



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Peggie T.,<sup>1</sup>  
Complainant,

v.

Debra A. Haaland,  
Secretary,  
Department of the Interior  
(Geological Survey),  
Agency.

Appeal No. 2020001880

Hearing No. 540-2017-00139X

Agency No. DOI-USGS-16-0209

**DECISION**

On January 16, 2020, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), from the Agency's August 27, 2019 determination that it was in compliance with its final order concerning backpay following an EEOC Administrative Judge's (AJ) decision finding that she was subjected to 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. For the following reasons, the Commission MODIFIES the Agency's award of backpay and REMANDS the matter to the Agency for further processing in accordance with our decision and order below.

**BACKGROUND**

Complainant worked for the U.S. Geological Survey, Southwest Biological Center, in Flagstaff, Arizona from April 25, 2011 to February 23, 2016 on the Flagstaff Science Campus as a GS-1220-09 Information Technology Specialist. Complainant filed a formal EEO complaint alleging that she was subjected to a hostile work environment and discriminated against on the bases of sex (female) and in reprisal for prior protected EEO activity as evidenced by multiple incidents including: (1) on an unspecified date, she was not promoted or made permanent as promised by

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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.

her supervisor; (2) on October 23, 2014, through February 16, 2016, her previous supervisor (S1A) removed various portions of her job duties; (3) from May 29, 2014 through February 16, 2016, she did not receive any work assignments when she began working for a new supervisor (S1B); (4) around May 2015 through December 2015, her former first-level supervisor discussed her performance with staff members in an attempt to mislead deciding officials about her position while she was on medical leave; (5) on an ongoing basis through February 2016, she discovered that her user account had been removed from the email distribution groups and was further denied access to many of the resources that were needed to do her job; (6) on or about February 1, 2016, she discovered that her Fiscal Year (FY) 2015 and FY 2016 Employee Performance Appraisal Plan (EPAP) were not established; (7) on February 16, 2016, she was informed by S1B, that S1A did not give him the router equipment, and was told that the "Subnet Project" is no longer needed; (8) on February 18, 2016, she was notified that her term appointment would end on February 23, 2016; (9) on February 18, 2016, she was not given the opportunity to be reassigned, ample notices regarding the termination, nor the opportunity to apply her skills in any of the five current vacant positions; and (10) from May 2014 through February 2016, Agency personnel failed to inform and guide S1B about the basic nature of needing to mitigate any further harassment or reprisal when acting as a liaison between Complainant and S1A.<sup>2</sup>

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 EEOC AJ. Complainant timely requested a hearing and the AJ held a hearing on December 4 -7 2018.

On July 11, 2019, the AJ issued her decision concluding that Complainant demonstrated by a preponderance of the evidence that the Agency unlawfully removed her job duties, failed to timely promote her to a GS-09 position, failed to renew her term appointment, and failed to convert her to a permanent GS-11/12 position due to unlawful discrimination based on her sex and prior EEO activity, and sexual harassment based on her refusal to accept S1A's unwelcome sexual advances.

The AJ ordered that the Agency take the following remedial actions: (1) payment of backpay and benefits related to (a) the Agency's failure to timely promote Complainant from a GS-7 to a GS-9 position; and (b) the Agency's failure to convert her from a GS-9 to a permanent GS-11/12 position; (2) payment of non-pecuniary compensatory damages in the amount of \$175,000; and (3) payment of pecuniary damages in the amount of \$5,866. Additionally, the AJ ordered Complainant to submit an Attorney's verified statement of fees and costs petition.

The Agency subsequently issued a final order fully implementing the AJ's decision and relief ordered. On December 10 and 11, 2019, Complainant served the Agency's EEO Director with a Notification of Non-Compliance with the Agency's order. The Agency did not submit a determination in response to Complainant's notification of noncompliance.

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<sup>2</sup> Prior to the hearing, Complainant withdrew an additional claim, as well as sex (pregnancy) and disability as bases of discrimination.

### CONTENTIONS ON APPEAL

Complainant asserts that the Agency has not calculated the backpay award properly by failing to include lost benefits, bonuses and promotions, including but not limited to a promotion to the GS-12 grade level. Complainant also asserts that the Agency failed to calculate and pay out the proper amount of prejudgment interest and increased tax liability caused by the lump sum payment. Lastly, Complainant asserts that the Agency failed to provide a “plain language” explanation of its backpay calculations.

### ANALYSIS AND FINDINGS

The purpose of a backpay award is to restore a prevailing party to the position she would have occupied absent 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). The agency is required to make certain deductions from backpay awards to ensure that the employee does not receive more in total benefits than she would have received in the absence of the personnel action.

The person who has been discriminated against must receive a sum of money equal to what would have been earned by that person in the employment lost through discrimination (gross backpay) less what was actually earned from other employment during the period, after normal expenses incurred in seeking and holding the interim employment have been deducted (net interim earnings). The difference between gross backpay and net interim earnings is net backpay due. Net backpay accrues from the date of discrimination, except where the statute limits recovery, until the discrimination against the individual has been remedied. Gross backpay should include all forms of compensation and must reflect fluctuations in working time, overtime rates, penalty overtime, Sunday premium and night work, changing rates of pay, transfers, promotions, and privileges of employment to which the prevailing party would have been entitled but for the discrimination. See Ulloa v. U.S. Postal Serv., Petition No. 04A30025 (Aug. 3, 2004) (citing Allen v. Dep’t of the Air Force, EEOC Petition No. 04940006 (May 31, 1996); Perez v. U.S. Postal Serv., EEOC Petition No. 04A40041 (Mar. 3, 2005)).

The Commission recognizes that precise measurement cannot always be used to remedy the wrong inflicted, and therefore, the computation of backpay awards inherently involves some speculation. Hanns v. U.S. Postal Serv., EEOC Petition No. 04960030 (Sept. 18, 1997). However, uncertainties involved in a backpay determination should be resolved against the agency which has already been found to have committed the acts of discrimination. Id.

The Commission finds that it is reasonable to require the agency to provide a clear and concise “plain language” statement of the formulas and methods it used to calculate petitioner’s backpay. See Vashi v. U.S. Postal Serv., EEOC Petition No. 0420060009 (Dec. 5, 2007) (noting that it is the agency’s obligation to ensure that its backpay calculations are clear, supported in the record and in accordance with 29 C.F.R. § 1614.501).

The AJ extended the time for the Agency to comply with completion of the ordered remedies until November 12, 2019. The record reflects that on approximately March 12, 2020, the Agency deposited a backpay payment of \$23,345 into Complainant's bank account.

The AJ ordered backpay for the delayed GS-09 promotion to be calculated from May 16, 2014 to December 28, 2014. In addition, the AJ ordered backpay for the Agency's failure to renew Complainant's term appointment and convert her to a permanent GS-11/12 position to be calculated from February 23, 2016 to the date when Complainant obtained an equivalent or a higher paid position or the entry of her judgment (i.e. July 11, 2019), whichever occurred first. The AJ further noted that step increases and promotion to a GS-12 position shall be calculated in accordance with Office of Personnel Management's guidelines and pay tables during the relevant time period.

#### *Complainant's Retroactive Conversion to Permanent GS-11/12*

Complainant would have started at the GS-11 grade, Step 1 (\$59,246 gross annual salary) on February 23, 2016. The record shows that Complainant was not eligible for a promotion to the GS-12, Step 1 (\$72,168 gross annual salary) until February 23, 2017, at which time she would have had the requisite 52 weeks in-grade to be promoted to the GS-12 position. See 5 C.F.R. § 300.604.

#### *Complainant's Job History Following Termination*

Between February 24, 2016 and November 26, 2016 Complainant was unemployed. On November 27, 2016, Complainant commenced a temporary position with the U.S. Peace Corps (Peace Corps) in Washington D.C., earning \$68,142.00 per year.<sup>3</sup> By the time the Peace Corps position ended Complainant's annual gross salary was \$70,103.

Complainant's salary during the first part of the Peace Corps term appointment was slightly higher than the salary she would have earned had the Agency not subjected her to harassment and retaliation. According to the Agency, this higher salary ends the backpay period. However, contrary to the Agency's assertion, the acceptance of the temporary Peace Corp position does not end the backpay period since it was not an equivalent or better position than Complainant's former position with the Agency. At the end of the term with the Peace Corps (i.e. the end of April 2017), Complainant was not eligible for a GS-12 promotion, nor did she earn a salary equal or greater than what she would have earned absent discrimination.

On February 23, 2017 (two months before the Peace Corps position ended), Complainant should have been promoted to GS-12 and would have earned a higher salary of at least \$72,168 (GS-12, Step 1).

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<sup>3</sup> Complainant asserts that she had to relocate from Flagstaff, Arizona to the Washington D.C. area to obtain employment.

In addition, Complainant's "pre-February 23, 2017 Peace Corps salary" was higher than what her GS-11 position would have been with the Agency because the Peace Corps position included a locality payment that compensated for the added cost-of-living expense associated with working in the Washington D.C. area. This locality payment should not be considered in the Agency's backpay calculations since it is meant to cover the higher costs associated with working in the Washington D.C. area. The undisputed record shows that the only job Complainant could get after her termination was one in Washington, D.C. If the Agency had not discriminated and retaliated against Complainant, she would have remained in Arizona.

On May 1, 2017, (upon the conclusion of the term position with the Peace Corps) Complainant started a position with the International Atomic Energy Agency (IAEA) in Vienna, Austria, earning a gross base salary of \$55,995.00, which was substantially lower than what she would have been earning absent discrimination.

The record does not contain any additional information pertaining to Complainant's post-termination work history. Accordingly, we find that Complainant has never obtained a position earning more than what she would have earned had she not been discriminated against. Accordingly, the backpay periods are as follows: (1) Backpay Period 1 consists of May 16, 2014 (i.e., the date Complainant should have been converted to the GS-9 grade level) to February 22, 2016 (i.e., the last day of her temporary appointment); and (2) Backpay Period 2 consists of February 23, 2016 (i.e., the day Complainant should have been converted to a permanent GS-11/12 position to July 11, 2019 (i.e., the date the AJ issued her decision).

#### *Retroactive Grade and Step Increases*

##### Backpay Period 1

The record shows that the Agency properly issued several corrected SF-50s for Backpay Period 1. Specifically, the record shows that the Agency retroactively promoted Complainant to the GS-9, Step 1 (\$54,573 gross annual salary) effective May 16, 2014. The documentary evidence further shows a step increase to GS-9, Step 2 (\$56,956 gross annual salary) effective on May 17, 2015.

##### Backpay Period 2

The documentation also shows that Complainant was properly converted to a career appointment at the GS-11, Step 2 grade (\$63,175 gross annual salary) effective February 23, 2016. The documentary evidence contains an SF-50 terminating the backpay period effective November 26, 2016 due to Complainant's appointment to a Peace Corps position. As discussed above, the Agency erred in terminating Complainant on February 23, 2016.

The undisputed record shows that the Agency failed to promote Complainant to the GS-12 level as ordered by the AJ or award any step increases that she would have received at the GS-12 level.

The record is devoid of evidence that Complainant ever obtained a permanent position with a higher salary than what she would have earned absent discrimination. Accordingly, as set forth in the order below, the Agency is required to recalculate the backpay award to add all the step increases that Complainant would have earned during Backpay Period 2.<sup>4</sup>

#### *Cash Awards*

##### Backpay Period 1

The record contains a corrected SF-50 reflecting a cash award of \$854 effective on December 12, 2014.

##### Backpay Period 2

It appears from the record that the Agency failed to retroactively issue cash awards to Complainant during Backpay Period 2 for the years 2016, 2017, 2018 and 2019.

#### *Healthcare Premiums*

Complainant asserts that the Agency inappropriately deducted healthcare premiums from her backpay award. Complainant asserts that she never wanted retroactive benefits, which are useless to her, she wanted monetary payment for the value of lost benefits, as ordered by the AJ.

An award of backpay should compensate a prevailing complainant for loss of health insurance coverage by either: (1) reimbursing her for health insurance premiums paid to continue in an agency-sponsored insurance plan or to secure alternate coverage; or (2) paying her for uninsured medical expenses incurred during the relevant period up to the amount the agency would have contributed to her health insurance premiums. see Wrigley v. U.S. Postal Serv., EEOC Petition No. 04950005 (Feb. 15, 1996); see also Yerger v. U.S. Postal Serv., EEOC Petitioner No. 04A50026 (Sept. 22, 2005) (citing McKinney v. U.S. Postal Serv., EEOC Petition No. 04980005 (Aug. 5, 1999).

Retroactively deducting insurance premiums from Complainant's gross backpay award does not fall under either of these scenarios. Accordingly, we agree with Complainant that health insurance premium payments during Backpay Period 2 should not have been deducted from her backpay award. Accordingly, the Agency shall correct their backpay calculations to correct this error.

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<sup>4</sup> It appears that Complainant would have been promoted to GS-12, step 2 on February 23, 2018, and GS-12, step 3 on February 23, 2019.

However, if during Backpay Period 2, Complainant incurred out-of-pocket medical costs or higher premiums that she otherwise would have incurred had she not been discriminated/retaliated against by the Agency, she is entitled to reimbursement of such additional costs so long as she provides the Agency with proof of such added expenses.

#### *Thrift Savings Plan (TSP)*

Complainant asserts she is entitled to revise the TSP elections she provided to the Agency on the basis that she had made her initial TSP election with the expectations that the Agency would have fully complied with the backpay order in 2019. It is unclear how the Agency calculated the reimbursement of TSP. Nevertheless, Complainant should be able to change her TSP election because of the significant failure by the Agency to comply with the AJ's backpay order.

#### *Additional Lost Benefits*

Complainant also asserts that the Agency failed to pay the monetary value of benefits including but not limited to life insurance, dental insurance and vacation pay. The Agency has failed to clearly explain its backpay and to what extent Complainant is entitled to these benefits.<sup>5</sup> Accordingly, we find that the Agency has not complied with this portion of the backpay order.

#### *Increased Tax Burden*

The AJ ordered the Agency to pay Complainant for any increased tax liability due to the lump sum backpay payment. Complainant submitted documentation demonstrating that the deficient backpay payment of \$51,590.73 resulted in an additional \$10,241 in additional tax liability in 2019 over what Complainant would have paid on this income had she received it in the appropriate years (2014-2016). The additional tax burden was calculated based on the difference between her projected tax return with the back wages and her projected return without the back wages.

The Agency asserts that Complainant's documentation is insufficient to prove her increased tax liability because she has not incurred any additional tax liability based on an income tax filing reflecting the lump sum payment. We agree with the Agency. However, on remand, the Agency shall give Complainant the opportunity to provide evidence concerning her entitlement to compensation for increased tax liability. Complainant, who bears the burden of proof, must submit evidence showing the difference between the taxes that she *paid* on the lump-sum payment and the taxes that she would have paid had the salary been earned over time. (emphasis added) See Darlene F. v. Soc. Sec. Admin., EEOC Petition No. 0420140010 (Apr. 8, 2016) ('It is Petitioner's burden to establish the amount of increased tax liability, if any.').

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<sup>5</sup> The Agency should request from Complainant documentation relevant to determining the value of the benefits lost as a result of the Agency's discrimination and retaliation.

That is, Complainant must show more than the total tax liability arising from her receipt of the lump-sum award; she must show the differential between this tax burden and the taxes that she would have paid if she had received the back pay as part of her salary. Johnson v. Envtl. Prot. Agency, EEOC Petition No. 0420060035 (Nov. 5, 2007). Complainant must “provide exact and detailed calculations showing the amount she is claiming.” Emerson S. v. U.S. Postal Serv., EEOC Petition No. 0420130026 (Nov. 20, 2015); compare Stefan H. v. Dep't of Justice, EEOC Petition No. 0420150008 (Feb. 18, 2016) (agency ordered to compensate petitioner for additional tax liability where tax preparer's letter explained in detail the additional liability and a methodology for avoiding a continuing cycle of tax penalties) with Cecile S. v. U.S. Postal Serv., EEOC Petition No. 0420120013 (Nov. 5, 2015) (tax preparer's letter that listed amounts of increased tax liability for back-pay years but did not explain how the amounts were calculated or include documentation indicating how the figures were reached was insufficient to support entitlement to tax-consequences award). For example, Complainant should submit detailed calculations showing the tax liability that she actually incurred for each year of the back-pay period, the tax liability that she would have incurred in each of those years if she had received the back pay in the form of a regular salary, and the tax liability that she incurred solely as a result of her receipt of the lump-sum back-pay award. Following receipt of Complainant's claim and supporting documents, the Agency shall issue a decision on the tax-liability matter.

#### *Interest on Backpay*

The AJ ordered that prejudgment interest be paid on lost backpay from the date Complainant was eligible or entitled to such additional compensation to the date that the monetary amount is paid.<sup>6</sup> The Agency paid prejudgment interest to Complainant in the amount of \$7,179.97. Assuming, the Agency properly calculated the prejudgment interest on its backpay award, as noted herein, that award was based on an incorrect backpay period.<sup>7</sup> Accordingly, we find that the Agency failed to fully comply with this portion of the AJ's order.

#### *Plain Language Explanation*

We agree with Complainant that the Agency did not adequately explain its backpay calculations in “plain language.” There is no explanation of how it arrived at the components of the backpay. Although three numbers are listed as totaling \$51,590.73 amount, there is no plain language explanation of how the Agency arrived at the components totaling these three amounts. There is no explanation of how vacation pay was calculated into that amount. There is no explanation of how the Agency calculated bonuses or the monetary value of lost benefits. There is no explanation of life insurance or other benefits. We agree with Complainant that the Agency's documentation consists mainly of incoherent listings of numbers, and very little language, much less plain language, regarding backpay computations.

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<sup>6</sup> See 26 U.S.C. § 6621(a), and 5 C.F.R. § 550.806(d) and (e). *See also* EEOC MD 110 at 9-19.

<sup>7</sup> We note that the Agency failed to properly explain its calculations.



Additionally, there is no plain language describing the value of benefits or the methodology of interest calculations.<sup>8</sup> Accordingly, we find that the Agency has failed to comply with the AJ's order.

### CONCLUSION

As set forth more fully above, we find that the Agency has not complied with the AJ's order pertaining to backpay and interest. Accordingly, we Order the Agency to comply as set forth herein.

### ORDER

The Agency is ORDERED to take the following remedial actions, to the extent that it has not already done so, within sixty (60) days from the date of this decision:

1. The Agency shall recalculate the backpay and interest owed to Complainant in accordance with 29 C.F.R. § 1614.501. Backpay for the delayed GS-09 promotion shall be calculated from May 16, 2014 to December 28, 2014 (Backpay Period 1). Backpay for the Agency's failure to renew Complainant's term appointment and convert her to a permanent GS-11/12 position shall be calculated from February 23, 2016 to July 11, 2019 (Backpay Period 2). Gross back pay includes all forms of compensation such as wages, bonuses, vacation pay, and all other elements of reimbursement and fringe benefits such as contributions to thrift savings, as well as pensions, life insurance, and health and dental insurance.
2. Prejudgment interest shall be paid on the lost back pay and benefits at the annual percentage rate or rates established by the U.S. Secretary of the Treasury under 26 U.S.C. § 6621(a), and 5 C.F.R. § 550.806(d) and (e). Interest shall be paid from the dates Complainant was eligible or entitled to such additional compensation to the date that the monetary amount is paid by the Agency. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) at 9-19.
3. After receipt of the net backpay award, Complainant shall provide the Agency with documentation of the increased tax liability associated with obtaining the lump sum payment.<sup>9</sup> The Agency shall pay Complainant this additional remedial relief within thirty (30) days from the date Complainant provides the appropriate documentary evidence of such increased tax liability.

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<sup>8</sup> To the extent that the Agency requires additional information from Complainant to accurately assess the backpay she is owed, it must request specific information from Complainant, in writing.

<sup>9</sup> Complainant shall also include the initial prior lump sum payments.

4. The Agency shall provide Complainant with a detailed statement clarifying how the backpay, benefits, and interest awards were reached. The statement shall consist of a clear and concise, "plain language" statement of the methods of calculations used for the instant matter and actual calculations applying said formulas and methods. If there is still a dispute regarding the exact amount of backpay, benefits, and interest, the Agency shall issue a check to Complainant for the undisputed amount.
5. Complainant shall cooperate in the Agency's efforts to compute the amount of backpay, benefits, and interests and shall provide all relevant information requested by the Agency. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
6. 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 of the Agency's calculation of backpay and other benefits due Complainant.

#### ATTORNEYS 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 this appeal. 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 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 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0920)

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

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

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

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

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

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

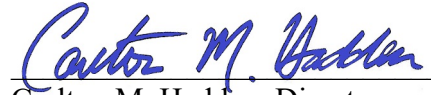
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from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

#### RIGHT TO REQUEST COUNSEL (Z0815)

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

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

FOR THE COMMISSION:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

April 22, 2021

Date