



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

[REDACTED]  
Thersa E.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120182764  
Hearing No. 440-2018-00103X  
Agency No. 4J-530-0028-17

**DECISION**

On August 29, 2018, 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 July 28, 2018, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS in part and REVERSES in part the Agency's final decision.

**ISSUES PRESENTED**

The issues presented are whether the Agency discriminated against Complainant based on race, color, disability, or reprisal for protected EEO activity when it: (1) denied her request for a reasonable accommodation; (2) placed her in an off-duty status; and (3) issued her a 14-day suspension.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Postage Due Technician at the Agency's Northbrook Post Office in Palatine, Illinois. According to the Standard Position Description for the position, the job involved distributing, classifying,

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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.

weighing, and rating mail; putting “postage and posts on postage due bill”; tabulating “and recording all advance deposits and withdrawals made daily in individual postage due trust fund accounts”; determining whether applicants meet the requirements for postage-due accounts; answering customer inquiries; and, when acting as a leader of other employees, providing direction and leadership. The position description states that the Postage Due Technician works alone for “approximately 75 percent or more of the scheduled daily tour.”

In a formal EEO complaint filed on February 2, 2017, and subsequently amended, Complainant alleged that the Agency discriminated against her based on race (Caucasian), color (white), disability (heart condition), and reprisal for prior protected EEO activity when:

1. on or around February 9, 2017, the District Reasonable Accommodation Committee (DRAC) denied her reasonable-accommodation request;
2. on January 31, 2017, she was placed in an off-duty status; and
3. on February 13, 2017, she was issued a 14-day suspension.<sup>2</sup>

In April 2016, Complainant requested permission to bring a medical alert dog to work. An Agency nurse sent an April 11, 2016, email to the Postmaster (Postmaster 1) stating that she was referring the matter to the DRAC. In an April 13, 2016, email to Postmaster 1, Complainant asked for an update on her request. She noted that she had made “an informal verbal request” and that she perhaps should have emailed a reasonable-accommodation request. She also noted that her dog was a medical alert dog, not a comfort animal.

Complainant submitted a Family and Medical Leave Act (FMLA) request to work five, six-hour days per week. Her Primary Care Provider, a Doctor of Osteopathic Medicine (Physician 1), completed the form on April 27, 2016. Physician 1 wrote that Complainant “was having a bicuspid aortic valve repair and then had a CVA [cerebrovascular accident]... She has a-fib now for a year. She has a rescue dog in training to recognize her a-fib. She is training her dog.” Physician 1 also wrote that Complainant “could have [an] episode of fast heart rate (a-fib) [and] may need to be absent.” The Agency granted the FMLA request on May 4, 2016.

In a May 10, 2016, email to Postmaster 1, a Health and Resource Manager (HR Manager 1) who was a member of the DRAC asked him to identify the essential functions of Complainant’s position “and what she can/can’t do.” She also asked Postmaster 1 to ask Complainant’s co-workers if they were allergic to dogs or were uncomfortable around them.

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<sup>2</sup> Complainant also alleged that the Agency discriminated against her based on disability and reprisal when, on March 31, 2017, the Postmaster interrupted her lunch break and instructed her to clean something, screamed at her, and threatened to send her home. The Agency dismissed this allegation pursuant to 29 C.F.R. § 1614.107(a)(1) maintaining it failed to state a claim. Complainant does not challenge this dismissal on appeal.

Complainant contacted an EEO Counselor on June 9, 2016 and complained that she had not received a response to her request for reasonable accommodation. Complainant and the Agency settled the informal complaint on September 6, 2016.

A June 10, 2016, Confirmation of Request for Reasonable Accommodation form, which apparently was completed by the Officer in Charge (OIC), states that Complainant requested reasonable accommodation on April 11, 2016, and that the “[d]og is trained to alert to arterial fibrillation (a-fib).” The form also states that Complainant has had four strokes and wanted “to bring [the] dog to work to prevent possible stroke.” According to the form, OIC held an interactive meeting with Complainant on June 10, 2016.

In a June 10, 2016, letter addressed to the “Special Accommodations Committee,” Complainant stated that her medical alert dog received training through the Service Dog Academy, that he alerts her to atrial fibrillation, and that, after he alerts her, she takes medication to prevent a fifth stroke. She noted that her FMLA request had been approved and that she was working a six-hour day so that she could attend scent training with her dog. In an undated note, Complainant stated that her insurance policy covered dog bites, her dog had not shown any signs of aggression, he passed “all criteria for Service Dog manners,” she was willing to bring him to work on her own time to get him used to the area, and she was “looking forward to his assistance warding off a 5th stroke.”

By letter dated July 13, 2016, the District Reasonable Accommodation Committee (DRAC) Chairman informed Complainant that the DRAC needed additional information to assess Complainant’s reasonable-accommodation request. He asked Complainant the following questions:

1. How does the dog detect atrial fibrillation?
2. Where must the dog be located in order to detect atrial fibrillation? For example, must you be holding the dog, or must the dog be right at your side?
3. How does your dog alert you to an episode of atrial fibrillation?
4. Must your dog be on a leash near you to detect an episode of atrial fibrillation?
5. Can the dog be crated for a period of time while you walk to other parts of the workplace? If so, how long?
6. Does the dog require constant holding or contact to effectively sense atrial fibrillation?
7. Can the dog wear a muzzle while in the workplace (or any other appropriate face guard while in the workplace?)

In addition, the DRAC Chairman asked Complainant to provide the following information:

1. Documentation showing the dog is certified to detect atrial fibrillation and who certified the dog.

2. Documentation related to the dog's training in advanced obedience.
3. Contact information for the Service Dog Academy referenced in your June 10, 2016 request for accommodation, or any other trainer.
4. Documentation related to the dog breed's potential to trigger dog-related allergies in the workplace. The Postal Service needs this information to determine whether the dog could be a harm to other employees or customers who may have dog-related allergies.

In an undated reply, Complainant stated that her dog detects "arterial fibrillation" through scent, can detect it from 40 feet away, alerts her by swiping his paw on her body, can be on a leash, is crate trained and "could be crated for periods of time," does not like to be held, and tolerates a muzzle but does not like it. She asserted, "Through his crate and leash and gate everyone will be safe." Complainant provided contact information for Physician 1 and her cardiologist (Physician 2). She also provided contact information for a trainer (Trainer 1) who conducted webinars. Complainant stated that she trained the dog herself based on the webinars and that she paid for the webinars and for a one-half-hour Skype session with Trainer 1. She offered to provide the DRAC with her training journal and receipts. Complainant asserted that her dog behaved well in restaurants and stores and was crate, potty, and leash trained.

In a letter dated March 21, 2016, but apparently sent to Complainant on September 9, 2016, HR Manager 1 asked Complainant to submit additional information. She requested certification that Complainant's dog was trained and could detect atrial fibrillation, an opportunity to meet with the trainer, and certification and documentation regarding the dog's obedience training. She also asked Complainant to complete a PS Form 2488, Authorization to Use or Disclose Protected Health Information. In addition, HR Manager 1 stated that the DRAC representatives wanted to observe Complainant and her dog in the workplace to evaluate the dog's performance.

Complainant completed the PS Form 2488 on September 17, 2016 and met with the DRAC on November 16, 2016. Her dog was with her during the meeting. On November 17, 2016, Complainant sent HR Manager 1 a "partial list" of dates and times when her dog alerted her. The list noted approximately 20 alerts from August 14 to November 3, 2016. She sent HR Manager 1 and another individual a December 7, 2016, email thanking them for meeting with her. She noted that it had been 234 days since she requested accommodation, asked whether the DRAC had contacted Trainer 1, and stated that she had contacted another trainer (Trainer 2) who was willing to test her dog and provide certification to the DRAC. Complainant also noted that her "electro cardiologist" recommended "an ablation surgery" and that she was concerned about having the surgery and changing medications if she was going to be away from her dog during work hours.

The DRAC Chairman sent Complainant a December 28, 2016, letter stating that the Occupational Health Office had tried to call Physician 2 three times, had not received a return call, and would try to contact him in writing. He also stated that the DRAC had tried unsuccessfully to email Trainer 1 and would attempt to schedule a teleconference with her.

He sent December 28, 2016, letters to Trainer 1 and Physician 2 requesting teleconferences, and the teleconferences occurred on January 18, 2017.

The record contains a statement in which Physician 2 stated that Complainant “has had 3 previous strokes of unknown cause.”<sup>3</sup> She underwent aortic valve replacement surgery on 05/04/2015 and had paroxysmal atrial fibrillation and a stroke status post-surgery. A trained atrial fibrillation detection dog is recommended to help detect atrial fibrillation in this high-risk patient and reduce stroke risk.” In a May 2, 2016, Patient Summary, Physician 2 stated that Complainant brought her “afib service dog” to her medical appointment, the dog alerted her to “afib” twice in the past month, and each episode lasted for approximately 15 minutes. He further stated, “She does not feel much when this happens--only can hear it when her head is on the pillow.” In a November 29, 2016, Patient Summary, another doctor (Physician 3) also mentioned that Complainant has an “afib alert dog who has been telling [her] that she has afib about every 2 weeks.” He states that Complainant has a history of four strokes.<sup>4</sup>

On February 9, 2017,<sup>5</sup> a Health and Resource Manager (HR Manager 2) notified Complainant that the DRAC had decided to deny Complainant’s request to bring her dog into the workplace. He stated that the DRAC had “determined that no nexus between [Complainant’s] medical condition and requested accommodation has been established.” According to HR Manager 2, Physician 2 told the DRAC that “he did not suggest the use of a dog to detect atrial fibrillation, and he has not recommended something like this to his patients in the past. He also stated that he has no knowledge of dogs being used to detect atrial fibrillation.” HR Manager 2 asserted that Physician 2 told the DRAC that “current technology” could monitor Complainant’s condition. He stated, “Based on your doctor’s statements, this technology would permit you to work while accurately monitoring your medical condition.” In addition, HR Manager 2 stated that Trainer 1 told the DRAC that she “had never trained a dog to detect atrial fibrillation” and knew of no one who had done so. He asserted, “[T]his information establishes no connection between your medical condition and the need of a dog to monitor atrial fibrillation.” He also asserted that other modifications, such as “continued use of partial-day leave or a personal monitoring device,” might accommodate her condition. He informed Complainant that the DRAC was willing to work with her to modify her assignment or schedule to enable her to “implement the personal monitoring technology” and suggested that Complainant contact the DRAC if she wanted to discuss alternative accommodations.

On January 31, 2017, Complainant’s first-level supervisor, the Supervisor of Customer Service (S1), orally placed Complainant in an off-duty status. That same day, S1 and a Postmaster

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<sup>3</sup> The statement is dated August 31, 2015. In her affidavit, Complainant asserted that Physician 2 put the wrong year on the statement and that the correct year is 2016.

<sup>4</sup> Physicians 1, 2, and 3 belong to the same medical practice.

<sup>5</sup> HR Manager 2’s letter is dated February 9, 2016. It appears, however, that the reference to 2016 is a typographical error and that the correct date is February 9, 2017.

(Postmaster 2) sent Complainant a letter confirming that the Agency had placed her in an off-duty status without pay because of inappropriate behavior “where the employee may be injurious to self or others.” Complainant reported to the Supervisor of Customer Service for a Pre-Disciplinary Interview on February 6, 2017.

On February 13, 2017, a Customer Service Supervisor (S2) and Postmaster 2 issued Complainant a Notice of 14-Day Suspension for Conduct Unbecoming, Inappropriate Behavior. The Notice stated that, on January 31, 2017, S1 asked Complainant “to accompany her to the Delivery Office for an official job discussion.” According to the Notice, Complainant stated that she wanted a union steward to be present, S1 stated that a steward’s presence was not necessary, Complainant grabbed her cell phone, and S1 thought that the cell phone was recording the interaction. Complainant rose from her chair, “got in [S1’s] face, pushing her with your chest, saying [she was] sick and going to the bathroom.” Complainant did not go to the bathroom but instead “began yelling and screaming on the workroom floor to the local union steward.” S1 notified Postmaster 2 of Complainant’s inappropriate conduct, the steward and Postmaster 2 asked Complainant to go to the office and stated that she did not need to have a steward present for the official discussion, Postmaster 2 told Complainant that she could not record conversations, Complainant refused Postmaster 2’s request to see her cell phone, and S1 told Complainant to leave the building. The Notice stated that Complainant’s pushing S1 was “inappropriate behavior” and “is considered violence.” It also stated that Complainant’s conduct violated Agency rules concerning Obedience to Orders and “Behavior and Personal Habits.”

In her affidavit, Complainant asserted that management officials, including S1, the DRAC Chairman, HR Manager 1, HR Manager 2, and Postmaster 2, were aware of her prior EEO activity. Complainant stated that she has atrial fibrillation and will have it for the rest of her life unless a future surgery successfully reduces it. She noted that she underwent an ablation on February 20, 2017, but “it did not stop or lessen the a-fib.” According to Complainant, she has no limitations in her personal life and her only work restriction is not to work for more than eight hours per day. She stated that she has no medical restrictions and did not request reasonable accommodation due to restrictions. Instead, Complainant explained:

I requested an accommodation to bring my medical alert dog to work as he alerts me to when I am in a-fib. I cannot tell when I go into a-fib and if I stay in a-fib for a prolonged amount of time I run the risk of either having a stroke, heart attack or even possible death. I have had 4 strokes in the past because I was not able to determine that I was in a-fib and that caused me to have the strokes as I was not able to take any medication or seek emergency treatment because I did not know I was in a-fib.

Complainant stated that she made an oral reasonable-accommodation request to Postmaster 1 and sent him a follow-up email. She filed her June 2016 informal EEO complaint because she had not received a response to her accommodation request within 20 business days.

Complainant further stated that, in January 2017, she traveled to Florida to meet with a trainer (Trainer 2) who trained dogs for individuals with disabilities. Trainer 2 evaluated Complainant's dog and completed evaluation sheets, but Complainant did not provide the documents to the DRAC because she received them after the DRAC had made its decision.<sup>6</sup>

Complainant disputed the February 9, 2017, letter's description of the conference call with Physician 2. According to Complainant, Physician 2 told the DRAC that there was a very expensive test that could be done, that most insurance companies did not cover its cost, that the test takes two weeks, and that it would not monitor her condition on a 24-hour basis as a medical alert dog would.

Complainant alleged that the Agency denied her requested accommodation in reprisal for her prior EEO complaint. She claimed that officials "dragged their feet when processing [her] request," that Postmaster 2 "had the final say so regarding this request," and that Postmaster 2's attitude toward her "changed drastically" after learning that she had named her, Postmaster 2, as a responsible management official.

With respect to claims 2 and 3, Complainant stated that she was at her desk when S1 came to her and told her that she needed to go to the office with S1 and the Postmaster. Complainant told S1 that she wanted a union steward to go with her, S1 went to speak to the Postmaster, S1 returned and stated that Complainant should go to the office or the discussion would occur on the floor, and Complainant got up and stated that she needed to go to the bathroom. According to Complainant, she was hoping to see the union steward on her way to the bathroom "so [she] could tell him [she] was being threatened and harassed by the management officials." Complainant asserted that S1 yelled at her and told her not to talk to the steward. Complainant also asserted that the steward asked her what was happening, and she told him the officials were requiring her to go to the office and denying her representation. As Complainant got near to the office, the Postmaster yelled at her to get in the office, she refused, the Postmaster yelled again, and she refused again, and the Postmaster "screamed" at her to get out of the building.

Complainant maintained that she "never touched, bumped, or even came close to assaulting" S1. She asserted that the "story was made up" in retaliation for her EEO complaint. She was not aware of any other employees who were or were not placed in off-duty status under similar circumstances. She likewise was not aware of any other employees who were or were not issued suspensions under similar circumstances. Complainant argued that managers violated the collective bargaining agreement when they issued the suspension because they did not follow its progressive-discipline policy.

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<sup>6</sup> In a January 20, 2017, letter to Complainant, Trainer 2 stated that Complainant and her dog had "successfully undergone training that meets the requirements set forth by this institution to achieve the level of certification" and that she rarely had met a dog "so focused on his job."

Complainant attached numerous documents to her affidavit, including statements that she, the union steward, and a coworker made in connection with Complainant's grievance challenging the suspension. Complainant also submitted a February 7, 2017, Polygraph Report in which a Polygraph Examiner stated that he administered a polygraph examination to Complainant; he asked her whether she touched S1 on January 31, 2017; and she replied, "No." According to the Examiner, Complainant's "results were 'No Deception Indicated.'"

In her affidavit, S1 stated that she placed Complainant in an off-duty status because of "[c]onduct unbecoming/actions." With respect to the circumstances leading to Complainant's suspension, S1 stated that she "cannot recall exactly what occurred. But I was instructed to give [Complainant] a verbal discussion. She wanted her union. I told her it wasn't needed for a verbal discussion. She got angry [and] pushed me and walked away." She replied, "No" in response to the EEO Investigator's questions about whether any other employees under her supervision had been placed in off-duty status or suspended, or not placed in off-duty status or suspended, under circumstances similar to Complainant's.

S2 stated in her affidavit that the Agency issued the suspension "for conduct unbecoming." She stated that Complainant refused S1's request to accompany her to the delivery office and asked for a union representative. According to S2, Complainant "abruptly got up from her chair, got into [S1's] face, pushing her with her chest, stating she was going to the bathroom."

Postmaster 2 noted in her affidavit that Complainant submitted her reasonable-accommodation request before she arrived at the facility. Like S1 and S2, Postmaster 2 stated that S1 placed Complainant in an off-duty status because of "[c]onduct unbecoming actions." According to Postmaster 2, "Complainant was informed that her action of pushing a supervisor with her chest was unacceptable, considered as violent, [and] was issued a 14-day suspension." She replied, "No" to the EEO Investigator's questions about whether any other employees under her supervision had been placed in off-duty status or suspended, or not placed in off-duty status or suspended, under circumstances similar to Complainant's.

In her affidavit, HR Manager 1 confirmed that she was a member of the DRAC and that the DRAC made the decision to deny Complainant's reasonable-accommodation request "with consultation/advice [through] the Postal Service's legal department." She referred the EEO Investigator to the DRAC's February 9, 2017, letter for the reasons why the Agency denied Complainant's request. She was not aware of any other employees who made reasonable-accommodation requests under circumstances similar to Complainant's. The DRAC Chairman also stated in his affidavit that he was not aware of any similar requests and referred the EEO Investigator to the DRAC correspondence.

HR Manager 2 stated in his affidavit that the DRAC "did not grant the accommodation as it is not warranted. The action was taken after consulting the [Agency's] Legal Department."

According to HR Manager 2, “[o]n consultation with [Complainant’s] medical provider, there was no information given that supported the medical usefulness of the dog in detecting the onset of her cardiac condition.” He stated that no other employee’s reasonable-accommodation request was granted or denied under similar circumstances.

S1, S2, Postmaster 2, HR Manager 1, HR Manager 2, and the DRAC Chairman all stated that they were not aware of Complainant’s prior EEO activity.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge. 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 decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

In its final decision, the Agency concluded that Complainant’s “increased susceptibility to strokes caused her to be a person with a disability as she had a cardiac condition subjecting her to a-fib.” The Agency also concluded that Complainant was a qualified individual with a disability because she could perform the essential functions of her position.

The Agency found, however, that it did not unlawfully deny Complainant’s request for reasonable accommodation. Citing Conley v. U.S. Postal Service, EEOC Appeal No. 01984624 (July 6, 2001),<sup>7</sup> the Agency stated that “an employer is not required to provide an accommodation which does not assist the complainant in performing the essential functions of his or her position.” The Agency found that there was no evidence “that Complainant’s a-fib prevented her from performing her duties” or that she could not perform her job without the use of a service dog.

The Agency also found that Complainant did not establish a prima facie case of reprisal. Noting that the settlement of Complainant’s prior EEO complaint occurred more than five months before the incidents at issue in this case, the Agency determined that “the more than five-month gap is too attenuated to suggest an inference of retaliation.”

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<sup>7</sup> In Conley, the Commission held that an agency provided a complainant with reasonable accommodation when, after the accessible parking space that the complainant used became unavailable due to construction, the agency assigned him to a different parking lot and provided shuttle service between the new lot and the agency. In describing an employer’s reasonable-accommodation obligations, the stated that, generally, an agency must accommodate the known limitations of a qualified individual with a disability; there must be a nexus between the disability and the requested accommodation; and “[a]n agency is not required to provide a requested accommodation if it does not assist the disabled employee to perform the essential functions of his or her position.”

The Agency similarly found that Complainant did not establish prima facie cases of discrimination based on race, color, or disability because she did not show that the Agency treated a similarly situated employee not in her protected groups more favorably than it treated her.

In addition, the Agency found that it articulated legitimate, nondiscriminatory reasons for its actions and Complainant did not show that the articulated reasons were a pretext for discrimination. It concluded that “Complainant’s allegations are not supported by the totality of the record and she has failed to present any plausible evidence that would demonstrate that management’s reasons for its actions were factually baseless or not its actual motivation.”

### CONTENTIONS ON APPEAL

On appeal, Complainant, through her non-attorney representative, argues that she provided the Agency with sufficient documentation to establish that she is an individual with a disability and that her disability “necessitates a reasonable accommodation.” She maintains that her medical-alert dog is a service animal, that a service animal is an assistive device, and that it “needs to be treated the same as other assistive devices would be.” She further maintains that she is an individual with a disability who needs to have her medical alert dog with her at work and that the Agency has not shown that granting her requested accommodation would have caused an undue hardship.

With respect to the Agency’s claim that Physician 2 told the DRAC that she could wear a monitor, Complainant asserts that Physician 2 “stated the monitor is not something that is worn for an extended period of time and it doesn’t remove the direct threat of the complainant going into an a-fib attack and being warned quickly enough of it.” According to Complainant, the monitor is used to determine how frequently atrial fibrillation occurs, an outside company monitors it, and there is no way to alert a patient that she is having an atrial fibrillation episode. Complainant asserts that, without “knowing she is having an episode, she could do something that would cause her to have a stroke or heart attack.”

With respect to the Agency’s statement that Trainer 1 had not trained a dog to look for atrial fibrillation, Complainant states that she “was fortunate enough to find a dog that alerted her to a-fib without any training” and that the dog was obedient when she brought it to work at the DRAC’s request. In response to the Agency’s statement that neither Physician 2 nor Trainer 1 knew of dogs being used to detect atrial fibrillation, Complainant asserts that other people have used dogs to alert them to cardiac events. She attaches copies of two articles concerning the use of cardiac service dogs.

In addition, Complainant contends that an agency’s obligation to provide reasonable accommodation is not limited to modifications that enable an employee to perform essential functions.

She maintains that reasonable accommodation includes the elimination of barriers to the enjoyment of equal benefits and privileges of employment and that an employee with a disability has a right to “enjoy the same freedom of movement as employees without disabilities.” Further, Complainant argues that the Agency has not shown that allowing her to bring her medical alert dog to work would have resulted in an undue hardship.

Finally, Complainant argues that she established a prima case of reprisal regarding her placement in off-duty status and the 14-day suspension because the responsible management officials were aware of the agreement settling her prior complaint. She denies that she pushed S1 and asserts that S1’s inability to remember exactly what occurred supports her position. Complainant alleges that S1 “cannot remember what occurred because she was either told to lie about happened or took it upon herself to lie about what happened.” She also alleges that Postmaster 2 and the supervisors have created a hostile work environment. In addition, Complainant notes that she paid for a polygraph examination, which showed that she was not being deceitful. She states that the Agency settled her grievance by rescinding the suspension, and she claims that the Agency’s “Labor Relations Specialist would never have agreed to settle the grievance the way that she did” had Complainant pushed S1.

In response, the Agency argues that the final agency decision correctly found that Complainant did not establish that the Agency discriminated against her based on race, color, disability, or reprisal. The Agency reiterates the February 9, 2017, DRAC decision’s descriptions of what Physician 2 and Trainer 1 told the DRAC. Although the Agency states that Physician 2 told the DRAC “that he did not suggest the use of a dog to detect atrial fibrillation,” it also notes that “the August 31, 2015, medical documentation from [Physician 2] specifically recommended “a trained atrial fibrillation detection dog.” The Agency notes that Complainant admitted that her dog had not received formal training and, citing Vina D. v. Department of Agriculture, EEOC Appeal No. 0120150054 (May 25, 2017),<sup>8</sup> states that the Commission’s Office of Federal Operations has held that an agency properly denied a request for a service animal that had not been fully trained. According to the Agency, “it was certainly appropriate for the DRAC to conclude that Complainant failed to establish the requisite nexus between her medical condition and her requested accommodation.”

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<sup>8</sup> The complainant in Vina D. asked the agency to accommodate her hearing disability by allowing her to bring a dog to work to alert her when the telephone rang, or someone entered her workspace. Noting that the dog was not yet fully trained to be a service animal, an agency official offered to change the locks on complainant’s doors, replace her telephone with a cell phone, install a light that would alert her when someone was at her door, and contact an organization to analyze complainant’s work area and offer recommendations. Noting that the complainant provided no evidence that the offered accommodations were ineffective, the decision held that, “based on the specific circumstances present,” the complainant did not establish that she was unlawfully denied reasonable accommodation.

In addition, the Agency notes that employees are entitled to effective accommodations but not necessarily the accommodations of their choice. The Agency maintains that “Complainant’s own doctor informed the DRAC that current technology existed that could accurately monitor Complainant’s medical condition. The fact that Complainant personally disagrees with [Physician 2’s] recommendation or that she found an article on the Internet that arguably contradicts such recommendation does not constitute a failure to accommodate.”

Further, the Agency argues that Complainant has not established a prima facie case of discrimination with respect to her placement in off-duty status and suspension. The Agency lastly argues that Complainant has not shown that discriminatory animus motivated the Agency’s actions.

### 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 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

#### *Reasonable Accommodation (Claim 1)*

Under the Commission’s regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause an undue hardship. See 29 C.F.R. § 1630.2(o), (p). An undue hardship is a significant difficulty or expense, in light of the nature and cost of the accommodation, the financial resources of the facility and agency, the agency’s operations, and the effect of the accommodation on the operations of the facility. Id. § 1630.2(p).

To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a “qualified” individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See, e.g., Bill A. v. Dep’t of the Army, EEOC Appeal No. 0120131989 (Oct. 26, 2016).

An individual with a disability is “qualified” if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that the 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).

Reasonable accommodation includes “[m]odifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position.” 29 C.F.R. § 1630.2(o)(ii). “In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” 29 C.F.R. pt. 6130 app. § 1630.2(o).

It may also be a reasonable accommodation to permit an individual with a disability to provide and utilize equipment, aids or services that an employer is not required to provide as a reasonable accommodation. For example, it would be a reasonable accommodation to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog to the employee.

Id.

Reasonable accommodation also includes “modify[ing] a workplace policy when necessitated by an individual’s disability-related limitations, absent undue hardship.” Thus, for example, an employer may need to permit in individual with insulin-dependent diabetes to keep food at her workstation or may need to allow an employee with a disability to use a refrigerator to store medicine that he needs to take during work hours. See Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002, question 24 (Oct. 17, 2002)

A reasonable accommodation must be effective. See U.S. Airways v. Barnett, 535 U.S. 391, 400 (2002) (“the word ‘accommodation’... conveys the need for effectiveness”). That is, a reasonable accommodation should provide the individual with a disability with “an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability.” 29 C.F.R. pt. 6130 app. § 1630.9. If more than one accommodation will enable an individual to perform the essential functions of his or her position, “the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations and may choose the less expensive accommodation or the accommodation that is easier for it to provide.” Id.; see also Goodman v. U.S. Postal Serv., EEOC Appeal No. 0120044371 (May 2, 2007). “The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the individual with a disability.” 29 C.F.R. pt. 6130 app. § 1630.9.

In this case, it is undisputed that Complainant is a qualified individual with a disability. Complainant asked the Agency to accommodate her disability by permitting her to bring her medical alert dog to work. The Agency denied Complainant's request because, according to the February 9, 2017, letter from HR Manager 2, the DRAC concluded that there was no nexus between her medical condition and the requested accommodation.

We disagree with the DRAC's conclusion. It is undisputed that Complainant experiences atrial fibrillation, has had strokes, and is at risk of having additional strokes. Complainant provided the DRAC with a list of dates and times when her dog alerted her to a-fib episodes. She also provided medical documentation establishing the connection between the a-fib and her request to have the dog: in a statement dated August 31, 2015,<sup>9</sup> Physician 2 expressly stated that a "trained atrial fibrillation detection dog is recommended to help detect atrial fibrillation in this high risk patient and reduce stroke risk"; in a May 2, 2016, Patient Summary, Physician 2 noted that Complainant brought her "afib service dog" to her medical appointment, the dog alerted her to a-fib twice in the past month, and each episode lasted for approximately 15 minutes; Physician 1 wrote in the April 27, 2016, FMLA form that Complainant had "a rescue dog in training to recognize her a-fib"; and Physician 3 noted in the November 26, 2016, Patient Summary that Complainant's dog was alerting her to a-fib episodes approximately every two weeks.

In addition, there is no explanation in the record for why Physician 2, during his conversation with the DRAC, purportedly contradicted his written comments in the statement dated August 31, 2015, and the May 2, 2016, Patient Summary. Those documents expressly refer to Complainant's use of a dog to detect atrial fibrillation. Although Trainer 1 purportedly told the DRAC that she did not know of anyone who had trained a dog to detect atrial fibrillation, Complainant stated in her sworn affidavit that her medical alert dog alerts her to a-fib. Even if HR Manager 2 accurately described the DRAC's conversation with Physician 2 and Trainer 1, we find that the preponderance of the evidence establishes a direct nexus between Complainant's request to bring her medical alert dog to work and her heart condition/atrial fibrillation.

We further find that the Agency did not offer Complainant an effective alternative accommodation. In the February 9, 2017, letter, HR Manager 2 suggested that leave or the use of a personal monitoring device might accommodate Complainant's condition. Although an employer may choose among effective accommodations, "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) (citing Mamola v. Group Mfg. Servs., Inc., 2010 WL 1433491 (D. Ariz. Apr. 9, 2010); Woodson v. Int'l Bus. Machines, Inc., 2007 WL 4170560 (N.D. Cal. Nov. 19, 2007)). Thus, "absent undue hardship, an agency should provide reasonable accommodations that permit an employee to keep working rather than choosing to put the employee on leave." Id.

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<sup>9</sup> As noted previously, Complainant asserted that Physician 2 put the wrong year on the statement and that the correct year is 2016.

In this case, using leave in lieu of bringing a medical alert dog to work would not have been an effective alternative.

Similarly, an offer to modify Complainant's assignment or schedule to enable her to use a personal monitoring device does not constitute an offer of an effective alternative accommodation. There is no evidence that Complainant sought to use such a device. In fact, on appeal, Complainant argues that a monitoring device would not alert her to atrial fibrillation. The Agency's role is to determine whether it can provide an effective accommodation without incurring an undue hardship. It is not the Agency's role to dictate what sort of assistive or monitoring device/animal Complainant chooses to use or otherwise to determine how Complainant monitors her heart condition. That decision rests with Complainant.

This is not a situation, such as that presented in Vina D. where the complainant rejected an agency's offer of an accommodation that would have eliminated the barrier to equal employment opportunity. Complainant sought permission to bring her medical alert dog to work so that the dog could alert her to episodes of atrial fibrillation. Based on the evidence before us, we find that the Agency's suggested alternatives would not have alerted her to a-fib episodes.

We note that, in its final decision, the Agency stated that there was no evidence that Complainant's atrial fibrillation or the lack of a medical alert dog prevented Complainant from performing the essential functions of her position. The DRAC, however, did not base its decision on Complainant's ability to perform essential functions. Moreover, the issue here is whether the Agency could have provided Complainant with "a change in the work environment... that enables an individual with a disability to enjoy equal employment opportunities." See 29 C.F.R. pt. 6130 app. § 1630.2(o). The Agency did not do so. Just as an employer, absent undue hardship, should permit an individual who is blind to use a guide dog at work or an individual with a disability requiring medication during work hours to use a refrigerator to store medicine, so too should the Agency have allowed Complainant to bring her medical alert dog to work. Unlike the agency in Conley v. U.S. Postal Service, the Agency here did not offer Complainant an effective alternative accommodation.

Further, we find that the Agency has not shown that allowing Complainant to bring her medical alert dog to work would have resulted in an undue hardship. The Agency did not base its denial of Complainant's request on the difficulty or expense that the requested accommodation would have entailed. The DRAC representatives specifically requested information about the dog's training and asked to observe Complainant and her dog in the workplace. Yet, nothing in HR Manager 2's February 9, 2017, letter stated that having the dog in the workplace would have caused any difficulty. Similarly, nothing in the letter stated that the Agency would have incurred any costs.

Having considered the evidence of record and based on the specific circumstances presented in this case, we find that the Agency unlawfully denied Complainant a reasonable accommodation for her disability.

Under Section 102 of the Civil Rights Act of 1991, compensatory damages may be awarded for pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. An agency, however, is not liable for compensatory damages in cases of disability discrimination where it demonstrates that it made a good faith effort to accommodate the complainant's disability.

In this case, Complainant requested permission to bring her medical alert dog to work in April 2016. The OIC did not meet with Complainant until June 10, 2016, and the DRAC did not ask Complainant for additional information until July 13, 2016. The Agency then waited until September 9, 2016, to request more information. Complainant completed a PS Form 2488 on September 17, 2016, and she met with DRAC representatives on November 16, 2016. Even though the Agency's February 9, 2017, decision was only three weeks after the DRAC representatives' January 18, 2017, teleconference with Physician 2 and Trainer 1, it was ten months after Complainant made her request. Given the two-month delay between Complainant's request and her meeting with the OIC, as well as the Agency's long delays in requesting additional information, we find that the Agency failed to make good-faith efforts to provide Complainant with a reasonable accommodation. Accordingly, we find that Complainant is entitled to compensatory damages.

#### *Disparate Treatment (Claims 2 and 3)*

To prevail in a disparate-treatment claim, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant must initially establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978). Proof of a prima facie case will vary depending on the facts of the particular case. McDonnell Douglas, 411 U.S. at 802 n.13. The burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is pretextual. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 519 (1993). Complainant can do this by showing that the proffered explanations are unworthy of credence or that a discriminatory reason more likely motivated the Agency. Burdine, 450 U.S. at 256. A showing that the employer's articulated reasons are not credible permits, but does not compel, a finding of discrimination. Hicks at 511.

Complainant can establish a prima facie case of reprisal discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination. Shapiro v. Social Security Admin., EEOC Request No. 05960403 (Dec. 6, 1996) (citing McDonnell Douglas Corp.). Specifically, in a reprisal claim, and in accordance with the burdens set forth in McDonnell Douglas, Hochstadt v. Worcester Foundation for Experimental Biology, 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976), and Coffman v. Dep't of Veteran Affairs, EEOC Request No. 05960473 (Nov. 20, 1997), a complainant may establish a prima facie case of

reprisal by showing that: (1) he or she engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he or she was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A nexus may be shown by evidence that the adverse treatment followed the protected activity within such a period of time and in such a manner that a reprisal motive is inferred. See Clay v. Dep't of the Treasury, EEOC Appeal No. 01A35231 (Jan. 25, 2005). An individual can engage in activity protected under Title VII by opposing a practice made unlawful by Title VII or by filing a charge, testifying, assisting, or participating in an investigation, proceeding, or hearing under Title VII. 42 U.S.C. § 2000(e)-3(a).

We assume, for purposes of analysis only and without so finding, that Complainant has established prima facie cases of discrimination based on race, color, disability, and reprisal. We find that the Agency articulated legitimate, nondiscriminatory reasons for its actions and Complainant has not shown that the reasons were a pretext for discrimination.

As Postmaster 2 and S1 noted in the January 31, 2017, letter, the Agency placed Complainant in an off-duty status because of inappropriate behavior “where the employee may be injurious to self or others.” The Notice of 14-Day Suspension for Conduct Unbecoming, Inappropriate Behavior stated that Complainant’s pushing S1 was “inappropriate behavior” and that her conduct on January 31, 2017, violated Agency rules concerning obedience and personal behavior.

We find that Complainant has not shown by a preponderance of the evidence that the Agency’s reasons were not credible. Complainant denied that she pushed S1, but she acknowledged that she told S1 that she wanted to go to the bathroom because she hoped to see the union steward on the way. She also acknowledged that she twice refused Postmaster 2’s request to go into the office. She also did not deny that she refused Postmaster 2’s request to see her cell phone. Even if Complainant did not push S1, we find that the evidence establishes that Complainant engaged in inappropriate behavior. Complainant has not shown a similarly situated employee, not in her protected groups, who engaged in similar behavior but was not similarly disciplined. To the extent that Complainant has argued that Postmaster 2 also yelled or that management officials otherwise engaged in offensive behavior, her argument does not establish discrimination. Postmaster 2 and management officials are not similarly situated to Complainant.

Further, Complainant has not shown that discriminatory animus more likely motivated the Agency’s actions. Her bare allegation that S1 contrived a story in retaliation for her EEO complaint is insufficient to establish discrimination.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that the Agency violated the Rehabilitation Act when it denied Complainant’s request for reasonable accommodation.

We further find that Complainant did not establish that the Agency discriminated against her based-on race, color, disability, and reprisal for protected EEO activity when it placed her in off-duty status and issued her a 14-day suspension. Accordingly, the Commission AFFIRMS in part and REVERSES in part the Agency's final decision. The complaint is REMANDED for compliance with this decision and the Order below.

### ORDER

The Agency, within one hundred and twenty days (120) of this decision, is ordered to take the following remedial action:

1. The Agency shall grant Complainant's request to bring her medical alert dog to work.
2. The Agency shall conduct and complete a supplemental investigation concerning Complainant's entitlement to compensatory damages as a result of the discriminatory denial of reasonable accommodation and determine the amount of compensatory damages due to Complainant. The Agency shall afford Complainant an opportunity to establish a causal relationship between the Agency's violation of the Rehabilitation Act and any pecuniary or non-pecuniary losses. Complainant shall cooperate in the Agency's efforts to compute the amount of compensatory damages she may be entitled to and shall provide all relevant information requested by the Agency. Within thirty (30) calendar days after completion of the investigation, the Agency shall issue a new Agency decision determining Complainant's entitlement to compensatory damages and shall pay Complainant the amount of compensatory damages due Complainant. The final decision shall contain appeal rights to the Commission. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.
3. The Agency shall provide a minimum of eight (8) hours of in-person or interactive training to the responsible management officials, including HR Manager 1, HR Manager 2, the OIC, the DRAC Chairman, and any other members of the DRAC who were involved in this matter. The training shall have a special emphasis on the Agency's obligation to provide reasonable accommodation to individuals with disabilities.
4. The Agency shall consider taking appropriate disciplinary action against the responsible management officials. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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 employ, the Agency shall furnish documentation of their departure date(s).

5. The Agency shall post a notice in accordance with the paragraph below entitled "Posting Order."

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Northbrook Post Office facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

#### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. §1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g).

The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0617)

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

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

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

The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

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

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

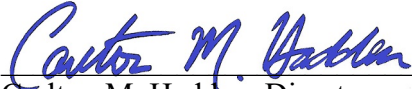
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from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

#### RIGHT TO REQUEST COUNSEL (Z0815)

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

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

FOR THE COMMISSION:



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Carlton M. Hadden, Director  
Office of Federal Operations

June 23, 2021

Date