



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

[REDACTED]
Darius C.,¹
Complainant,

v.

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

Appeal Nos. 2020000613 and 2021001698

Agency Nos. 6X-000-005-19 and 1K-221-0035-20

DECISION

Complainant filed separate timely appeals with the Equal Employment Opportunity Commission (EEOC or Commission) from an Agency final decision dated August 6, 2019 (Agency No. 6X-000-005-19) and a second Agency decision dated November 24, 2020 (Agency No. 1K-221-0035-20). Both decisions addressed Complainant's assertions that the Agency was in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Since the Commission may, in its discretion, consolidate two or more complaints of discrimination filed by the same complainant, we have consolidated them for a joint appellate decision. See EEOC Regulation 29 C.F.R. § 1614.606. For the following reasons, the Commission REVERSES the Agency's final decisions in both complaints.

ISSUE PRESENTED

The issue presented is whether Complainant has shown by a preponderance of the evidence that the Agency subjected him to discrimination based on his disability in either or both complaints.

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 causal mail handler at the Agency's Northern Virginia Processing and Distribution Center in Merrifield, Virginia.

On December 29, 2018, Complainant filed an EEO complaint, Agency No. 6X-000-005-19 (Complaint 1), alleging that the Agency discriminated against him based on his disability (deafness) when, on October 30, 2018, the Agency failed to provide a sign language interpreter for a Combined Federal Campaign (CFC) event, which led him to feel segregated. Complainant was not provided with the CFC talk until November 2, 2018, when it was given to him separately.

The investigative record reflects the following pertinent matters relating to the subject claim. On October 30, 2018, the District Manager (RMO1²) and the Human Resources Manager (RMO2) held a CFC event that was organized by two non-managerial employees. Representatives from various charities spoke at the event. Posters advertising the CFC event were placed throughout the facility two-three weeks prior to the event. Management realized the day of the event that an interpreter was not scheduled. RMO1 asserted that once management realized an interpreter was not present, arrangements were made to schedule an interpreter to cover the CFC event material on another day. RMO2 noted that the representatives from the various charities could not come back for a second time so she provided the hearing-impaired employees an opportunity to directly communicate with the charities. Neither official discussed alternative options such as utilizing Video Remote Interpreting (VRI), or Video Relay Service (VRS).

On November 2, 2018, management arranged to have an interpreter present a repeat of the CFC event presentation. Complainant asserted that having a separate event made him feel segregated from other employees. Complainant noted that had an interpreter been available on October 30, 2018, then he would have also been able to participate in the discussions and contribute at the original event. Complainant asserted the secondary event was not sufficient and segregated hearing-impaired employees from the rest of the employees. RMO1 and RMO2 stated that management's mistake in not providing an interpreter was an unintentional oversight and was not meant to intentionally segregate Complainant. Both officials noted that an interpreter presented the same information albeit a few days after the original event.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

² Responsible Management Official (RMO).

On August 16, 2020, Complainant filed a second EEO complaint, Agency No. 1K-221-0035-20 (Complaint 2), alleging that the Agency discriminated against him based on his disability (deafness) when on May 13, 2020, Complainant was not provided with an interpreter during a last-minute emergency meeting regarding COVID-19.

The investigative record reflects the following pertinent matters relating to the subject claim. On May 13, 2020, the Senior Plant Manager (RMO3) and the Senior Manager of Distribution Operations (RMO4) held an emergency meeting. The purpose of the meeting was to relay to employees that there had been a COVID-19 positive individual on site that day. Complainant was informed of the meeting shortly before it started. When he arrived and noticed that a sign language interpreter was not present, he asked RMO4 about the matter. RMO4 acknowledged the lack of an interpreter but did nothing more. Complainant noted that management did not suggest or provide any alternate accommodations. Complainant stated that while he was provided with notes, he did not have access to any of the information being discussed and was unable to ask questions. Complainant noted that both officials were aware of his disability and have both provided a sign language interpreter on several occasions in the past. Neither official offered Complainant an alternative accommodation for the May 13, 2020 meeting.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency noted that due to the exigent circumstances of the emergency meeting, it was not a violation when management failed to provide Complainant with his preferred accommodation of a live interpreter. The Agency noted that management had provided an effective means of communication by providing Complainant with pertinent meeting notes. The Agency concluded that Complainant did not prove that the Agency subjected him to discrimination as alleged.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency provided an appellate brief for either complaint.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

ANALYSIS AND FINDINGS

As a threshold matter, we note that although the Agency made references to disability accommodations in both complaints, the focus of its analysis viewed the complaints in terms of disparate treatment. We determine that Complainant's claims of disability discrimination are more appropriately classified as a failure to accommodate, and not a disparate treatment claim. We will therefore analyze the complaints as a failure to accommodate claim.

Disability Accommodation

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 accommodation 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). To establish that he was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) he is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide him with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance on Reasonable Accommodation). 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). Complainant was born with a hearing impairment. The Agency did not dispute that Complainant is a qualified individual with a disability.

In the instant case, Complainant has essentially alleged a denial of an effective reasonable accommodation when the Agency failed to provide effective interpreter services during the October 30, 2018 CFC event and the emergency May 13, 2020 meeting. The Commission has previously found that an employer must provide reasonable accommodation to enable an employee with a disability to have equal access to information communicated in the workplace. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999) at question 14. We have previously held that "for a severely hearing-impaired employee who can sign, reasonable accommodation, at a minimum, requires providing an interpreter for safety talks, discussions on work procedures, policies or assignments, and for every disciplinary action so that the employee can understand what is occurring at any and every crucial time in his employment career, whether or not he asks for an interpreter." Feris v. Envtl. Prot. Agency, EEOC Appeal No. 01934828 (Aug. 10, 1995); see also Funk v. U.S. Postal Serv., EEOC Appeal No. 01984772 (July 27, 2001); Thomas v. U.S. Postal Serv., EEOC Appeal No. 01982321 (Feb. 2, 2001).

Moreover, the Rehabilitation Act requires that an agency reasonably accommodate hearing-impaired employees by providing effective interpreter services during work-related activities where hearing-impaired employees are expected to be present. Ortiz v. U.S. Postal Serv., EEOC Request No. 05960270 (Oct. 16, 1998).

The Agency officials³ here noted that Complainant was repeatedly accommodated in the past as an effort to demonstrate that the Agency adheres to the Rehabilitation Act. Past accommodation only serves to emphasize the Agency's failure to provide effective reasonable accommodations during both work place events.

Regarding the October 30, 2018 CFC event, RMO2 acknowledged that the Agency failed to provide a sign language interpreter during the event but asserted that management arranged to have an interpreter present for a second and equal CFC event presentation on November 2, 2018. RMO2 also noted that she provided Complainant, and other hearing-impaired employees, the opportunity to communicate with any of the charity representatives after the original event. RMO1 and RMO2 asserted that the second event provided Complainant an effective accommodation. Complainant asserted that the secondary event was segregated and did not give him a chance to understand and contribute to the discussion portion of the October 30, 2018 CFC event, and/or communicate with the charity representatives, who could not attend the second event.

Regarding the May 13, 2020 event, RMO3 and RMO4 repeatedly asserted that it was the emergency nature of the meeting that barred them from scheduling a sign language interpreter. Despite the lack of in-person interpretation, RMO3 and RMO4 asserted that Complainant essentially received an effective alternative accommodation when management exchanged notes during the meeting. RMO3 and RMO4 asserted that the notes sufficed to provide the pertinent information. Complainant asserted that he was again shut out from the conversation that occurred. We remind the Agency that the Commission has previously found that providing written materials does not excuse an agency from its obligation to provide a deaf employee with an interpreter simply because the employee can otherwise understand written material. Jackson v. U.S. Postal Serv., EEOC Request No. 05880750 (Apr. 18, 1989).

While Complainant did not request the presence of a sign language interpreter at either event, Agency management was well aware that he needed and was entitled to such a reasonable accommodation. Moreover, even if an in-person interpreter was unavailable on the last-minute May 13, 2020 meeting, the Agency had access to Video Remote Interpreting (VRI), or Video Relay Service (VRS) as per its own April 2017 *Reasonable Accommodation, An Interactive Process Handbook EL-307 (Handbook)*, which also refers individuals to a separate September 9, 2013 Management Instruction (MI) guideline titled, *MI Providing Communication Accommodations for the Deaf and Hard of Hearing, EL-670-2013-6*.

³ RMO1, RMO2, RMO3, and RMO4 collectively referred to as Agency officials.

Additionally, this issue is a recurring concern at this facility, particularly with management failing to utilize all available interpretation services when an in-person interpreter is unavailable. Coralee H. v. U.S. Postal Serv., EEOC Appeal No. 0120172277 (Feb. 15, 2019) (finding that the management at the same facility failed to provide complainant videophone and video remote interpreting services). The record demonstrated that effective alternatives to a live sign language interpreter services were feasible and readily available for this facility.

Based on a review of the record, we find that the Agency failed to provide Complainant with a reasonable accommodation, in violation of the Rehabilitation Act, when interpretation services were not provided during the October 30, 2018 CFC event and May 13, 2020 emergency COVID-19 meeting. Moreover, what was provided in terms of the second CFC event fails to qualify as an effective accommodation as it lacked the charity representatives from the first event and did not make up for Complainant's inability to engage in the discussions and interactions provided to other employees at the original event.

Good Faith Efforts

In reasonable accommodation matters, employer liability depends on a finding that, had a good faith interactive process occurred, the parties could have found a reasonable accommodation that would enable the individual with a disability to perform the essential functions of the job. Broussard v. U.S. Postal Serv., EEOC Appeal No. 01997106 (Sept. 13, 2002) (although agency cannot be held liable solely for failure to engage in interactive process, it can be held liable where failure to engage in process resulted in failure to provide reasonable accommodation), request to recon. denied, EEOC Request No. 05A30114 (Jan. 9, 2003). If the agency fails to demonstrate that it made a good faith effort to provide the complainant with a reasonable accommodation, then damages may be awarded. 42 U.S.C. § 1981a(a)(3); see also Jones v. Dep't of Agric., EEOC Appeal No. 0120080833 (July 18, 2012); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007).

In reviewing the record and history at this facility, we find that the Agency is clearly aware of its obligations to reasonably accommodate Complainant, and other hearing-impaired employees⁴.

⁴ We take administrative notice that there is a pattern of hearing-impaired employees being denied a reasonable accommodation of interpretation services at the Agency's Merrifield, Virginia facility. We note another matter in which a hearing-impaired employee was also denied access to a live interpreter, or interpreter services such as video remote interpreting. Coralee H. v. U.S. Postal Serv., EEOC Appeal No. 0120172277 (Feb. 15, 2019) (while complainant did not request the presence of an interpreter at the safety talk meeting, management was aware that she needed and was entitled to such a reasonable accommodation. As such, the agency failed to provide complainant with a reasonable accommodation in violation of the Rehabilitation Act); Coralee H. v. U.S. Postal Serv., EEOC Appeal No. 2019004219 (Aug. 6, 2020) (agency ordered to pay the complainant \$10,000 in nonpecuniary damages, amongst other remedies for its violation of the Rehabilitation Act).

Additionally, Complainant previously filed a complaint on the same issue where the Commission found that management failed to provide an interpreter, or an effective alternative. Darius C. v. U.S. Postal Serv., EEOC Appeal No. 0120160004 (Nov. 1, 2016) (Agency failed to provide interpreter during a scheduled service talk); see also Darius C. v. U.S. Postal Serv., EEOC Appeal No. 0120171165 (Oct. 12, 2018) (Agency ordered to pay \$1,000 in nonpecuniary damages).

Based on a review of the record, including those not specifically addressed herein, we find that the Agency failed to engage in good faith efforts to provide Complainant with an effective reasonable accommodation.

Facility's Reasonable Accommodation Procedures

The Commission's MD-715 is the policy guidance which the Commission provides to federal agencies for their use in establishing and maintaining effective programs of equal employment opportunity under Title VII and the Rehabilitation Act. MD-715 provides a roadmap for ensuring that all employees and applicants for employment enjoy equality of opportunity in the federal workplace regardless of race, sex, national origin, color, religion, disability, or reprisal for engaging in prior protected EEO activity. Compliance with MD-715 is mandatory for all Executive agencies. See Equal Employment Opportunity Commission Management Directive 715 (MD-715) ("Responsibilities") ("Agency Heads are responsible for the following: 1. Ensuring compliance with this Directive and those implementing instructions issued by EEOC in accordance with existing law and authority."). See also 29 C.F.R. § 1614.103(b)(2) ("This part applies to... Executive agencies as defined in 5 U.S.C. 105..."); and 29 C.F.R. § 1614.102(e) ("Agency [EEO] programs shall comply with this part and the Management Directives and Bulletins that the Commission issues").

In this case, we acknowledge that the Agency provided a copy of its April 2017 Reasonable Accommodation, An Interactive Process Handbook EL-307 (Handbook) regarding reasonable accommodation. The Handbook generally outlines the Agency's policy and obligations on procedures, guidance, and instructions on reasonable accommodation matters. While the Handbook does not cover details regarding accommodations for hearing-impaired or deaf employees, it does refer individuals to a separate Management Instruction (MI) guideline titled, MI Providing Communication Accommodations for the Deaf and Hard of Hearing, EL-670-2013-6, and last updated September 9, 2013.

While this MI covers a variety of matters related to accommodations for the deaf and hard of hearing, we conclude that the MI fails to effectively communicate the EEO policies and procedures in accordance with MD-715 because it does not clearly establish that written, exchanged notes do not qualify as an effective, reasonable accommodation. In the instant complaint, the Agency argued that the May 13, 2020 emergency meeting qualified as an exigent circumstance under the MI. The Agency argued that as such, management did not violate Complainant's rights when they only provided passed notes regarding the COVID-19 emergency meeting.

As stated above, providing written materials does not excuse an agency from its obligation to provide a deaf employee with an interpreter simply because the employee can otherwise understand written material. Jackson v. U.S. Postal Serv., EEOC Request No. 05880750 (Apr. 18, 1989). The MI's guidelines fail to make this abundantly clear.

Additionally, the MI provides that management is not in violation of the MI if there is a cancellation or failure of an in-person interpreter to appear as scheduled. The MI deems a cancellation or no-show as an exigent circumstance which releases the Agency of its obligation to provide interpretation services at an event. The MI further only requires the Agency to provide an accommodation as soon as "reasonably" as possible. This policy fails to consider that should there be a cancellation or a no-show, the Agency still has effective alternative methods, such as Video Remote Interpreting (VRI), or Video Relay Service (VRS), and should make every reasonable effort to provide such alternative resources to the employee(s) on the *same day* as the originally scheduled in-person interpretation. The current MI indicates that should an in-person interpreter cancel or fail to show, then an Agency is free of its obligations *until* it can "reasonably" reschedule. What the MI guidelines fail to make clear is that should in-person interpretation cancel or is a no-show, then the Agency is still obligated to attempt scheduling of VRI or VRS services. See Coralee H. v. U.S. Postal Serv., EEOC Appeal No. 0120172277 (Feb. 15, 2019). To this end, we find that the Agency shall work with the Commission's Federal Sector Programs to update and issue its reasonable accommodation procedures as ordered below.

CONCLUSION

Based on a thorough review of the record, we REVERSE the Agency's final decision in Complaint 1 and Complaint 2 and REMAND the matter in accordance with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

1. The Agency will immediately ensure that Complainant is provided with a qualified sign language interpreter when required during his employment, including at a minimum for safety talks, discussions on work procedures, policies or assignments, for performance evaluations and for every employee-wide event or emergency safety meetings so that the employee can understand what is occurring at any and every crucial time in the employee's career.
2. Within **ninety (90) calendar days** from the date this decision is issued, the Agency shall conduct a supplemental investigation of Complainant's entitlement to compensatory damages for both Complaint 1 and Complaint 2. The Agency is directed to inform Complainant about the legal standards associated with providing compensatory damages and give Complainant examples of the types of evidence used to support a claim for compensatory damages. Complainant shall be given **thirty (30) calendar days** from the date he receives the Agency's notice to provide all supporting evidence of his claim for compensatory damages. Within **thirty (30) calendar days** of the date the Agency

receives Complainant's submission, the Agency shall issue a new final decision determining Complainant's entitlement to compensatory damages, together with appropriate appeal rights.

3. Within **ninety (90) calendar days** from the date this decision is issued, the Agency shall provide eight (8) hours of in-person or interactive training to all managers and supervisors at its Northern Virginia Processing and Distribution Center regarding the Agency's obligation to provide reasonable accommodation under the Rehabilitation Act to qualified individuals with disabilities. The training must emphasize the Agency's obligations under Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and in particular, its duties regarding reasonable accommodation, and specifically with respect to the requirements for hearing-impaired employees as reviewed in this decision.
4. Within **sixty (60) calendar days** from the date this decision is issued, the Agency shall consider taking disciplinary action against RMO1, RMO2, RMO3 and RMO4. The Agency shall report its decision. 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.
5. The Agency's Reasonable Accommodation, An Interactive Process Handbook, EL-307 (Handbook) was last updated in April 2017, and the Management Instruction Providing Communication Accommodations for the Deaf and Hard of Hearing, EL-670-2013-6, was last updated on September 9, 2013. Within **sixty (60) calendar days** from the date this decision is issued, the Agency shall work with Federal Sector Programs (FSP) to issue updated and compliant reasonable accommodation procedures. The Agency shall work with FSP to incorporate this decision to effectively communicate the EEO policies and procedures in accordance with MD-715.
6. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Northern Virginia Processing and Distribution Center in Merrifield, Virginia 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).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

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

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

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

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

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

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

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

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

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

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title.

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

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

May 24, 2021

Date