



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Mirta Z.,¹
Complainant,

v.

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

Appeal No. 2020000383

Hearing No. 531-2019-00330X

Agency No. 4K-210-0023-18

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 2, 2019, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of 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 MODIFIES the Agency's final decision.

ISSUES PRESENTED

The issues are whether Complainant established that the Agency discriminated against her based on her disability, or in reprisal for protected EEO activity, when it failed to accommodate her; instructed her not to report to work; and terminated her employment.

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 a Postal Support Employee/Sales, Service Distribution Associate (PSE/SSDA) at the Agency's Berlin Post Office in Berlin, Maryland. Complainant stated that during her interview with a Human Resources Representative (HRR), she disclosed that she was epileptic, and they determined that a clerk position was the best fit based on Complainant's need to be cautious regarding possible seizure triggers. Complainant stated that she offered to provide a doctor's note, but HRR declined because she did not think an accommodation would be needed for a clerk position. Complainant stated that HRR informed her that the Postmaster (PM) of the Berlin Post Office wanted Complainant to agree to some conditions, such as being periodically required to report in at 4:30 a.m. during the holiday season. Complainant stated that she responded that the 4:30 a.m. start times made her nervous, but that HRR informed her that it would only be periodic and during the holidays. Report of Investigation (ROI) at 135-6.²

On November 2, 2017, Complainant was offered a position as a PSE/SSDA, effective November 11, 2017. ROI at 175. Complainant started her orientation on November 13, 2017, and she reported to the Berlin Post Office on November 15, 2017, at 5:30 a.m. Complainant stated that when she met PM, she disclosed her health concerns and stated that she could not work hours before sunrise. PM and Complainant then called HRR, who stated that she was not aware that the Agency would place Complainant in Berlin or that it had become a Night Owl office.³ Complainant stated that she tried to negotiate her hours, but PM declined. ROI at 137-8.

Complainant stated that later in the evening, she spoke with the Manager, Postal Operations (MPO), who told Complainant that adjustments would be made to her schedule. Complainant stated that she reported to work the following day, and that PM was displeased. Complainant stated that she tried to explain that throwing off her sleep schedule could affect her seizures and medication. Complainant stated that she offered to provide a doctor's note, and that PM responded that it would not change anything. Complainant stated that she reported to work around 3:30 a.m. on November 17, 2017, and she suffered a grand mal seizure around 7:30 a.m. ROI at 139-40.

On November 20, 2017, Complainant obtained a doctor's note and provided it to the Agency. Complainant's doctor requested that the Agency accommodate Complainant with "a steady, consistent, normal work shift, i.e. 8 a.m.-5 p.m." due to her "medical condition." ROI at 108. Complainant stated that MPO called to inform her that her schedule was being changed to the afternoon shift, starting at 12:30 p.m. Complainant stated that prior to her new shift, a supervisor called to instruct her not to come to work. ROI at 140. MPO stated that she forwarded Complainant's doctor's note to the District Reasonable Accommodation Committee (DRAC) to process Complainant's request. ROI at 161.

² We note that some parts of Complainant's affidavit in the ROI are not legible. As such, we will refer to Complainant's additional statements submitted with her affidavit.

³ The record does not reveal when the Berlin Post Office became a Night Owl office.

On November 22, 2017, HRR emailed Complainant to inform her that a vacancy would be posted at Sharptown, if Complainant was interested since her original goal was four hours and she had expressed concerns about Berlin's Night Owl hours. Complainant responded that four hours was not her goal. ROI at 105. The acting Occupational Health Nurse Administrator (OHNA), who served as the DRAC Chairperson, stated that Complainant was sent the reasonable accommodation request forms on November 27, 2017, and that on January 5, 2018, OHNA informed Complainant that her reasonable accommodation request would be closed if she did not respond. ROI at 169-70.

On January 6, 2018, Complainant submitted her reasonable accommodation application, requesting a daytime work schedule that was as consistent as possible. ROI at 116-17. Complainant's supporting medical documentation stated that Complainant "must work day shift." ROI at 120-1. The DRAC scheduled a meeting with Complainant to discuss her request for January 25, 2018. ROI at 122. OHNA stated that there was no accommodation that would enable Complainant to perform the essential functions of her position, and that she was offered a position at Sharptown, which she declined. OHNA stated that after a search, no vacant positions within Complainant's restrictions were available. ROI at 170.

On an unidentified date, Complainant filed a reconsideration of the DRAC's decision.⁴ Complainant stated that the Agency's decision stated that there were no daytime PSE jobs available within 50 miles of her house, which was not true because she was aware of a position available in Salisbury. ROI at 125-8.

On February 7, 2018, PM issued Complainant's Notice of Separation. PM stated that the Berlin Post Office was designated as a Night Owl office, requiring PSE assistance at nighttime and early morning hours. PM stated that Complainant informed her supervisors that she was unable to work the hours of the position for which she was hired, and therefore, was separated. ROI at 178.

On February 28, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on her disability (epilepsy) and in reprisal for prior protected EEO activity when:

1. starting on or about November 16, 2017, she was not provided a reasonable accommodation;
2. on November 22, 2017, she was notified that she was not listed as scheduled for work and instructed not to report to work; and
3. on February 7, 2018, she was issued a Notice of Separation for Unable to Perform the Duties of the Position for which she was hired.

⁴ The record does not contain a copy of the DRAC's decision on Complainant's request. We remind the Agency of its obligation to provide a complete record to the Commission.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge. Complainant timely requested a hearing but subsequently withdrew her request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency found that Complainant established a prima facie case of discrimination based on reprisal for protected EEO activity of requesting a reasonable accommodation. The Agency determined that Complainant did not establish a prima facie case of disability discrimination because she was unable to perform the essential functions of her position. However, the Agency assumed that Complainant established a prima facie case of disability discrimination and found that the Agency did not fail to accommodate her. The Agency found that after Complainant presented medical documentation requesting to work a “normal” schedule from 8:00 a.m. to 5:00 p.m., Complainant was offered a position at the Sharptown location that met her desired daytime hours, which she refused. The Agency then found that Complainant went through the DRAC interactive process and there was no vacant funded position, at or below Complainant’s level that could accommodate her restrictions.

For claims 2 and 3, the Agency found that Complainant did not establish a prima facie case of disability discrimination because she did not identify any similarly situated employees who were treated better under similar circumstances. The Agency assumed, for the sake of argument only, that Complainant established a prima facie case of disability discrimination, and found that management officials articulated legitimate, nondiscriminatory reasons for their actions. The Agency then found that Complainant did not prove that the reasons were pretexts for discrimination. The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Complainant filed the instant appeal and submitted a brief in support of her appeal. The Agency opposed Complainant’s appeal.

CONTENTIONS ON APPEAL

Complainant’s contentions

Through her attorney, Complainant argues that the Agency erroneously found that she was not discriminated against when it refused to accommodate her, and instead, terminated her employment. Complainant states that she is an individual with a disability because she suffers from epilepsy, which substantially limits a neurological function. Complainant states that she is qualified for a PSE/SSDA position because she could work a regular daytime shift from 8 a.m. to 5 p.m., and that there is no evidence to the contrary.

Complainant states that she informed HRR of her disability and need to work only daytime hours. Complainant states that she also informed PM on her first day of work, and again on November 20, 2017, when she submitted a doctor’s note which supported her request for a daytime shift as an accommodation.

Complainant argues that the Agency failed to accommodate her. Complainant states that a reassignment is only appropriate after it is determined that there are no other effective accommodations, and that in her case, a reassignment was the only effective accommodation. Complainant states that a possible reassignment to Sharptowne was not an “offer of reassignment,” but rather, an invitation for Complainant to apply for the vacancy, and that the Agency cannot claim that it offered a reassignment to Complainant as an accommodation. In addition, Complainant argues that the Agency provided no evidence showing that it offered Complainant a reassignment during the DRAC process. Complainant states that the Agency produced a document showing that there were ten (10) vacant PSE/SSDA positions. Complainant notes that she provided this evidence to the Agency on August 15, 2019, but that the Agency did not acknowledge this evidence in its final decision. As such, Complainant asserts that she established that the Agency violated the Rehabilitation Act because it failed to accommodate her disability.

Complainant argues that the Agency also violated the Rehabilitation Act when it terminated her employment. Complainant states that the Commission previously found that an agency has an obligation to provide a complainant with a reasonable accommodation, either in the form of a position modification or reassignment that will not result in an undue hardship for the agency, and that an agency may not instead terminate a complainant in an effort to shirk its responsibility to provide these accommodations in Zarate v. United States Postal Service, EEOC Appeal No. 01A00415 (January 8, 2001).

Complainant also argues that the Agency ignored evidence showing that management officials exhibited discriminatory or retaliatory animus against her. For example, after Complainant accused PM of disability discrimination after she suffered from a seizure in the workplace, MPO sought to terminate Complainant’s employment. Complainant requests that the Commission vacate the Agency’s final decision, find that the Agency violated the Rehabilitation Act, and remand the matter back to the Agency on the issue of damages.

Agency’s contentions

The Agency argues that, even if Complainant could raise an inference of retaliation, the Agency articulated legitimate, nonretaliatory reasons for its actions. Specifically, the Agency asserts that Complainant was offered a position within her restrictions, which she refused; Complainant was notified that she was not scheduled to work on November 22, 2017, because the medical information she submitted prohibited her from working during her normally scheduled work hours; and Complainant was issued the notice of separation because, as a PSE employee, she could not work the hours proscribed. The Agency asserts that Complainant cannot offer any specific evidence in support of her bare assertions of discrimination and relies solely on general conclusory statements, which are insufficient to refute the Agency’s legitimate, nonretaliatory reasons for its actions. The Agency requests that the Commission affirm its final decision finding no discrimination.

ANALYSIS AND FINDINGS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 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”).

As an initial matter, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. See *id.*, at Chap. 9, § IV.A.3. On appeal, Complainant did not contest the Agency’s decision finding no discrimination for claim 2; as such, we will not address this claim in the instant decision.

In addition, as a general rule, no new evidence will be considered on appeal unless there is an affirmative showing that the evidence was not reasonably available prior to or during the investigation. See EEO MD-110 at Chap. 9, § VI.A.3. Here, Complainant stated that she provided additional evidence to the Agency on August 15, 2019, but that the Agency did not acknowledge this evidence in its final decision. We note that the Agency did not deny Complainant’s assertion that she previously provided this evidence; accordingly, the Commission will consider this new evidence on appeal.

Reasonable Accommodation

In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability; (2) she is a qualified individual with a disability; and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance). An agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o), (p).

An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(ii).

Here, Complainant's medical documentation dated January 11, 2018, shows that she suffers from epilepsy, which affects her concentration, attention, and can alter her level of consciousness, alertness and ability to drive. ROI at 120. As such, we find that Complainant is an individual with a disability.

After a complainant has shown that she is an individual with a disability, the complainant must then establish that she is a "qualified individual with a disability," an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the individual holds or desires and who, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R. § 1630.2(m). In this case, MPO and OHNA stated that Complainant could not perform the essential functions of working nighttime and/or early morning hours. ROI at 163, 170. However, MPO's statement that the Agency offered Complainant a position at Sharptown, "which required only daylight work hours," undermines the Agency's argument that working nighttime or early hours was an essential function. ROI at 163. Further, we note that the Agency did not dispute that Complainant could perform her duties with an accommodation of a daytime shift. See Gilberto S. v. Dep't of Homeland Sec., EEOC Petition No. 0320110053 (July 10, 2014) (complainant who could not work the graveyard shift found to be a qualified individual because he could perform the essential functions of his position while at work). Complainant also provided an email from HRR to PM, dated November 15, 2017, in which HRR stated that Complainant "tested well and interviewed well" for the position. As such, we find that Complainant is a qualified individual with a disability.

The record shows that Complainant requested a reasonable accommodation of a daytime work schedule. Prior to Complainant's employment, she voluntarily disclosed her medical condition and need to be careful of early morning hours to HRR. ROI at 134-5. PM stated that on November 15, 2017, Complainant informed her that she could not report to work earlier than 4:30 a.m. due to a medical condition because she had seizures and could not change her sleep schedule. ROI at 149. When making an accommodation request, an employee is not required to use the magic words "reasonable accommodation." Instead, the employee need only inform the Agency that she needs an adjustment or change at work for a reason related to a medical condition. See Enforcement Guidance at Q.1. Here, we find that Complainant's conversations with HRR and PM were requests for a reasonable accommodation because she informed the Agency of her need for a schedule with a start time no earlier than 4:30 a.m. due to her medical condition.

We find that Complainant's request for an accommodation was initially denied by PM on November 15, 2017. Complainant stated that she was offered a daytime shift (Tour 2) and the record shows that Complainant's job offer was for "Tour 2" at the Berlin Post Office. ROI at 81, 175. PM stated that they did not label any "tours" and schedules were based on start times. Complainant stated that when she requested a schedule which started in the late morning or early afternoon, PM denied her request. ROI at 152, 138.

However, we do find that Complainant did not provide sufficient medical documentation until January 11, 2018. An agency is permitted to seek documentation where it is necessary to determine that the individual has a covered disability for which the requested accommodation is necessary.

See 29 C.F.R. § 1630.14; Ross v. Dep't. of the Treasury, EEOC Appeal No. 01982708 (August 3, 2001). While Complainant provided a doctor's note on or about November 20, 2017, the note did not identify Complainant's medical condition or limitations. ROI at 108. Complainant's medical documentation dated January 11, 2018, noted that Complainant had epilepsy and identified her limitations. ROI at 120-1.

Complainant's reasonable accommodation request was then forwarded to the DRAC, which met with Complainant on January 25, 2018. While the record did not contain the DRAC's written denial, Agency officials confirmed that they denied Complainant's request. MPO stated that at the DRAC's request, a reassignment search was conducted and that the Agency found no vacant positions within Complainant's commuting area and medical restrictions. ROI at 163. OHNA stated that after a reassignment search, no vacant positions within Complainant's restrictions were available. ROI at 170.

The Commission has long held that reassignment is the reasonable accommodation of last resort and is required only after it has been determined that there are no effective accommodations that will enable Complainant to perform the essential functions of her current position, or all other reasonable accommodations would impose an undue hardship. See Enforcement Guidance. Here, the Agency simply asserts that there were no available positions/duties within Complainant's restrictions to which she could have been reassigned. However, the Agency has provided no further evidence that it conducted an agency-wide search for vacant, funded positions that Complainant could perform with or without a reasonable accommodation. See Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 26, 2016) (agency has the obligation to conduct an agency-wide search for vacant, funded positions that complainant could perform).

To the extent that the Agency argues that Complainant declined an offer of a reassignment to Sharptown, we find that this was not an offer of a reassignment because HRR stated that she wanted to alert Complainant that the position was "going to be posted in the next few days" and did not offer to place Complainant into the position. ROI at 105. The Commission has found that reassignment means that the employee gets the vacant position, if she is qualified for it, and is not required to compete for the position. See Enforcement Guidance at Q. 29; Smith v. Dep't of the Army, EEOC Petition No. 03A20073 (May 15, 2003).

Complainant provided evidence from the Agency, in the form of a list of vacant funded positions, which included ten (10) PSE/SSDA positions available in February 2018, and there is no evidence that a reassignment offer was made to Complainant when the Agency conducted a reassignment search during the DRAC process. In addition, we note that the Agency did not offer any arguments or evidence that the available positions would not have allowed Complainant to work a daytime shift, or that placing Complainant into one of these positions would be an undue hardship. As such, we find that the Agency violated the Rehabilitation Act when it failed to accommodate Complainant when it denied her request for a schedule change on November 15, 2017, and when it did not offer her a reassignment to a vacant funded PSE/SSDA position.

We also find that the Agency violated the Rehabilitation Act when the Agency terminated Complainant's employment, instead of providing a reasonable accommodation. See Zarate v. U.S. Postal Serv., supra (the Commission found that the complainant was denied reasonable accommodation when he was terminated, rather than having his position modified, or alternatively, being reassigned). Accordingly, we REVERSE the Agency's finding that it did not violate the Rehabilitation Act when it failed to accommodate Complainant and when it terminated Complainant's employment and ORDER the Agency to take further action, in accordance with the Order below.

Where a discriminatory practice involves the provision of a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for her disability. See 42 U.S.C. § 1981a(a)(3); and Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). In this case, we find that the Agency did not show that it made a good faith effort to offer a reassignment to Complainant, despite evidence showing that there were ten (10) PSE/SSDA positions available. Complainant is therefore entitled to present a claim for compensatory damages on the Agency's failure to accommodate and termination of her employment. See West v. Gibson, 527 U.S. 212 (1999); see also Complainant v. Dep't of Justice, EEOC Appeal No. 0120121339 (May 8, 2015) (complainant entitled to present a claim for compensatory damages when she was in bad faith denied accommodation leading to her termination).

As Complainant would not be entitled to any additional remedies, we do not find it necessary to address whether the Agency's actions were also motivated by reprisal for her requesting a reasonable accommodation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's decision finding that it did not discriminate against Complainant based on her disability, or in reprisal for protected EEO activity, when it instructed her not to report to work; and we REVERSE the Agency's decision finding that it did not violate the Rehabilitation Act when it failed to accommodate Complainant and when it terminated Complainant's employment and ORDER the Agency to take further action.

ORDER

The Agency is ordered to take the following remedial action:

1. Within 60 days from the date this decision is issued, the Agency shall offer Complainant reinstatement to her former PSE/SSDA position, or a substantially equivalent and agreeable position, at an Agency facility which can provide Complainant with a consistent, daytime work schedule, retroactive to November 15, 2017 (or the date when the DRAC issued its decision denying Complainant's request for a reasonable accommodation). Complainant must respond to the Agency's offer in writing within 15 days of receipt of the

offer. Should Complainant reject the offer of reinstatement, entitlement to any additional back pay attributed to the reinstatement shall terminate as of that date of refusal.

2. Within 60 days from the date this decision is issued, the Agency shall determine the appropriate amount of additional backpay, with interest, and other benefits (such as Thrift Savings Plan and FERS pension) due Complainant (if any), pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in the Agency's efforts to compute the amount of backpay and benefits due, and she shall provide all relevant information requested by the Agency. The Agency shall pay the amount within 60 days from the date of that determination of the appropriate amount. If there is a dispute regarding the exact amount of backpay and/or benefits, the Agency shall pay Complainant the undisputed amount within 60 days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
3. Within 30 days from the date the backpay amount is paid to Complainant, the Agency shall request that Complainant submit her claim for compensation for all additional income-tax liability associated with lump sum payments. The Agency shall afford Complainant 60 days to submit her claim and supporting documents. The burden of proof to establish the amount of additional tax liability, if any, is on Complainant. The calculation of additional tax liability must be based on the taxes Complainant would have paid had she received the backpay in the form of regular salary during the backpay period, versus the additional taxes she paid due to receiving the back-pay in a lump-sum award. Thereafter, the Agency shall issue a decision regarding claimed additional tax liability within 60 days after the time period expires for Complainant to submit her claim for additional tax liability.
4. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages, attorney's fees, and costs. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages, attorney's fees, and costs no later than 30 days after the completion of the investigation.
5. Within 90 days of the date this decision is issued, the Agency shall provide eight (8) hours of interactive EEO training to PM, MPO, and OHNA, with an emphasis on the Agency's obligation to accommodate, and not terminate, qualified individuals with disabilities.
6. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against PM, MPO, and OHNA. 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).

7. The Agency shall immediately post a notice in accordance with the paragraph below.

POSTING ORDER (G0617)

The Agency is ordered to post at its Berlin Post Office 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 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)

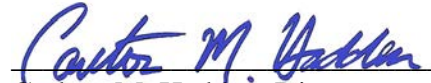
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

January 28, 2021
Date