside their differences.

With regard to the rumors that were rampantly spread across the facility about Complainant's sexual orientation and relationship with CW1, the record establishes that, since July 2010, almost all supervisors and coworkers knew of the rumors. There is no indication that any supervisory official took any action to stop the rumors once it was brought to their attention. In fact, evidence in the record shows that supervisors also engaged in spreading the rumors. As a result, we find that the Agency is liable for the coworker harassment.

Agency Liability for Supervisor Harassment

In the context of supervisory liability, employers are subject to vicarious liability for unlawful harassment by supervisors. Faragher v. City of Boca Raton, 524 U.S. 775 (1998); Burlington Industries v. Ellerth, 524 U.S. 742 (1998). The standard of liability set forth in these decisions is premised on two principles: (1) an employer is responsible for the acts of its supervisors, and (2) employers should be encouraged to avoid or limit the harm from harassment. In order to accommodate these principles, the Supreme Court held that an employer is always liable for a supervisor's harassment if it culminates in a tangible employment action.

Here, we find that the supervisors' harassment resulted in tangible employment actions. For example, in claims 1 and 7, Complainant was issued disciplinary actions such as reprimands because of her interactions with CW1 or being within CW1's vicinity. Additionally, Complainant was subjected to frequent movement of her work location because of her interactions with CW1, was moved from working in CW1's building in July 2010 and March 2011, and was told that she could not go to that building to help a less-experienced supervisor in June 2011. As a result, the Agency is liable for the supervisors' harassment.

Compensatory Damages

We find that Complainant is entitled to relief for the more than two years of harassment that she was subjected to from both her coworkers and supervisors. However, the record is not sufficiently developed for us to make a determination on compensatory damages. Therefore, we will remand the issue of damages to the Agency for a supplemental investigation, as described in the Order below.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that Complainant established by a preponderance of the evidence that she was subjected to a hostile work environment on the basis of sex. The Agency's final decision is REVERSED and the complaint is REMANDED for further actions consistent with this decision and the Order of the Commission, below.

ORDER

1. The Agency will immediately take steps to ensure that all sexual harassment ceases and desists in the facility. The Agency will ensure that it takes steps to immediately address any reports of harassment or discrimination brought to its attention, and it will act immediately to stop rumors that could result in a hostile work environment.
2. Within 120 days of the date on which this decision is issued, the Agency shall expunge all of Complainant's records of any reference to the reprimands that she received for socializing with CW1 and being in CW1's building.
3. The Agency shall undertake a supplemental investigation to determine Complainant's entitlement to compensatory damages under Title VII. The Agency shall give Complainant notice of her right to submit objective evidence (pursuant to the guidance given in Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993)) and request objective evidence from complainant in support of her request for compensatory damages within forty-five (45) calendar days of the date Complainant receives the Agency's notice. No later than ninety (90) calendar days after the date that this decision is issued, the Agency shall issue a final agency decision addressing the issue of compensatory damages. The final decision shall contain appeal rights to the Commission. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.
4. Within 120 days of the date on which this decision is issued, the Agency shall provide specialized, in person, 8-hour training to all Agency management officials at Tinker Air Force base regarding employees' rights and managements'

responsibilities with respect to Title VII, with special emphasis on preventing and responding to harassment.

5. Within 120 days of the date on which this decision is issued, the Agency shall provide specialized, in person, 8-hour training to all Agency employees at Tinker Air Force base, which shall be separate from the management training described above. This training shall focus on employees' rights and responsibilities with respect to Title VII, including harassment based on sex stereotyping, as well as harassment.
6. The Agency shall consider taking disciplinary action against the responsible management officials listed in this decision. The Agency shall report its decision within thirty (30) calendar days of the date this decision is issued. If the Agency decides to take disciplinary action, it shall identify the actions taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. The Commission does not consider training to constitute disciplinary action.
7. The Agency shall consider taking disciplinary action against CW2. The Agency shall report its decision within thirty (30) calendar days of the date this decision is issued. If the Agency decides to take disciplinary action, it shall identify the actions taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. The Commission does not consider training to constitute disciplinary action.
8. The Agency shall consider taking disciplinary action against any employee(s) it can identify who were responsible for the spreading of the rumors about Complainant's sexual orientation and relationship with CW1. The Agency shall report its decision within thirty (30) calendar days of the date this decision is issued. If the Agency decides to take disciplinary action, it shall identify the actions taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. The Commission does not consider training to constitute disciplinary action.

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.

POSTING ORDER (G0617)

The Agency is ordered to post at its Tinker Air Force Base 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 (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).


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

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

February 9, 2021

Date