



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Barbie W.,<sup>1</sup>  
Complainant,

v.

Christine Wormuth,  
Secretary,  
Department of the Army,  
Agency.

Appeal No. 2020002288

Hearing Nos. 480-2013-00073X  
480-2013-00074X  
480-2012-00745X

Agency Nos. ARSHAFTER09NOV05346  
ARSHAFTER10JUL03258  
ARSHAFTER11MAR01488

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 19, 2019, final agency decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Information Technology Specialist, GS-12, at the Agency's Customer Service Center, 30<sup>th</sup> Signal Battalion, Schofield Barracks, Hawaii.

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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.

In formal EEO complaints filed on January 6, 2010; September 14, 2010; and May 18, 2011; and subsequently amended, Complainant alleged that the Agency discriminated against her and subjected her to a hostile work environment based on race (African American), sex (female), the intersectional basis of race and sex, and in reprisal for prior protected EEO activity when:

1. on November 4, 2009, her second-level supervisor (S2) requested her acknowledgement for a Level 2, "Excellent" Work Performance Evaluation;
2. on March 4, 2010, her first-level supervisor (S1) provided her with a Memorandum of Counseling for Disruptive and Unprofessional Behavior;
3. on March 22, 2010, the Battalion Commander (S4) provided her a Notice of Decision on Proposed Suspension;
4. between June 7 and July 16, 2010, S1 and S2 prevented Complainant from preparing for and disrupted her presentation and instruction to students;
5. on June 15, 2010, S1 pointed his finger at her and made an inappropriate comment to her;
6. from June 15 to July 9, 2010, S1 provided Complainant with verbal and written counseling for work performance issues, being late to work, and not following established time and attendance procedures;
7. on June 17, 2010, Complainant was denied the opportunity to work the same capacity as her GS-12 Lead IT Specialist counterpart when her request to distribute work orders was denied;
8. on July 8, 2010, S1 changed her lunch time;
9. on July 12, 2010, S1 informed Complainant not to perform her duties in the training room but to return to her duties and responsibilities at the help desk, if classes were not being conducted;
10. on July 27, 2010, the Deputy Director (S3), who served as Complainant's second-level and third-level supervisor during different periods, purportedly informed Complainant of management's intent to suspend her for failing to follow instructions;
11. on September 7, 2010, S3 provided her a Notice of Proposed 14-Day Suspension for failing to follow instructions;
12. on October 12, 2010, S4 provided her a Notice of Decision to the Proposed Notice of 14-Day Suspension;
13. on November 30, 2010, S1 provided Complainant a Level 4 "fair" work performance evaluation;
14. management failed to take corrective action based on testimony Complainant provided during an Investigations and Resolution Divisions (IRD) fact-finding conference (FFC) held January 18, 2011;
15. on February 15, 2011, S3 denied Complainant's request for additional compensatory time and claimed that Complainant had made a fraudulent request;
16. on February 18, 2011, S1 drafted a request for a disciplinary action (CPAC-25) that included Complainant's Social Security Number and other personal data and sent it to coworkers;
17. on February 22, 2011, S1 took Complainant's purse and asked another coworker to look through it; and

18. a projected leave calendar maintained by S1 reflected that Complainant had taken 24 hours of leave on March 11, 14, and 15, 2011, as opposed to eight hours of leave taken on March 15, 2011, and which S3 refused to correct upon Complainant's request.

At the conclusions of the investigations, the Agency provided Complainant with copies of the reports of investigation and notices of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing, and an AJ held a hearing on December 9, 10, 12, and 13, 2013, and April 7, 2014. A decision was issued on January 20, 2017, finding that Complainant established that the Agency subjected her to reprisal with respect to the February 18, 2011, CPAC-25 matter (claim 16) but did not establish that the Agency discriminated against her with respect to any of the other matters raised in her complaints. Complainant was awarded \$2,000.00 in nonpecuniary damages and \$625.62 in pecuniary damages. The Agency was ordered to provide training to S1 and to post a notice of the finding of retaliation. The Agency subsequently issued a final order fully implementing the AJ's decision.

Thereafter, Complainant filed an appeal to the EEOC. On appeal, Complainant argued the Agency subjected her to discrimination with respect to the remaining incidents at issue. She requested an increase in nonpecuniary, compensatory damages. Further, Complainant stated that she submitted a request for attorney's fees and costs to the AJ on September 22, 2017, but did not receive a ruling on the matter. She asked the Commission to award her \$76,232.07 in fees and \$136.39 in costs.

In response to Complainant's appeal, the Agency argued there was no evidence that any of the actions at issue were motivated by discriminatory animus.

In EEOC Appeal No. 0120171302 (April 9, 2019), OFO found except for the allegation involving the CPAC-25 matter (claim 16), Complainant had not established that the Agency subjected her to discrimination or harassment based on race, sex, the combination of race and sex, or reprisal. We found no error in the AJ's determination that Complainant was entitled to receive \$2,000.00 in nonpecuniary damages and \$625.62 in pecuniary, compensatory damages. Further, we noted Complainant prevailed on one claim (claim 16) and is entitled to receive reasonable attorney's fees and costs for work done on that claim (claim 16). We noted that the AJ's decision and the Agency's final action implementing that decision do not address the issue of attorney's fees. Thus, we remanded the matter of attorney's fees to the Agency for a decision on the issue.

#### *Complainant's Request for Attorney's Fees*

On May 7, 2019, Complainant filed her request for attorney's fees. Complainant provided evidence indicating her request was received by the Agency on May 13, 2019. Complainant requested attorney's fees in the amount of \$78,930.00 for 263.1 hours of work performed between March 16, 2011 and April 16, 2019, at the rate of \$300.00 per hour; a 4.7% excise tax of \$3,709.71; and costs in the amount of \$208.84, for a total of \$82,639.71.

In a declaration, Complainant's attorney stated that she worked on the complaints cited from February 2010 up to the decision on April 12, 2019. The attorney stated that work from February 2010 through March 15, 2011,<sup>2</sup> was excluded from the attorney's fees and costs request as it pertained to claims not intertwined with claim 16. The attorney stated that the billing amount was reasonable and was necessary to protect Complainant's rights in this case for eight years. The attorney requested payment for eight years of work regarding retaliation from S1 to Complainant in 2011, which escalated throughout the years.

*Agency Opposition to Attorney's Fees*

On November 15, 2019, the Agency filed an Agency Opposition to Motion for Attorney's Fees. The Agency stated that she received Complainant's Motion for Attorney Fees on November 8, 2019. The Agency argued that Complainant's Attorney has failed to support her claim that \$300.00 per hour is warranted.

The Agency also noted that while Complainant's Attorney claimed she omitted hours for other claims which were unsuccessful, this is belied by the fact that she claimed all 40 hours of hearing time, 24 hours of fact-finding time, over 20 hours of hearing preparation, and 30 hours of drafting closing arguments and proposed findings of fact and conclusions of law. The Agency notes that she refers to seven years of work and a complicated fact intensive case which required extensive research. The Agency argued in light of the limited success, the amount of attorney's fees and costs be reduced.

Further, the Agency argued the Commission has held that two hours is a reasonable time for an attorney to determine whether to represent a Complainant. Thus, she argues that Complainant's request for 5.3 hours of pre-complaint time, should be reduced by 3.3 hours.

The Agency noted the single successful claim was part of a complaint filed on May 18, 2011. The Agency initially dismissed the complaint for failure to state a claim. Complainant appealed the dismissal and the Commission reversed the dismissal in early March 2012. Thus, the Agency claimed the fact-finding conference on June 6, 2011, the discovery responses on August 2-3, 2011, and the settlement conference on January 9, 2012, were not connected to the relevant complaint, but to earlier complaints filed by Complainant, in which she was not successful. Thus, the Agency asked for 14.5 hours submitted for work on these dates be disallowed.

The Agency noted Complainant's Attorney requested two hours of time to review a scheduling order on August 6, 2013. The Agency argued for an attorney of such experience and skill, reviewing a routine scheduling order should take no more than half an hour. Thus, the Agency requests 1.5 hours of these be disallowed.

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<sup>2</sup> A review of the billing statement shows the omitted charges ran from February 16, 2010 – January 27, 2011, for a total of 63.9 hours.

The Agency noted Complainant requested a total of 10 hours for research on June 11, 2013 and September 12, 2013, with no reference to subject matter, claim, or complaint involved. Similarly, Complainant's Attorney requested one hour for preparing a timeline on September 24, 2013, with no reference to the subject matter of complaint. The Agency argued that because these entries lacked sufficient specificity, they should be disallowed.

The Agency requested the hours spent preparing for and attending the hearing should be reduced due to minimal success as Complainant succeed on only one claim. Specifically, the Agency recognized Complainant's Attorney claimed 111 hours of research, hearing preparation, and hearing attendance between September 6, 2013 and May 30, 2014. The Agency noted that Complainant's Attorney argued that the claims are all intertwined, however, the Agency stated in finding retaliation by the Agency, the AJ cited the temporal proximity between the EEO fact-finding held on January 18-19, 2011, and the fact that the form was drafted on February 18, 2011. The Agency argued that proving temporal proximity and winning on claim 16 required very little work. The Agency stated winning on this claim did not require Complainant's Attorney to engage in discovery or to obtain any information from the Agency.

The Agency also objected to the 4.5 hours claimed by Complainant's Attorney for reading the initial decision and consulting with Complainant. The Agency argued that the hours spent deciding to appeal should be denied since she did not prevail on any of her claims on appeal.

Finally, the Agency noted that the attorney's fees submissions lack any itemization of time spent preparing the fees motion. The Agency stated while Complainant's Attorney may be entitled to some fees for filing a motion with regard to fees, she is not entitled to work on an unsuccessful challenge to the merits of the underlying decision. The Agency argued that an attorney at the level of experience of Complainant's Attorney does not require 24 hours to research and draft a motion indicating that she is entitled to at least some fees for work on her one successful claim. Clearly, a substantial part of her time was spent researching and arguing for the unsuccessful claims. Thus, the Agency requested that 20 of the 24 hours claimed for preparing the unsuccessful appeal be reduced from the overall fees paid.

#### *Final Agency Decision on Attorney's Fees*

The Agency issued a final decision on December 19, 2019. The Agency noted that "[d]ue to an administrative error" Complainant's May 7, 2019 request for attorney's fees and costs was not docketed for a decision until November 9, 2019.

The decision found that the rate of \$300.00 per hour was appropriate. Further, the decision found no reduction in requested fees was warranted for pre-complaint work.

The decision noted that claim 16 was part of a complaint filed on May 18, 2011, which the Agency initially dismissed for failure to state a claim on August 13, 2011. Complainant appealed the dismissal and the Commission reversed the dismissal in a decision dated March 6, 2012.

Thus, the decision found the hours billed for a fact-finding conference on June 6, 2011, the discovery responses on August 2-3, 2011, and the settlement conference on January 9, 2012, were not connected to the relevant complaint, but to earlier complaints. The decision also found the hours billed for the April 26, 2011 “Letter to EEOC Judge” and the July 28, “2011 Stipulation Regarding Discovery in EEOC,” were also unrelated to the successful claim, because that claim was on appeal and not the subject of any EEOC hearing during that timeframe. However, since the dismissal was reversed and the claim remanded, the decision allowed 3.0 hours of time for the preparation and filing of the claim and review of the dismissal that was ultimately successfully appealed.

Further, the decision noted the existence of multiple bases, legal theories and three different complaints, along with the isolated nature of the single successful claim, indicates that these matters were fractionable; however, Complainant’s Attorney did not provide sufficient information to determine which hours pertained to the successful allegations. The decision found that under these circumstances it was reasonable to take an across the board reduction in the fees and costs requested, since Complainant’s Attorney provided insufficient information to determine which fees were related to the single successful claim. The decision found it would not be reasonable to award attorney’s fees for the 17 unsuccessful claims, three unsuccessful bases, and/or the two unsuccessful legal theories. The decision noted Complainant’s appeal included all of the unsuccessful claims, and the omitted attorney’s fees and costs, but Complainant’s attorney did not delineate which work related solely to claim 16 and the omitted attorney’s fees and costs, vice the unsuccessful claims. The decision determined all of the requested attorney’s fees and costs, except those specifically disallowed above, were appropriately subjected to the across the board reduction. Thus, the decision awarded 1/18<sup>th</sup> of all allowable fees, excise taxes, and costs since she prevailed on only one of the 18 claims.

Specifically, the decision concluded that Complainant’s requested award of 263.1 hours at \$300.00 per hour was reduced by 14.7 hours, resulting in 248.4 allowable hours of which 1/18<sup>th</sup> was attributed to the single successful claim, for an award of 13.8 hours at \$300.00 per hour. Costs were also limited to 1/18<sup>th</sup> of 208.84. Complainant’s Attorney was also awarded the requested 4.7% excise tax on the reduced fee award. Complainant was awarded \$5,040.00<sup>3</sup> in attorney’s fees, \$194.58 in excise taxes<sup>4</sup>, and \$11.60 in costs, for a total award of \$5,246.18.

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<sup>3</sup> The Agency also appears to have awarded 3.0 hours for work done on Complainant’s appeal of the procedural dismissal in the amount of \$900.00.

<sup>4</sup> The Agency appears to have miscalculated the excise tax because a 4.7% tax on \$5,040.00 equals \$236.88.

*Arguments on Appeal*

On appeal, Complainant claims the Agency failed to timely issue a decision on her request for attorney's fees and she requests the full amount of fees claimed as a sanction. Complainant also argued her attorney's fees should not be reduced by the Agency as the claims are intertwined. Complainant notes her attorney worked on the case from 2010 – 2019 and excluded 63.9 hours of work done in 2010 on some of the claims which were not upheld. She argues that there should be no reduction because her retaliatory harassment claim encompassed her successful claim and the facts of the two were intertwined. Further, Complainant notes the Agency wrongfully dismissed her complaint and she successfully appealed in a decision issued on March 12, 2012. She argues the time spent on this appeal should not be excluded. She also argues that her costs should not be reduced from \$208.00 which she contends is reasonable. Finally, Complainant requests additional 7.5 hours at \$300.00 per hour for the amount of time her attorney spent in trying to obtain attorney's fees pursuant to the EEOC decision for a total of \$2,250.00 plus 4.7% excise tax and interest.

In response to Complainant's appeal, the Agency disputes Complainant's entitlement to the full amount of fees sought as a sanction. The Agency also argues the fee petition is not reasonable. The Agency reiterates its claim that Complainant's attorney omitted hours for other claims which were unsuccessful. The Agency contends in light of the limited success, the amount of attorney's fees be reduced.

The Agency requests a reduction in hours for pre-complaint work. The Agency also contends that inappropriate and unsubstantiated hours should be reduced. The Agency claims that Complainant's claims are not intertwined. Specifically, the Agency notes that the 18 claims involved allegations against three supervisors other than the supervisor involved in claim 16, over a span of almost 18 months, with different facts, and different legal theories. Further, the Agency argues that Complainant's success was relatively minor in light of her claims.

The Agency also notes Complainant's attorney claimed 4.5 hours reading the initial decision and consulting with the client. The Agency argues this did not contribute to the success of the single claim on which Complainant prevailed. The Agency argues that if any or all of her claims were successful on appeal, then recovery of fees would be appropriate, but none of her claims were. Thus, the Agency requests those hours be denied.

Moreover, the Agency states that Complainant's appeal was not successful on the merits. The Agency states that the initial decision by the AJ found discrimination with regard to claim 16. The EEOC decision affirmed the initial decision on the merits and remanded the matter for a determination of the proper amount of attorney's fees. The Agency notes the attorney's fees calculations lack any itemization of time spent preparing the fees motion.

The Agency states while Complainant's Attorney might be entitled to some fees for filing a motion with regard to fees, she is not entitled to her work on an unsuccessful challenge to the merits of the underlying decision. Thus, the Agency requests 20 of the 24 hours claimed for preparing an unsuccessful appeal be reduced from the overall fees paid.

### ANALYSIS AND FINDINGS

#### *Complainant's Request for Sanctions*

EEOC regulations provide that an agency shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision. We note that our regulations require agency action in a timely manner at many points in the EEO process. Tammy S. v. Dep't of Def., EEOC Appeal No. 0120084008 (June 6, 2014). Compliance with these timeframes is not optional; as the Commission stated in Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052, "the Commission has the inherent power to protect its administrative process from abuse by either party and must insure that agencies, as well as complainants, abide by its regulations." Because of the length of time it can take to process a federal sector EEO complaint, any delays in complying with the time frames in the regulations can impact the outcome of the complainant's claims. Id.

Although the Agency failed to issue a timely decision as required by regulation, we find that the Agency did not act in a manner to warrant a sanction. See, e.g. Josefina L. v. Soc. Sec. Admin., 0120142023 (July 19, 2016), req. for recon. denied, EEOC Request No. 0520170108 (Feb. 9, 2017) (finding that the Agency's 571-day delay in issuing the decision did not warrant sanctions, as complainant did not show she was prejudiced by the delay); Abe K. v. Dep't of Agric., EEOC Appeal No. 0120141252 (Nov. 4, 2016) (declining to sanction an agency that issued a decision after approximately 326 days when complainant failed to show that he was prejudiced by the delay); Jocelyn R. v. Dep't of Def., EEOC Appeal No. 0120152852 (Mar. 11, 2016) (citing Vunder v. U.S. Postal Serv., EEOC Appeal No. 01A55147 (May 12, 2006) (declining to sanction an agency that issued a decision after approximately 371 days)).

With respect to Complainant's request that the Commission sanction the Agency because of the length of time that it took to issue a final decision in this case, we decline. Specifically, we find that in this case the Agency's untimeliness did not prejudice Complainant and that the minimal delay here did not result in an unconscionable delay in justice or adversely affect the integrity of the EEO process as a whole.

#### *Attorney's Fees and Costs*

By federal regulation, the agency is required to award attorney's fees for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(H).



To determine the proper amount of the fee, a lodestar amount is reached by calculating the numbers of hours reasonably expended by the attorney on the complaint multiplied by a reasonable hourly rate. Blum v. Stenson, 465 U.S. 886 (1984); Hensley v. Eckerhart, 461 U.S. 424 (1983).

All hours reasonably spent in processing the complaint are compensable. Fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, Administrative Judge, or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. 29 C.F.R. § 1614.501(e)(1)(iv).

Attorney's fees may not be recovered for work on unsuccessful claims. Hensley, 461 U.S. at 434. Courts have held that fee applicants should exclude time expended on "truly fractionable" claims or issues on which they did not prevail. See Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense, 675 F.2d 1319, 1327 n.13 (D.C. Cir. 1982). Claims are fractionable or unrelated when they involve distinctly different claims for relief that are based on different facts and legal theories. Hensley, 461 U.S. at 435. However, in cases where a claim for relief involves "a common core of facts or will be based on related legal theories," a fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Id. "The hours spent on unsuccessful claims should be excluded in considering the amount of a reasonable fee only where the unsuccessful claims are distinct in all respects from the successful claims." See EEO MD-110, Ch. 11, Sect. 6 (A)(7) (citation omitted).

Upon review, we find the Agency properly disallowed 14.7 hours claimed for the following dates: fact-finding conference on June 6, 2011, discovery responses on August 2-3, 2011, the settlement conference on January 9, 2012, the April 26, 2011 Letter to the AJ, and the July 28, 2011 Stipulation Regarding Discovery (this work was unrelated to the successful claim, because that claim was on appeal and not the subject of an EEOC hearing during that timeframe).

In its final decision the Agency stated that it was allowing only 3.0 hours of time for the preparation and filing and review of the dismissal that was ultimately successful on appeal. However, we find that Complainant is entitled to all the hours requested from September 17, 2011 through March 6, 2012, for work done in connection with her appeal of the Agency's dismissal of her complaint, which contained claim 16. This appeal contained a procedural review of the Agency's dismissal of her complaint and the Commission examined the entirety of Complainant's harassment complaint to find the matter stated a claim. Thus, we consider all the hours billed were necessary to secure a reversal of the Agency's procedural dismissal. Accordingly, Complainant is entitled to 7.1 hours for work on that appeal at the rate of \$300.00 per hour, totaling \$2,130.00.

Regarding the remaining challenges on appeal to pre-complaint hours, time spent reviewing a scheduling order on August 6, 2013, 10 hours spent on research on June 11, 2013 and September 12, 2013, one hour for preparing a timeline on September 24, 2013, 4.5 hours reading the initial decision and 4.5 hours spent reading the initial decision, and consulting with the client, we note that these hours were not specifically deducted by the Agency in its final decision. Thus, we decline to deduct those hours from the total hours claimed.

In the present case, we find the discriminatory action which resulted in the finding of discrimination was not inextricably intertwined with the other issues in the case so as to warrant the full amount of attorney's fees requested. We note that Complainant was successful on one of 18 claims and that an across the board reduction of 1/18<sup>th</sup> is appropriate in the circumstances of this case.

Thus, we find Complainant is entitled to attorney's fees *for the full amount of time* spent appealing the Agency's dismissal of her complaint (7.1 hours x \$300.00 hourly rate = \$2,130.00). Additionally, Complainant is entitled to attorney's fees for 241.3 allowable hours (263.1 hours minus 7.1 hours for procedural appeal minus 14.7 hours for work done on earlier complaints) *of which 1/18<sup>th</sup> is attributable* to the single success claim, for an award of 13.4 hours x \$300.00 per hour rate = \$4,020.00. Thus, Complainant is entitled to a total award of attorney's fees in the amount of \$6,150.00 (\$2,130.00 + \$4,020.00).

We note the Agency awarded Complainant the requested 4.7% excise tax on the reduced fee award. Complainant has not challenged the rate of the excise tax awarded. Therefore, we find the Agency shall pay a 4.7% excise tax on the award of attorney's fees in the amount of \$289.05.

Further, we find the Agency properly reduced costs based on Complainant's limited success. Thus, we find Complainant is entitled to costs in the amount of \$11.60.

Finally, we note Complainant requests additional 7.5 hours at \$300.00 per hour for the amount of time her attorney spent in trying to obtain attorney's fees pursuant to the EEOC decision for a total of \$2,250.00 plus 4.7% excise tax and interest. We find that Complainant is a prevailing party in the instant appeal and Complainant's Attorney should prepare and submit to the Agency a verified statement of attorney's fees accompanied by an affidavit from the attorney itemizing the charges. EEOC MD-110 Chap. 11, § VI.F. See H Order below.

### CONCLUSION

Accordingly, the Agency's final decision is MODIFIED and the matter is REMANDED to the Agency for compliance with this decision and the Order herein.

### ORDER

To the extent it has not already done so, the Agency shall take the following actions:

Within 60 calendar days from the date this decision is issued, the Agency shall pay \$6,150.00 in attorney's fees, \$289.05 in excise taxes, and \$11.60 in costs for a total amount of \$6,450.65.

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

#### ATTORNEY'S FEES (H1019)

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

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

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

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

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

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (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

July 28, 2021  
Date