



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

[REDACTED]
Aileen C.,¹
Complainant,

v.

Samantha Power,
Administrator,
Agency for International Development,
Agency.

Appeal No. 2019004993

Agency No. OCRD-001-14-F

DECISION

Complainant timely filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from an Agency decision, dated June 3, 2019, concerning Complainant's entitlement to compensatory damages, back pay, front pay, and attorney's fees and costs regarding an equal employment opportunity (EEO) complaint claiming employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

ISSUES PRESENTED

The issues presented are: 1) whether the Agency properly found that Complainant was entitled to \$4,283.28 in pecuniary compensatory damages and \$15,000 in non-pecuniary compensatory damages; 2) whether the Agency properly awarded Complainant front pay in the amount of \$145,553.72 (plus interest); 3) whether the Agency properly found that Complainant was not entitled to back pay for failing to mitigate damages; and 4) whether the Agency properly found that Complainant was entitled to \$44,530.92 in attorney's fees.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Senior Legislative Technical Specialist for the Agency's Office of Strategic Planning and Operations, Asia and Middle East Bureaus in Washington, D.C. On October 15, 2013, Complainant filed an EEO complaint alleging discrimination on the bases of disability (Parkinson's Disease) and age (67) when the Agency terminated her position as Senior Legislative Technical Specialist effective June 28, 2013.

Following 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 (AJ). After Complainant withdrew her request for a hearing, the Agency issued its final decision finding no discrimination. Complainant thereafter appealed the Agency's final decision to the Commission.

In Aileen C. v. Agency for International Development, EEOC Appeal No. 0120170399 (Sep. 18, 2018), the Commission reversed the Agency's final decision, finding that Complainant established that she was subjected to discrimination when she was terminated from her position. As a result of the finding of discrimination, the Commission ordered that Complainant be reinstated if Complainant's contracting employer still staffs the relevant (or a substantially equivalent) position at the Agency. The Commission's order with respect to back pay noted as follows:

Complainant is entitled to a back pay award, beginning from the effective date of her termination and continuing until she is reinstated to a position or declines an offer of one. If Complainant's contracting employer no longer staffs positions with the Agency to which Complainant can be reinstated, her back pay period shall end with the date this decision is issued

The Commission also ordered, in pertinent part, that if there is no position to which Complainant can be reinstated, Complainant is entitled one (1) year of front pay at the salary she earned while at the Agency, starting with the date her back pay award ends. The Commission further instructed the Agency to provide Complainant with compensatory damages and attorney's fees along with costs.

The Agency subsequently provided Complainant with a notice of her right to submit evidence in support of her claim for damages. On November 29, 2018, Complainant, through her counsel, submitted a compensatory damages memorandum, requesting \$15,832.50 in pecuniary damages and \$175,000 in non-pecuniary compensatory damages.²

² On December 3, 2018, Complainant submitted a second verified request, amending her request for pecuniary compensatory damages to \$17,705.70 for additional medical expenses she accumulated. Complainant specifically requested an increase in her health care costs totaling \$5,883.20.

Specifically, with regard to pecuniary damages, Complainant requested costs and moving expenses associated with her personal move from Virginia to Maine in the amount of \$7,539.22. Complainant also requested Continuation of Health Coverage (COBRA) for eight months at a cost of \$535.41 per month for a total of \$4,283.28 and co-payment for health care for a total of \$4,010.00.

In addressing her request for non-pecuniary compensatory damages, Complainant maintained that she suffered professional and emotional harm for more than five years as a consequence of the Agency's action in terminating her employment. Complainant asserted that at the time she was terminated from the Agency in June 2013, she was experiencing early symptoms of Parkinson's Disease. She maintained that the discriminatory termination caused her to delay her pursuit of medical testing so she could put in place a proper treatment for her Parkinson's Disease. Complainant stated that when she was notified in late May 2013 that her job would end the following month, the uncertainty over her health insurance and income caused her to postpone her medical appointments for about nine months. Complainant believed that this delay in her treatment regime had a permanent and harmful impact upon her health. Complainant asserted that specialists at her treating clinic stated that she had lost some opportunity to delay and slow the progress of the disease.

Complainant averred that the suddenness of the Agency's decision to end her contract in June 2013, caused her immediate financial harm that affected both her and mother. Complainant asserted that she was left no choice but to move to Maine to care for her mother, which was made more difficult for her due to the loss of her salary. Complainant further attested that being forced into early retirement without being financially prepared caused her to experience anxiety, depression, as well as sleep disturbances. She attested, moreover, that she became socially isolated, ashamed, and lost professional relationships as well as her professional reputation.

In addition, on October 17, 2018, and May 8, 2019, Complainant submitted petitions for attorney's fees requesting a total of \$47,783.79 in fees and \$272.44 in costs.

Agency's Final Decision on Damages

On June 3, 2019, the Agency issued its final decision concerning Complainant's entitlement to compensatory damages, back pay, front pay, and attorney's fees and costs. The Agency denied Complainant's request for pecuniary damages in the amount of \$7,539.22 related to her moving expenses wherein she moved to Maine on December 21, 2013. In denying Complainant's request for the moving expenses, the Agency determined that Complainant failed to establish a connection between the Agency's conduct and her move, as she did not move to Maine to seek new employment. The Agency also noted that Complainant sought reimbursement for her COBRA costs in the amount of \$4,283.28, as well as her bills for doctor visits and co-payments related to her Parkinson's Disease, among other conditions, in the amount of \$5,883.20 for a total of \$10,166.48. The Agency fully awarded Complainant's COBRA costs in the amount of \$4,283.28 but denied Complainant's request for \$5,883.20 in costs related to her doctor's bills.

The Agency also awarded Complainant \$15,000 in non-pecuniary compensatory damages, finding that Complainant experienced emotional distress, anxiety, depression, sleep disturbance, loss of confidence, loss of professional reputation, loss of professional connections, and issues with her relationship with her mother and others. The Agency also observed that the discrimination had a negative effect on Complainant's health and her Parkinson's Disease. The Agency, in limiting the non-pecuniary damage award to \$15,000, noted that Complainant did not submit written statements from any medical professionals, and she did not provide significant detail about the nature and extent of the harm she suffered.

With respect to back pay, the Agency noted that on December 21, 2013, approximately six months following her June 28, 2013 termination, Complainant moved to Maine to care for her elderly mother. The Agency observed that Complainant performed caregiver duties for her mother until her passing on July 4, 2018. The Agency noted that Complainant acknowledged that she did not seek employment during the back pay period because she needed to care for her mother. The Agency therefore found that Complainant voluntarily removed herself from the labor market and made no effort to mitigate her damages during the back pay period. As such, the Agency found that Complainant was not entitled to an award of back pay.

The Agency additionally found that Complainant could not be reinstated into her former position, as the company who staffed Complainant at the Agency no longer contracted with the Agency. As such, the Agency awarded Complainant front pay in the amount of \$145,553.72 (plus interest) at her salary for 2013.

In addressing attorney's fees, the Agency found that the hourly rates requested by Complainant's counsel, law clerks, and paralegals were reasonable. But deducted 7.8 hours of attorney's fees requested for work performed during the informal pre-complaint process. The Agency ultimately awarded Complainant \$44,530.92 in attorney's fees and \$272.44 in costs.

CONTENTIONS ON APPEAL

Complainant's Brief on Appeal

On appeal, Complainant, through her counsel, initially asserts that the Agency improperly did not award any benefits with her front pay award, and therefore argues that the Agency should have awarded her benefits in addition to her salary. Complainant asserts, moreover, that the Agency improperly determined that she was not entitled to an award of back pay. Complainant asserts that the Agency has not provided any evidence that there were, in fact, appropriate positions available for which she could have applied and for which she was qualified. Complainant contends that the Agency has not shown that there were any substantially equivalent positions for which she could have applied given her age and experience. Complainant maintains that the Agency should have taken into account her age of 67 in the context of determining whether her failure to obtain a substantially similar position constituted a failure to mitigate.

Complainant maintained that there were no substantially equivalent positions in Maine, and she could not afford to take a position paying substantially less as she needed to care for her mother while she worked.

Complainant contends that the Agency's discriminatory termination of her caused her to move to Maine to care for her sick mother, as she no longer had the financial capacity to hire support for the care of her mother. Complainant therefore maintains that the Agency erroneously denied her \$7,539.42 in moving expenses to care for her mother. Complainant further argues that she is entitled to an award of \$175,000 in non-pecuniary compensatory damages for the emotional harm she suffered as a result of the discriminatory termination. She states that because of the discriminatory termination she had to uproot her life and career and return to Maine because she could no longer make payments on behalf of her mother's care. She also states that her relationships with friends and colleagues ended. She suffered from depression, sleep interruption, financial anxiety, personal anxiety and a general loss in enjoyment of life. Complainant maintains her professional career ended and she was forced into retirement. Complainant believes that this emotional harm caused by the Agency amounted to far more than that accounted for by the Agency.

Complainant additionally asserts that the Agency improperly deducted 2.4 hours out of the 7.8 hours deducted from her counsel's fee petition, as the 2.4 hours were billed for reviewing her file deciding whether her counsel would accept representation of her.

Agency's Response

In response, the Agency requests that we affirm its final decision with respect to the remedies awarded to Complainant. The Agency initially asserts that Complainant is not entitled to an additional award of front pay. The Agency specifically maintains that it requested Complainant's company benefits package, and specified information regarding her benefits. But Complainant only submitted documentation with generalized benefits for all company employees instead of her specific benefits. The Agency notes that Complainant does not specify on appeal what benefits it did not pay for and how much in benefits is owed to her.

The Agency further maintains that Complainant is not entitled to an award of back pay because she took herself out of the job market, and therefore she did not mitigate her damages. The Agency specifically notes that the contractor company's separation letter invited Complainant to apply for other positions within the contractor company's capacity. But Complainant did not take the contractor company up on their offer and she did not apply for other positions anywhere else. The Agency notes that Complainant lived in the Washington, D.C area for six months after her termination and before she moved to Maine, and notes that there was no evidence that she looked for other positions during this time period. The Agency also indicates that there is no evidence, or even an assertion, that Complainant submitted one resume or spoke to one recruiter regarding a job in Maine.

The Agency maintains, moreover, that Complainant is not entitled to an award for moving expenses related to her move to Maine, as she failed to submit a resume in the six months between her termination and move. The Agency additionally asserts that the \$15,000 awarded in non-pecuniary compensatory damages adequately compensated Complainant for the emotional harm she suffered. The Agency maintains that Complainant's mental suffering is similar to Commission cases wherein approximately \$15,000 was awarded. The Agency asserts that Complainant did not suffer professional harm as the contractor invited her to apply for other projects in its separation letter. The Agency lastly maintains that it properly calculated Complainant's award of attorney's fees and costs.

ANALYSIS AND FINDINGS

Pecuniary Compensatory Damages

Pecuniary losses are out-of-pocket expenses incurred because of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other such quantifiable expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement, whereas future pecuniary damages are those likely to occur after the resolution of the complaint. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at Chap. 11, § VII.B (internal citations omitted).

In a claim for pecuniary compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the agency's discriminatory conduct.

Upon review, we agree with the Agency's decision not to award Complainant pecuniary compensatory damages concerning her move to Maine. We find that Complainant has not established a casual connection between her move and the discriminatory termination. In so finding, there is no dispute that Complainant's move was related to the care of her Mother and not related to her seeking new employment. We find that the Agency cannot be held responsible, in this case, for the financial difficulties associated with Complainant's mother.³

³ We note that Complainant, on appeal, has not addressed the Agency's denial of her request for pecuniary damages regarding her costs related to her doctor's bills. We therefore decline to address these costs herein as Complainant has not raised them on appeal. We note that the Commission has the discretion to review only those issues specifically raised in an appeal. See EEO MD-110, at Chap. 9, § IV.A.3 (Aug. 5, 2015).

Notwithstanding, as explained below, we do find that Complainant is entitled to compensation related to the emotional harm caused by her own financial difficulties, which resulted from the discriminatory termination.

Non-pecuniary Compensatory Damages

The Commission notes that damage awards for emotional harm are difficult to determine and there are no definitive rules governing the amount to be awarded in given cases. In this regard, the Commission finds that a proper award must meet two goals: not be “monstrously excessive” standing alone and be consistent with awards made in similar cases. See Cygnar v. City of Chicago, 865 F.2d 827, 848 (7th Cir. 1989). Moreover, we point out that nonpecuniary, compensatory damages are designed to remedy a harm and not to punish the Agency for its discriminatory actions.

Section 102(a) of the 1991 Civil Rights Act authorizes an award of compensatory damages for all post-act pecuniary losses, and for non-pecuniary losses, such as, but not limited to, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to character and reputation, and loss of health. To receive an award of compensatory damages, Complainant must demonstrate that she has been harmed due to the Agency's discriminatory action; the extent, nature and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for recon. den'd. EEOC Request No. 05940927 (Dec. 8, 1995); EEOC's Enforcement Guidance: Compensatory and Punitive Damages Available under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992) (“Guidance”). Statements from others, including family members, friends, and health care providers can address the outward manifestations of the impact of the discrimination on the complainant. Id. The complainant could also submit documentation of medical or psychiatric treatment related to the effects of the discrimination. Id. Non-pecuniary damages must be limited to the sums necessary to compensate the injured party for the actual harm and should consider the severity of the harm and the length of time the injured party has suffered from the harm. Carpenter v. Dep't of Agriculture, EEOC Appeal No. 01945652 (July 17, 1995).

In determining non-pecuniary, compensatory damages, the Commission strives to make damage awards for emotional harm consistent with awards in similar cases. In this case, Complainant maintained that the discriminatory termination caused her to delay her treatment for her Parkinson's Disease. Complainant stated that when she was notified in late May 2013 that her job would end the following month, the uncertainty over her health insurance and income caused her to postpone her medical appointments for about nine months. Complainant believed that this delay in her treatment regime had a permanent and harmful impact upon her health. Complainant averred that the specialists at her treating clinic stated that she had lost some opportunity to delay and slow the progress of the disease. Complainant contended that the suddenness of the Agency's decision to end her contract in June 2013, caused her immediate financial harm that affected both her and mother. Complainant asserted that she was left no choice but to move to Maine to care for her mother, which was made more difficult for her due to the loss of her salary.

Complainant further wrote that being forced into early retirement without being financially prepared, caused her to experience anxiety, depression, as well as sleep disturbances. She attested, moreover, that she became socially isolated, ashamed, and lost professional relationships as well as her professional reputation.

After considering the awards in similar cases and the relevant factors discussed above, we find the Agency's \$15,000 award is insufficient to remedy the harm that its actions caused Complainant. We find that an award of \$100,000 is a more reasonable award for the emotional distress she suffered as a direct result of the Agency's conduct (termination of employment). See Cher C. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120140445 (Jan. 9, 2017) (\$95,000 awarded where complainant experienced stress, loss of professional standing, a panic attack, and exacerbation of her lupus symptoms); Emmett W. v. Dep't of Agriculture, EEOC Appeal No. 0120143098 (May 3, 2016) (\$80,000.00 as a result of the agency's discriminatory termination where complainant experienced financial difficulties, cancelation of medical insurance, exacerbation of his pre-existing condition, and sleeplessness, among other things); Billy B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120132680 (Nov. 19, 2015) (Commission awarded \$85,000 in non-pecuniary, compensatory damages where the agency discharged complainant, which exacerbated his preexisting condition and caused emotional distress, nightmares, a damaged professional reputation, isolation, weight gain, and paranoia).

We find the award of \$100,000 is not motivated by passion or prejudice, not “monstrously excessive” standing alone, and is consistent with the amounts awarded in similar cases.

Front Pay

As noted above, the Agency found that Complainant could not be reinstated into her former position, as the company who staffed Complainant at the Agency no longer contracted with the Agency. As such, the Agency awarded Complainant front pay in the amount of \$145,553.72 (plus interest) at her salary for 2013. We note that Complainant asserts, on appeal, that the Agency improperly did not award any benefits with her front pay award, and therefore argues that the Agency should have awarded her benefits in addition to her salary. However, Complainant has not explained what additional benefits she is entitled to and provides no documentation related to her benefits on appeal. We therefore find that Complainant has failed to provide evidence in support of her claim for additional front pay, and we therefore decline to disturb the Agency's award of front pay in this case.

Back Pay

The purpose of a back-pay award is to restore to a complainant the income she would have otherwise earned but for the discrimination. Albemarle Paper Co. v. Moody, 442 U.S. 405, 418-19 (1975); Davis v. U.S. Postal Serv., EEOC Petition No. 04900010 (Nov. 29, 1990). Gross back pay should include all forms of compensation and must reflect fluctuations in working time, overtime rates, penalty overtime, Sunday premium and night work, changing rate of pay, transfers, promotions, and privileges of employment to which the petitioner would have been

entitled but for the discrimination. Ulloa v. U.S. Postal Serv., EEOC Petition No. 04A30025 (Aug. 3, 2004) (citing Allen v. Dep't of the Air Force, EEOC Petition No. 04940006 (May 31, 1996)). In computing the net amount of back pay payable, an agency is required to offset any outside earnings received by an employee for other employment undertaken to replace the employment from which the employee was separated. See 5 C.F.R. § 550.805(e)(1). Specifically, § 706(g) of Title VII, 42 U.S.C. § 2000e-5(g), provides that “interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable.”

Here, the record reflects that the company contractor, in its separation letter, invited Complainant to search for other positions within the company that may be available. The separation specifically noted, in pertinent part:

I encourage you to institute your own search within [the company] for any available positions which might be of interest to you. To access a current listing of [company] openings, please go tocom.

There is no dispute that Complainant did not apply for or submit any resume for any position during the back pay period either before or after her move to Maine. We note, moreover, that Complainant did not apply for a position during the six-month period between her termination and her move to Maine. The record simply reflects that Complainant did not seek re-employment during the back pay period at all.

A complainant generally has a duty to mitigate damages. An agency has the burden to establish, by a preponderance of the evidence that a complainant has failed to mitigate her damages. See 29 C.F.R. § 1614.501(d); see also McNeil v. U.S. Postal Serv., EEOC Petition No. 04990007 (Dec. 9, 1999). The Commission has generally held that an agency must satisfy a two-prong test to meet its burden of proof. This test requires the agency to show that: (1) complainant failed to use reasonable care and diligence in seeking a suitable position; and (2) there were suitable positions available which complainant could have discovered and for which he or she was qualified. See Beaton v. Dep't of Justice, EEOC Petition No. 04A30044 (Jan. 13, 2004).

Upon review, like the Agency, we find that that Complainant failed to meet her burden to establish that she is entitled to recover back pay. We specifically find that during the back pay period at issue, Complainant was not engaging in reasonable efforts to find comparable employment. We note that where a complainant makes no effort to mitigate damages and does not explain the lack of effort, the Agency does not have to meet the second prong. See Simmons v. U.S. Postal Serv., EEOC Petition No. 04930005 (Dec. 10, 1993); Donovan v. U.S. Postal Serv., EEOC Petition No. 04A40004 (Jan. 13, 2004).⁴

⁴ As explained above, Complainant has presented no evidence that she looked for another position or sought employment in any fashion. As such, we find that Complainant has failed to specifically show that because of her age and work experience, she was unsuccessful in locating

Attorney's Fees

We note that Complainant asserts that the Agency improperly deducted 2.4 hours out of the 7.8 hours deducted from her counsel's fee petition, as the 2.4 hours were billed for reviewing her file regarding whether her counsel would accept representation of her. The Commission has previously found that an attorney may reasonably expend up to two hours to determine whether to represent a complainant. See Nita S. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120151925 (May 23, 2017); Walker v. Dep't of Agric., EEOC Appeal No. 01944314 (Aug. 4, 1995); Flora v. Dep't of Agric., EEOC Appeal No. 01943058 (May 26, 1995); Floxi v. U.S. Postal Serv., EEOC Appeal No. 01940384 (Oct. 14, 1994); Stauner v. Dep't of Agric., EEOC Appeal No. 01890678 (April 13, 1989). We therefore find that the Agency's reduction for work performed during the pre-complaint process was appropriate with the exception of two hours. We find that Complainant's counsel is entitled to two hours of work performed concerning whether to accept the representation of Complainant at his billed hourly rate of \$417, totaling \$834.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision.

ORDER

To the extent that it has not already done so, the Agency shall take the following actions within 120 days of the date of this decision is issued:

1. Pay Complainant \$4,283.28 in pecuniary compensatory damages and \$100,000 in non-pecuniary compensatory damages;
2. Pay Complainant front pay in the amount of \$145,553.72 (plus interest); and
3. Pay Complainant \$45,364.92 in attorney's fees (\$44,530.92 plus \$834) and \$272.44 in costs.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), 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.

any job that was comparable in skill, wages, and working conditions to her Senior Legislative Technical Specialist position.

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 the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

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

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

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

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

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

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision.

If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

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

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

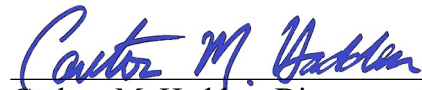
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title.

Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

August 2, 2021

Date