



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



Aida E.,
Julietta K.,
Juanita K.,
Yvette H.,¹
Complainants.

v.

Sonny Perdue,
Secretary,
Department of Agriculture
(Food and Nutrition Service),
Agency.

Appeal Nos. 2020002203, 2020002190, 2020002216, 2020002197

Agency Nos. FNCS-2017-00079, FNCS-2017-00092, FNCS-2017-00115, FNCS-2017-00091²

DECISION

Complainants filed appeals with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's January 9, 2020, final decision concerning their equal employment opportunity (EEO) complaints 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 the Equal Pay Act (EPA) of 1963, as amended, 29 U.S.C. § 206(d) et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUES PRESENTED

The issues presented are: 1) whether the Agency complied with the Commission's prior decision and conducted a proper Supplemental Report of Investigation such that the Commission can

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.

² The Agency also identified this matter as consolidated case No. FNCS-2017- 00079P.

adjudicate Complainants' claims on the merits; 2) whether Complainants established that they were subjected to discrimination when they were hired at the GS-07 grade-level rather than the GS-09 grade-level; and 3) whether Complainants established that the Agency violated the Equal Pay Act (EPA).

BACKGROUND

At the time of events giving rise to Complainants' complaints, Complainant 1 worked as a Program Specialist, GS-09, at the Agency's Food and Nutrition Service (FNS), Western Regional Office (WRO), Food Distribution Programs (FDP), Community Nutrition Branch (CNB), Special Nutrition Programs Branch (SNPB), located in San Francisco, California.

Complainant 2 worked as Management Services Specialist, GS-09 at the Agency's FNS, WRO, Grants Management and Administrative Services (GMAS) Division, Administrative Services Unit (ASU), in San Francisco, California.

Complainant 3 and Complainant 4 both worked as Program Specialists, GS-09, FNS, WRO, SNPB, in San Francisco, California.

In June of 2015, FNS Agency representatives attended the West Coast Regional Returning Peace Corps Volunteers (RPCV) Conference and Recruitment Fair. Report of Investigation (ROI), at 523. Therein, the Agency collected applications from Complainants as well as from other applicants for positions with the Agency. *Id.* Complainants applied for positions by submitting application materials, including a cover letter and resume, transcript, and a description of their Peace Corps service. A separate sub-Agency, the Food Safety and Inspection Service (FSIS), was assigned to determine applicants' non-competitive eligibility for Program Specialist positions and to perform the GS-level classification determination on behalf of the Agency. First Supplemental Report of Investigation (First Supp. ROI), at 24. The FSIS's Human Resources (HR) received about 22 applications to review from the Agency, and two female FSIS HR Specialists (HRS 1 and HRS 2) were assigned to review the applications to determine eligibility and grade classification for the prospective candidates. Second Supplemental Report of Investigation (Second Supp. ROI), at 30-32.

HRS 1 reviewed 14 applications (encompassing 12 female and two male applicants), including the applications of Complainant 2 and Complainant 4. First Supp. ROI, at 124. HRS 1 classified six applicants eligible at the GS-07 grade-level, including Complainant 2 and Complainant 4 because they only possessed bachelor's degrees. *Id.* HRS 1 classified both male applicants eligible at the GS-07 grade-level as well. *Id.* HRS 1 also classified six females to be eligible for the GS-09 grade-level or above because they had obtained master's degrees. *Id.* One female candidate's application was still pending, and another female applicant was found not to be eligible by HRS 1. *Id.*

HRS 2 was assigned to review the applications of eight applicants (encompassing six female and two male candidates) including Complainant 1 and Complainant 3 who both did not possess master's degrees. HRS 2 classified Complainant 1, Complainant 3, three other female candidates, and one of the male candidates to be eligible for the GS-07 grade-level. HRS 2 found three female applicants and one male applicant to be eligible for the GS-09 grade-level.³

As such, from August 2015 through October 2015, Complainants and other applicants who only possessed bachelor's degrees began working for the Agency at the GS-07 grade-level in Program Specialist positions. Applicants who possessed master's degrees began working at the GS-9 grade-level.⁴ Notwithstanding, all four Complainants were promoted to the GS-09 grade-level within a year or so of their hiring on or before October 1, 2016. Second Supp. ROI, at 65, 114, 135, and 176.

On September 6, 2016, the Agency again requested that FSIS perform grade classifications for hiring. The FSIS's Branch Chief reviewed applications from two male applicants (Comparator 1 and Comparator 2) and solely found them to be eligible for hire at the GS-09 grade-level based on their education and experience. Second Supp. ROI, at 51, 125-126. Comparator 1 did not accept the Agency's offer to be hired as a Data Analyst, and therefore he was not hired by the Agency. However, Comparator 2 accepted a Program Specialist position at the GS-09 grade-level even though he did not hold a master's degree. By the time Comparator 2 began working for the Agency at the GS-09 grade-level on October 17, 2016, all four Complainants had been promoted to the GS-09 grade-level. ROI, at 29. Comparator 2 and all four Complainants had similar education and experience and were also assigned to perform relatively the same duties as Program Specialists.

Complainants all filed EEO complaints alleging the Agency discriminated against them on the basis of sex (female). Complainant 1 filed an EEO complaint on February 10, 2017; Complainant 2 filed an EEO complaint on February 16, 2017; Complainant 3 filed an EEO complaint on February 24, 2017; and Complainant 4 filed an EEO complaint on February 20, 2017.

The Agency accepted the following claims:

Complainant 1 — FNCS-2017-00079

Whether Complainant was subjected to discrimination based on sex (female) when:

- a. On October 27, 2016, she learned at the time of her hire, two similarly-situated male colleagues were hired as GS-09 Program Specialists and she was hired as a GS-07 Program Specialist for essentially the same position; and

³ See Agency's Brief in Opposition to Complainants' appeal, Exhibits A-C.

⁴ See Agency's Brief in Opposition to Complainants' appeal, Exhibit C (Qualifications Worksheet).

- b. On October 27, 2016, she learned that in violation of the Equal Pay Act, she was being paid less than a similarly-situated male colleague for performing a Program Specialist position that required substantially equal skill, effort, and responsibility under similar working conditions.

Complainant 2 — FNCS-2017-00092

- a. On October 27, 2016, she learned at the time of her hire, two similarly-situated male colleagues were hired as GS-09 Program Specialists and she was hired as a GS-07 Program Specialist for essentially the same position; and
- b. On October 27, 2016, she learned that in violation of the Equal Pay Act, she was being paid less than a similarly-situated male colleague for performing a Program Specialist position that required substantially equal skill, effort, and responsibility under similar working conditions

Complainant 3 — FNCS-2017-00115

- a. On November 1, 2016, she learned at the time of her hire, two similarly-situated male colleagues were hired as GS-9 Program Specialists and she was hired as a GS-07 Program Specialist for essentially the same position; and
- b. On November 1, 2016, she learned that in violation of the Equal Pay Act, she was being paid less than a similarly-situated male colleague for performing a Program Specialist position that required substantially equal skill, effort, and responsibility under similar working conditions.

Complainant 4 — FNCS-2017-00091

- a. On November 1, 2016, she learned at the time of her hire, two similarly-situated male colleagues were hired as GS-09 Program Specialists and she was hired as a GS-07 Program Specialist for essentially the same position; and
- b. On November 1, 2016, she learned that in violation of the Equal Pay Act, she was being paid less than a similarly-situated male colleague for performing a Program Specialist position that required substantially equal skill, effort, and responsibility under similar working conditions.

The Agency dismissed Complainants' allegations that the Agency abused the mediation process when management officials came unprepared to answer any questions, resulting in limited communication during the actual mediation session. The Agency noted that Complainants' allegations constituted a "spin-off" complaint. The Agency noted that under 29 C.F.R. §1614.107(a)(8), an Agency is required to dismiss a spin-off complaint that alleges dissatisfaction, unfairness,, or bias in the processing of a discrimination complaint.

The Agency nevertheless noted that Complainants' allegations were being referred to the Agency official responsible for the quality of Agency EEO complaint processing.

The accepted claims were consolidated for processing. A joint investigation and a supplemental investigation were conducted. Following the investigations, the Agency provided Complainants with notices of their right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainants' requests, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainants failed to prove that the Agency subjected them to discrimination as alleged. The Agency specifically found that Complainants did not establish a prima facie case of discrimination based on sex, but it nevertheless articulated legitimate, nondiscriminatory reasons for its actions, which Complainants did not show were pretextual. The Agency also found that Complainants did not establish a prima facie violation of the Equal Pay Act (EPA).

EEOC Appeal No. 0120181052, et al.

Complainants thereafter appealed the Agency's final decision to the Commission, addressed in the consolidated EEOC Appeal No. 0120181052, et al. Therein, the Commission found the record unclear as to who made the qualification determinations for Complainants and Comparator 2. In so finding, the Commission noted that there was conflicting evidence as to whether the FSIS was involved in conducting the qualification determination for Comparator 2. The Commission further noted that the worksheets for Complainants and Comparator 2 created during the qualification determination process were missing from the record. The Commission observed, moreover, that the record was unclear as to the actual duties performed by Comparator 2 during the relevant time-period. The Commission lastly noted that the record did not show whether the Agency addressed Complainants' concerns regarding the Agency's processing of their complaints pertaining to the mediation process.

The Commission therefore vacated the Agency's decision finding no discrimination and ordered the Agency to conduct a supplemental investigation with a subsequent final agency decision addressing the merits of Complainants' complaints. The Commission further ordered the Agency to supplement the record indicating what actions the Agency took regarding Complainants' allegations of the improper processing of their complaints pertaining to the mediation process.

Agency's Final Decision dated January 9, 2020

On December 27, 2019, the Agency issued its second Supplemental Report of Investigation, and issued its consolidated final decision on January 9, 2020, finding no discrimination. In its decision, the Agency initially found that Complainants did not contest its previous finding that Comparator 1 was not similarly-situated to Complainants, as he was offered a different position. The Agency found that Comparator 2 was not similarly-situated to Complainants as well.

In so finding, the Agency noted that Complainants were hired between August 2015 and October 2015, while Comparator 2 was hired in October 2016, a year later.⁵ The Agency also found no evidence supporting an inference of discrimination. The Agency specifically found that a review of the applicants hired from August 2015 through October 2015, as well as Comparator 2, reflected that women were more likely to be graded at the GS-09 grade-level than men during the classification qualification process. As such, the Agency found that Complainants did not establish a prima facie case of disparate treatment based on sex.

The Agency additionally determined that it articulated legitimate, nondiscriminatory reasons for its actions, which Complainants did not establish were pretextual. The Agency specifically noted that HRS 1 and HRS 2 classified Complainants at the GS-07 grade-level based on the Office of Personnel Management (OPM) General Schedule Qualification Standards for the GS-0301 Program Series. The Agency also noted that HRS 1 and HRS 2 classified a majority of female applicants at the GS-09 grade-level while male applicants were classified primarily as GS-07s. The Agency therefore observed that women were overwhelmingly classified at higher grade levels than men during the hiring process.

The Agency also found that Complainants did not establish a prima facie violation of the EPA. The Agency noted that Complainants were hired at the GS-07 grade-level between August 2015 and October 2015, equally to three men and an additional three other women. The Agency noted that when Complainants were first hired in August through October 2015, there were another 10 people hired as GS-09 Program Specialists, with the overwhelming majority being women (9 women and one male). The Agency noted, moreover, that by the time Comparator 2 was hired, all Complainants had already been promoted to the GS-09 grade-level.

CONTENTIONS ON APPEAL

Complainants' Brief on Appeal

On appeal, Complainants initially contend that the Agency has not fully complied with the Commission's orders in EEOC Appeal No. 0120181052, et al., and submitted the required documentation in its Supplemental ROI. Complainants specifically maintain that the Agency has not provided the ordered relevant documentation to clarify who made the qualification determinations for Complainants and Comparator 2. Complainants maintain, moreover, that the qualification worksheets for Complainants and Comparator 2 were not provided by the Agency in accordance with the Commission's orders. They also contend that several ordered affidavits were not included in the Supplemental ROI, including the affidavit from the individual who made the qualification determination for Comparator 2.

⁵ The Agency noted that Complainants were not similarly-situated to Comparator 2 because the FNS did the qualification analysis for Comparator 2 but was not assigned to do a qualification analysis for complainants as well. However, as noted above, the record reflects that the FNS assigned the FSIS to do qualification analyses for all Complainants as well as Comparator 2.

Complainants further argue that the Agency did not provide any additional information regarding how it handled the processing of their complaints, in accordance with the Commission's decision.

Complainants additionally maintain that they established a prima facie case of discrimination based on their sex because they were similarly-situated to Comparator 2. They assert that they all had the same level of education and were hired under the same qualification criteria as Comparator 2. Complainants argue that the Agency did not follow OPM standards, and therefore qualification determinations were made on a case-by-case basis, opening the qualification process to unconscious bias and sex discrimination.

Complainants further assert that the Agency violated the EPA as they were hired at the GS-07 grade-level, while Comparator 2 was hired at the GS-09 grade-level a year later. They contend they performed more duties than Comparator 2 but were only initially classified at the GS-07 grade-level. Complainants additionally argue that Program Specialist Positions are normally advertised between the GS-09 through GS-12 grade levels, and only females were classified at the GS-07 grade-level. Complainants state that they performed substantially equal or superior work to Comparator 2, yet they were classified lower than him upon hiring. They believe that Comparator 2 will reach the top of grade ladder with one year less experience than them and he will be better situated for opportunities and promotions.

Agency's Response

In response, the Agency argues that its decision correctly determined that Complainants did not establish a prima facie case of discrimination based on her sex. The Agency specifically asserts that multiple male colleagues of Complainants were also classified at the GS-07 grade-level during the same time Complainants were hired in 2015. The Agency notes, moreover, that multiple other female employees were classified at the GS-09 grade-level during the same time Complainants were hired in 2015 as well. The Agency asserts that there is no evidence showing that HRS 1 or HRS 2 considered gender when they classified Complainants at the GS-07 grade-level. In addition, the Agency asserts that Comparator 2 was hired during a different time-period with different individual(s) classifying him for the Program Specialist position, and therefore he was not similarly-situated to Complainants.

The Agency asserts that it was the FSIS Branch Chief who classified Comparator 2 at the GS-09 grade-level, and his opinion that prior Peace Corps experience would typically be equivalent to a GS-07 for many positions appeared to be at odds with Peace Corps guidance that grades begin at a GS-05 equivalent. The Agency noted that HRS 1 and HRS 2 assessed the prior Peace Corps experience of the 2015 male and female candidates at a GS-05 level. But the record at most implies a difference in professional opinion or, at worst, a mistake in assessing Peace Corps experience between HRS 1, HRS 2, and the FSIS Branch Chief.

The Agency believes further that Complainants did not establish a prima facie violation of the EPA because male employees hired at the same time during the 2015 timeframe as Complainants were also hired at the GS-07 level. The Agency also notes that Complainants had already been promoted to the GS-09 grade-level when Comparator 2 was hired.

The Agency asserts, furthermore, that it substantially complied with the Commission's orders in EEOC Appeal No. 0120181052, et al., as it conducted an appropriate supplemental investigation interviewing relevant witnesses who remained in federal service, and included additional documentation related to Complainants' case. The Agency additionally addresses Complainants' concerns regarding the processing of their complaints, asserting that it conducted an inquiry into the underlying mediation. The Agency states that it supplemented the record with a memorandum dated April 17, 2017, wherein the Agency's Civil Rights Director noted that the Agency actively participated in alternative dispute resolution (ADR) with Complainants and management officials participated in good faith in attempting to achieve resolution with all parties.

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, 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").

ANALYSIS AND FINDINGS

Compliance with EEOC Appeal No. 0120181052, et al.

Notwithstanding Complainants' contentions on appeal, we find that the Agency has substantially complied with the Commission's orders in EEOC Appeal No. 0120181052, et al. In so finding, there is no dispute that Complainants received the Agency's second Supplemental ROI, which the Agency completed on December 27, 2019. The Agency's second Supplemental ROI contained four additional affidavits from Agency officials, including an affidavit from HRS 2. The investigator was not successful in obtaining an affidavit from HRS1, as she had retired from the Agency. The second Supplemental ROI also contained other documentation relating to the performance and duties of Complainants and Comparator 2.

Moreover, we note that the record contains the initial ROI and the first Supplement ROI, as well as the second Supplemental ROI completed on December 27, 2019.

The record contains significant documentation and affidavits related to the evaluation qualification process of Complainants as well as Comparator 2. Included in the record, is an affidavit from the FSIS Branch Chief who classified Comparator 2 at the GS-09 grade-level. We determine that the record is now adequately developed for us to adjudicate Complainants' claims of discrimination on the merits.⁶

Disparate Treatment

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainants to prevail, they must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). Once Complainants have established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainants to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainants retain the burden of persuasion, and it is their obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

Complainants may establish a prima facie case of sex discrimination by providing evidence that (1) they are a member of a protected class; (2) they suffered an adverse employment action; and (3) either that similarly-situated individuals outside their protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir. 2004) (internal quotation marks omitted).

In this case, Complainants assert that Comparator 2 was a similarly-situated employee, outside of their protected category who was treated more favorably when he was hired as a Program Specialist at the GS-09 grade-level. However, we find that Comparator 2 is not similarly-situated to Complainants' To be considered "similarly situated," the comparator must be similar in substantially all aspects, so that it would be expected that they would be treated in the same manner. See Grappone v. Dep't of the Navy, EEOC No. 01A10667 (Sept. 7, 2001), request for recon. den'd, EEOC Request No. 05A20020 (Jan. 28, 2002).

⁶ We find the Agency properly addressed the processing of Complainants' complaints regarding the mediation process in its memorandum dated April 17, 2017.

Herein, the record reflects that while Complainants and Comparator 2 performed the same work functions under the same management officials, Comparator 2 was hired a year later, during a different time-period, under a somewhat different selection process. Complainants were all evaluated with a large group of applicants from August 2015 through October 2015 by HRS 1 and HRS 2, while Comparator 2 was hired a year later in October 2016 and solely evaluated by the FSIS Branch Chief. As such, we find that Complainants were not similarly-situated to that of Comparator 2.

In addition, we find that Complainants have not established that the Agency's actions here would support an inference of discrimination. The record shows that HRS 1 and HRS 2 classified both men and women equally based on whether they had a master's degree. All male applicants without master's degrees were graded at the GS-07 grade level by HRS 1 and HRS 2 as well. Moreover, we note that all Complainants were promoted to the GS-09 grade-level within a year or so of their hiring before Comparator 2 was hired.

Equal Pay Act

The United States Supreme Court articulated the requirements for establishing a prima facie case of discrimination under the EPA in Corning Glass Works v. Brennan, 417 U.S. 188 (1974). To establish a prima facie case of a violation under the EPA, a complainant must show that she or he received less pay than an individual of the opposite sex for equal work, requiring equal skill, effort, and responsibility, under similar working conditions within the same establishment. Sheppard v. EEOC, EEOC Appeal No. 01A02919 (September 12, 2000), req. for reconsideration denied, EEOC Request No. 05A10076 (August 12, 2003).

Once a complainant has met this burden, an employer may avoid liability only by showing that the difference in pay is justified under one of the four affirmative defenses set forth in the EPA: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production of work (also referred to as an incentive or piecework system); or, (4) a differential based on any factor other than sex. *Id.*

Upon review, we find that Complainants have not established a prima facie violation of the EPA. In so finding, we note that the Agency offered Comparator 1 the position of Data Analyst, a different position, which he did not accept. As a result, Comparator 1 was not hired by the Agency. Also, as noted above, Complainants were all evaluated with a large group of applicants due to the Agency's attendance at the RPCV Conference and Recruitment Fair. Complainants were hired from August 2015 through October 2015 by HRS 1 and HRS 2, while Comparator 2 was hired over a year later in October 2016 and solely evaluated by the FSIS Branch Chief.

At the time Complainants were hired, the record shows that all the male applicants without master's degrees who were evaluated by HRS 1 and HRS 2 were also graded at the GS-07 grade-level. Each female applicant with a master's degree was graded at the GS-09 grade-level. Complainants, who all did not have master's degrees, were therefore graded equally to the male applicants who did not have master's degrees also during the 2015 hiring process.

We note that HRS 1 and HRS 2 evaluated a total of four male candidates with three being classified at the GS-07 grade-level. They also evaluated an approximate total of 18 female candidates and at least half were classified at the GS-09 grade-level. In addition, there is no dispute that all Complainants were promoted to the GS-09 grade-level within a year or so of their hiring before Comparator 2 was hired. Consequently, the Commission finds that Complainants did not establish a prima facie violation of the EPA.

Even assuming, however, that Complainants established a prima facie violation under the EPA, we find that the Agency has shown that the pay differential was based on a factor other than sex. We note that Complainants were evaluated by HRS 1 and HRS 2, while Comparator 2 was evaluated by the FSIS Branch chief a little over a year later. The record shows that HRS 1 and HRS 2 assessed Prior Peace Corps experience combined with a bachelor's degree equivalent to the GS-07 level, while the FSIS Branch Chief believed that prior Peace Corps experience with a bachelor's degree could be equivalent to the GS-09 grade-level. The FSIS Branch Chief opined that a master's degree is a not a mandatory requirement to be classified at the GS-09 grade-level.

The FSIS Branch Chief specifically attested:

I was not involved in the outreach or recruitment efforts for the program specialist positions that the Complainant's [sic] applied to, so I am unable to speak to the qualification requirements that were included in the vacancy posting. I can, however, certify that per OPM's General Schedule Qualification Standards for the GS-0301 series, a Master's degree (education) is listed as one of the ways an applicant can qualify at the GS-9 grade level. Applicants can also qualify for the GS-0301-9 position through specialized experience or an equivalent combination of education and experience. . . .

First Supp. ROI, at 51.

As such, there was clearly a difference in professional judgment between HRS 1, HRS 2, and the FSIS Branch Chief pertaining to the grade classifications of applicants. However, even if the responsible Agency officials here made mistakes in how they evaluated Complainants' or the Comparators' experience and education, the record clearly shows that sex did not factor into the decision-making process in management's application of the relevant classification qualification criteria.

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 final decision finding no discrimination.

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 (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION-EQUAL PAY ACT (Y0408)

You are authorized under section 16(b) of the Fair Labor Standards Act (29 U.S.C. § 216(b)) to file a civil action in a court of competent jurisdiction **within two years** or, if the violation is willful, **three years** of the date of the alleged violation of the **Equal Pay Act** regardless of whether you have pursued any administrative complaint processing. The filing of the 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