



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

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Waltraud R.,<sup>1</sup>  
Complainant,

v.

Thomas J. Vilsack,  
Secretary,  
Department of Agriculture  
(Office of the Chief Financial Officer),  
Agency.

Appeal No. 2020001535

Hearing No. 461-2019-00024X

Agency No. OCFO-2018-00378

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 19, 2019, final decision concerning his 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 REVERSES the Agency's final decision.

**ISSUES PRESENTED**

The issues are whether: (1) the Agency properly dismissed one of Complainant's claims as untimely; and (2) Complainant established that the Agency discriminated against him based on his disability, or in reprisal for protected EEO activity, when it denied his requested reasonable accommodation of two days of telework per week.

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<sup>1</sup> 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 Program Analyst at the Agency's Government Employee Services Division in New Orleans, Louisiana. On November 9, 2017, Complainant submitted a reasonable accommodation request to telework at least four days per pay period,<sup>2</sup> or on the days that he feels ill. With his request, Complainant submitted a physician's note stating that he has severe, persistent allergic asthma and allergic rhinitis and that he is allergic to multiple mold spores as well as other allergens. Complainant's doctor added that Complainant should have a well-ventilated, dehumidified environment in which to work, as a moldy or humid environment puts him at risk for an asthma exacerbation. Report of Investigation (ROI) at 173, 175.

On January 4, 2018, the Acting Associate Director (AAD) (no disability) issued Complainant a denial of his requested accommodation and granted him outside breaks to get fresh air and the ability to use leave for his medical needs. ROI at 177. On March 9, 2018, Complainant emailed the Reasonable Accommodation Coordinator (RAC) regarding his request for telework as a reasonable accommodation. Complainant noted that his request had previously been approved in 2014, but that he had to reapply after he moved to a different building. Complainant stated that, since moving, his asthma had been exacerbated, and that the building does not have any open windows and the seating arrangement does not allow the air to flow. ROI at 106.

On March 20, 2018, AAD issued Complainant another decision on his reasonable accommodation request. AAD stated that he could not grant Complainant's request to work near a window that opens because the building windows do not open. AAD also stated that an air-quality study revealed no problems with the air/ventilation within the facility. ROI at 54-55.

On April 11, 2018, Complainant requested an update from RAC, who responded that she did not understand what Complainant was asking for, and she asked if he had other ideas besides sitting near an open window or additional telework. On April 16, 2018, Complainant requested RAC's assistance because AAD's recommendation to go outside would aggravate his condition. Complainant noted that his coworkers had fans due to the inefficient air conditioning and restrictive air flow, and that his medical documentation stated that he needed to be in a well-ventilated area. On April 18, 2018, RAC responded that AAD could not grant additional telework days because Complainant's essential duties required his physical presence in the office, and that she would like to further discuss Complainant's request. On July 27, 2018, Complainant sent a follow-up email to RAC asking for a status update on his request. ROI at 107-09.

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<sup>2</sup> Complainant teleworked one day per week pursuant to the Agency's telework policy. ROI at 202-04. We note that while Complainant requested "at least four days per pay period," he did not specify how many additional telework days he was requesting as an accommodation.

*EEO Complaint*

On April 12, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of disability (Chronic Allergic Rhinosinusitis with Polyposis and Allergic Asthma), and in reprisal for prior protected EEO activity (Agency Case No. OCFO-2016-00156), when on January 4, 2018, management denied Complainant's request to telework two days per week as a reasonable accommodation.

The Agency accepted this claim for investigation, but dismissed Complainant's untimely allegation that he was subjected to disparate treatment when on October 27, 2017, Complainant learned that a management official instructed his rating official to lower the rating of one of the elements on his fiscal year 2017 Annual Performance Appraisal. The Agency also dismissed Complainant's allegation of non-sexual harassment when on October 27, 2017, a management official directed Complainant to perform a work function that was in violation of the terms of a prior settlement agreement. The Agency dismissed this allegation for failure to state a claim. ROI at 75-79.

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

The Agency found that Complainant established that he had a physical disability and that he was qualified for his position. The Agency then found that management officials took reasonable actions to accommodate Complainant. The Agency determined that AAD offered Complainant an alternative accommodation that granted approval to take breaks, as needed, or to take leave if he could not travel into the office. The Agency noted that, while Complainant argued that he should have been afforded more days of telework, a review of his medical documentation showed that his medical provider did not indicate that Complainant needed telework as an accommodation and that his medical documentation states, "Please provide him with a well ventilated, dehumidified environment in which to work as a moldy or humid environment puts him at risk for an asthma exacerbation." The Agency found that Complainant's allegations that he needed telework as a reasonable accommodation were unsupported. The Agency further found that AAD testified that Complainant could not be granted additional days of telework due to his job responsibilities.

The Agency determined that management offered Complainant an effective alternate accommodation by allowing him to take breaks, as needed, and leave on days that he could not travel into the office. Although Complainant argued that management's alternate accommodation did not "help" and was "not reasonable," the Agency noted that the ability to take leave is a form of a reasonable accommodation. The Agency found that its burden was satisfied in taking reasonable actions to accommodate Complainant's disability.

The Agency also found that Complainant did not establish a prima facie case of retaliation because there was insufficient temporal proximity from his prior EEO activity, which occurred in January 2016, to the relevant action in this case in January 2018. The Agency concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

Complainant filed the instant appeal and submitted a statement in support of his appeal. The Agency opposed Complainant's appeal.

### CONTENTIONS ON APPEAL

#### *Complainant's Contentions*

On appeal, Complainant disputes that going outside is a reasonable accommodation for someone who has allergies. Complainant states that if he comes into contact with certain allergens, such as dust, pollen, mold, grass, and ragweed, his chances of experiencing an allergy attack increase, and that going outside is more harmful. Complainant notes that his first request was to have an office near a window, as he had in their previous building, but they moved into a building with sealed windows. Complainant also states that the air conditioning in the building is bad. Complainant asserts that AAD terminated his reasonable accommodation in August 2017, which had been in place since 2014.

Complainant states that on October 27, 2017, AAD ordered his supervisor to lower his performance appraisal from superior to fully successful. Complainant notes that the Agency's Appraisal Review Board ruled against AAD's decision to lower his performance rating.

#### *Agency's Contentions*

The Agency states that its final decision correctly found that Complainant did not establish discrimination. The Agency notes that it granted Complainant a reasonable accommodation which permitted him to perform the essential functions of his job, and was supported by the medical documentation, and that Complainant failed to establish any unnecessary delay in responding to his request for reasonable accommodation. The Agency states that the accommodation granted was reasonable and consistent with the medical documentation provided, and that while Complainant asserted that he should have been granted an additional telework day per week, the request was not supported by his medical documentation. In addition, the Agency granted liberal access to leave if Complainant was ill. The Agency argues that it correctly held that Complainant did not establish a failure-to-accommodate claim.

The Agency also argues that Complainant did not establish reprisal on any claim and that he failed to establish a nexus between his protected EEO activity and any of the actions at issue. The Agency notes that although it was undisputed that AAD was aware of Complainant's prior EEO activity, the matter closed in 2016, and there was no temporal proximity or other evidence of a nexus between the accommodation-request processing and the prior EEO activity. The Agency requests that the Commission affirm its final decision.

### 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").

### ANALYSIS AND FINDINGS

#### *Dismissed Claims*

EEOC regulation requires that complaints of discrimination be brought to the attention of the EEO counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. 29 C.F.R. § 1614.105(a)(1). The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep't of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

On appeal, Complainant raised the dismissed claim alleging discrimination when on October 27, 2017, AAD instructed Complainant's rating official to lower the rating of one of the elements on his fiscal year 2017 Annual Performance Appraisal. Complainant's 45-day deadline to contact an EEO counselor was December 11, 2017, and the record shows that he initiated the instant EEO complaint on January 23, 2018. ROI at 29. We note that Complainant did not assert that he did not have a reasonable suspicion of discrimination until a later date. As such, we find that Complainant's EEO contact for this claim was untimely and AFFIRM the Agency's procedural dismissal of this claim.

Further, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. See EEO MD-110 at Chap. 9, § IV.A.3. On appeal, Complainant did not contest the Agency's procedural dismissal of his claim alleging non-sexual harassment when a management official directed him to perform a work function that was in violation of the terms of a prior settlement agreement; as such, we will not address this claim in the instant decision.

*Reasonable Accommodation*

In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability; (2) he 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). “The term ‘qualified,’ with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m). 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).

The term “reasonable accommodation” means, in pertinent part, modifications or adjustments to the work environment, or to the manner or circumstances under which the position held is customarily performed that enable a qualified individual with a disability to perform the essential functions of the position in question. See 29 C.F.R. § 1630.2(o)(1)(ii). Reasonable accommodations may include but are not limited to: job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. Id.

We find that Complainant is an individual with a disability. 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). Complainant’s medical documentation statement shows that he has severe, persistent allergic asthma and allergic rhinitis, and that he is allergic to multiple mold spores as well as other allergens. ROI at 175. Complainant stated that he snuffles, snorts, wheezes, and experiences sinus headaches and constant nasal drip. ROI at 97, 124. As such, we find that the record shows that Complainant is substantially limited in his ability to breathe, and that he is an individual with a disability.

After a complainant has shown that he is an individual with a disability, the complainant must then establish that he 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).

Here, AAD confirmed that Complainant is capable of performing the essential functions of his position. ROI at 129. As such, we find that Complainant is a qualified individual.

We find that the Agency failed to accommodate Complainant when, on January 4, 2018, AAD denied his request to telework two days per week as a reasonable accommodation. Allowing an employee to telework is a form of a reasonable accommodation. "An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation, but only if this accommodation would be effective and would not cause an undue hardship." Enforcement Guidance on Reasonable Accommodation, at Question 34. An "undue hardship" is a significant difficulty or expense in light of the agency's circumstances and resources. See 29 C.F.R. § 1630.2(p). The agency bears the burden of establishing, through case-specific evidence, that a reasonable accommodation would cause an undue hardship. U.S. Airways, Inc. v. Barnett, 535 U.S. 391 at 402. An employer may deny an employee's request to telework if it can show that an alternative accommodation would be effective or that telework would cause an undue hardship. See Enforcement Guidance on Reasonable Accommodation, at Question 34. The Agency has a burden of production to show that there is an effective alternative accommodation.

We find that the Agency has not shown that the alternative accommodations it granted Complainant were effective. AAD stated that he offered Complainant an alternative accommodation of taking breaks outside and the ability to take leave when he was feeling ill. ROI at 130. However, Complainant stated that going outside for fresh air does not help and could trigger an asthma attack, and it would impede his ability to get his work done. ROI at 100. Complainant also stated that what was offered was not a reasonable accommodation because any employee is entitled to go outside for breaks and take leave, when necessary. ROI at 121. Further, "forcing an employee to take leave when another accommodation would permit an employee to continue working is not an effective accommodation." Denese G. v. Dep't of the Treasury, EEOC Appeal No. 0120141118 (Dec. 29, 2016); see also Elsa S. v. Nat'l Aeronautics and Space Admin., EEOC Appeal No. 0720180021 (Feb. 14, 2020); Jody L. v. Dep't of the Air Force, EEOC Appeal No. 0120151351 (Jan. 17, 2018). We note that the Agency did not provide any evidence showing that taking breaks to go outside or taking leave would enable Complainant to perform the essential functions of his position, and we find that the Agency has not met its burden to show that the alternative accommodations were effective.

We also find that the Agency did not argue that granting Complainant's request would have been an undue hardship. AAD only stated that Complainant's request was not reasonable because it did not lend itself to day-to-day operations of the unit. ROI at 132. Even assuming that AAD denied Complainant's request due to undue hardship, we find that AAD's generalized conclusion does not suffice to support a claim of undue hardship. Rather, a showing of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;

- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and
- the impact of the accommodation on the operation of the facility.

See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017); Enforcement Guidance on Reasonable Accommodation, Undue Hardship Issues. Here, the record does not contain any supporting evidence that granting Complainant two days of telework per week would have been an undue hardship.

The Commission has recognized that an agency is not required to remove any of the essential functions of a position as a reasonable accommodation. See Enforcement Guidance Types of Reasonable Accommodations Related to Job Performance, General Principles. See also Larraine S. v. Dep't of Agric., EEOC Appeal No. 0120180647 (Aug. 15, 2019); Carlton T. v. Dep't of the Navy, EEOC Appeal No. 0120151566 (Feb. 7, 2018); Timika O. v. Dep't of the Navy, EEOC Appeal No. 0220140008 (Mar. 9, 2017). AAD stated that Complainant's position as a Program Analyst requires him to be available to assist others, and that Complainant requested training, and both required him to be in the office. ROI at 130-32. However, AAD did not explain why Complainant's physical presence in the office was necessary to assist others and obtain training. In addition, we note that Complainant stated that he had been previously approved to telework two days per week as a reasonable accommodation in 2014, through August 2017, and that it did not affect his work. ROI at 97, 121. We find that there is no evidence that Complainant was unable to perform his duties during the time when he was previously granted additional telework as a reasonable accommodation, or that providing Complainant with two telework days per week would remove any essential function from his position.

In opposition to Complainant's appeal, the Agency argued that Complainant's medical documentation did not support his request for additional telework. However, we note that the decisions issued by AAD on January 4, 2018, and March 20, 2018, did not inform Complainant that his telework requests were denied due to insufficient medical documentation. AAD only noted that the Agency may periodically request updated medical information, and that Complainant should inform AAD if his medical condition changes. ROI at 177, 54-55. In addition, when Complainant reached out to RAC for additional assistance, there is no evidence showing that RAC explained that Complainant's medical documentation was insufficient to support his telework request.<sup>3</sup>

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<sup>3</sup> The EEO Investigator noted that she did not obtain a statement from RAC, who had resigned from the Agency, because RAC's supervisor could not provide RAC's contact information. The



We also find that the Agency failed to continue to engage in the interactive process. Complainant continued to engage in the interactive process when he informed RAC that the granted accommodations of outside breaks and leave were not effective. While the record shows that RAC left the Agency on July 5, 2018, the last email from RAC to Complainant was sent on April 18, 2018. Complainant sent RAC a follow-up email on July 27, 2018, and even though RAC had left the Agency by then, Complainant's email shows that neither RAC, nor anyone else at the Agency, had communicated with him recently about his reasonable accommodation request. ROI at 315, 107.

However, the Commission has recognized that an agency's failure to engage in the interactive process does not, in itself, constitute a violation of the Rehabilitation Act. See Pitts v. U.S. Postal Serv., EEOC Appeal No. 0120130039 (Mar. 13, 2013) (citing Doe v. Soc. Sec. Admin. Appeal No. 01A14791 (Feb. 21, 2003)). Liability depends on a finding that, had a good faith interactive process occurred, the parties could have found a reasonable accommodation. Id. Accordingly, the fact that the Agency failed to properly engage in the interactive process does not, by itself, demand a finding that Complainant was denied a reasonable accommodation. Rather, to establish a denial of a reasonable accommodation, Complainant must establish that the failure to engage in the interactive process resulted in the Agency's failure to provide a reasonable accommodation. Id.

In this case, Complainant established that he was effectively accommodated from 2014 through 2017 with two days of telework, and that the Agency made him renew his request, which it then denied. As such, we find that the Agency could have accommodated Complainant again by granting him two telework days per week, but that it stopped engaging in the interactive process. As noted above, if the Agency required additional medical documentation to support Complainant's telework request, there is no evidence in the record that it communicated this need to Complainant. We find that the Agency discriminated against Complainant based on disability when on January 4, 2018, it denied his reasonable accommodation request for two days of telework per week and instead granted him accommodations that it has not shown to be effective. Accordingly, we REVERSE the Agency's final decision finding no discrimination and REMAND the complaint to the Agency for further action.

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 his disability. See 42 U.S.C. § 1981a(a)(3); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). Here, we find that the Agency's grant of ineffective alternative accommodations and its failure to continue to engage in the interactive process do not demonstrate a good faith effort in providing Complainant with a reasonable accommodation. Accordingly, we find that Complainant is entitled to compensatory damages from the Agency's discrimination against him and ORDER the Agency to conduct a supplemental investigation on Complainant's damages.

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EEO Investigator stated that the Agency informed her that it would obtain guidance from the Office of General Counsel, but she did not receive any guidance. ROI at 305.

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 his prior protected EEO activity.

### 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 procedural dismissal of the untimely claim and REVERSE the Agency's final decision finding no discrimination, and we REMAND the complaint to the Agency for further action, in accordance with the Order below.

### ORDER

The Agency is ordered to take the following remedial action:

1. To the extent that it has not done so, the Agency shall grant Complainant's request to telework two days per week as a reasonable accommodation, within 90 days from the date this decision is issued.
2. Within 60 days of the date this decision is issued, the Agency shall restore or compensate Complainant for any leave that he has been forced to use due to the Agency's failure to provide him with a reasonable accommodation since January 4, 2018.
3. 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 his 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.
4. Within 90 days of the date this decision is issued, the Agency shall provide eight (8) hours of interactive EEO training to AAD, with an emphasis on the Agency's obligation to accommodate qualified individuals with disabilities.
5. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against AAD. 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).
6. Within 30 days of the date this decision is issued, the Agency shall post a notice in accordance with the paragraph below.

POSTING ORDER (G0617)

The Agency is ordered to post at its Government Employee Services Division in New Orleans, Louisiana, 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 (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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

July 13, 2021  
Date