



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Mark D.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Appeal No. 2020003543

Agency No. FBI201500088

DECISION

Complainant filed the instant appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 28, 2020 final decision concerning his award of compensatory damages regarding his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. The Agency's decision regarding compensatory damages is AFFIRMED.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Automotive Mechanic, WG-10, in the St. Louis Division.

On April 2, 2015, Complainant filed his complaint alleging disability when on October 30, 2014, the Agency rescinded its job offer for the Electronics Technician position in the St. Louis Division, and on December 11, 2014, his appeal of that rescission was denied.

Following an investigation into Complainant's complaint, he requested a final Agency decision without a hearing. On June 6, 2016, the Agency issued its final decision finding no discrimination regarding the complaint. Complainant appealed the decision.

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.

The Commission, in EEOC Appeal No. 0120162225 (July 27, 2018), reversed the Agency's final decision and found that Complainant was discriminated against based on disability. Therein, the Commission ordered the Agency to take the following remedial actions, in part:

1. Within 60 days of receipt of this Order, the Agency shall offer Complainant reinstatement into the position of Electronics Technician in the St. Louis Field Office of the FBI located in St. Louis, Missouri. The Agency shall afford Complainant 15 days to determine whether to accept reinstatement. Should Complainant reject the offer of reinstatement, Complainant's entitlement to back pay shall terminate as of the date of his rejection.
2. Within 60 days of receipt of this Order, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 114.501. The back pay period shall start on December 11, 2014 through the date of acceptance or rejection of the Agency's offer of reinstatement set forth in paragraph 1 above. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within 90 calendar days of the date the Agency determines the amount it believes to be due. 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."
3. The Agency shall also pay compensation for the adverse tax consequences of receiving back pay as a lump sum. Complainant has the burden of establishing the amount of increased tax liability, if any. Once the Agency has calculated the proper amount of back pay, Complainant shall be given the opportunity to present the Agency with evidence regarding the adverse tax consequences, if any, for which Complainant shall then be compensated.
4. Within 90 days of receipt of this Order, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of his compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than 30 days after the completion of the investigation.
5. Within 90 days of receipt of this Order, the Agency shall provide eight hours of in-person or interactive EEO training for MDO, MEDCHIEF and HR on the Rehabilitation Act. The training shall emphasize the Rehabilitation's Act's requirements with respect to the use of fitness-for-duty examinations and other selection criteria to ensure that similar violations do not occur.

6. Within 60 days of receipt of this Order, the Agency shall consider taking appropriate disciplinary action against MDO, MEDCHIEF and HR. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials or employees have left the Agency's employment, the Agency shall furnish documentation of their departure date(s).
7. The Agency shall immediately post a notice in accordance with this decision.

On February 4, 2019, Complainant filed a petition for enforcement of the Commission's foregoing Order. Specifically, Complainant claimed that he would have been promoted to a GS-12, step 3, absent the discrimination; he was entitled to the restoration of 86 hours of annual leave and 127 hours of sick leave; he should be reimbursed for transportation (a vehicle and Agency paid gas); back pay at the GS-12, step 3, after December 9, 2018; and he was entitled to higher performance ratings. The Commission docketed Complainant's petition under EEOC Petition No. 2019001549.

Meanwhile, on February 5, 2019, the Agency issued its final decision concerning Complainant's compensatory damages and his restoration of sick leave. The Agency stated that on November 14, 2018, Complainant submitted his email requesting a maximum award of \$300,000.00 for emotional distress; future pecuniary damages; restoration of 86 hours of annual leave and 104 hours of sick leave; and a past pecuniary damages award of \$20,595.00 for medical visits and tests. The Agency indicated that Complainant also submitted: invoices from a medical clinic dated March 15, 2017, and September 26 and 27, 2018; two medical invoices dated February 27 and March 15, 2017; and a Psychology Initial Evaluation Note dated November 20, 2018. Considering the evidence submitted by Complainant and his pre-existing conditions, ventricular arrhythmia and sleep apnea, the Agency concluded that he was entitled to \$10,000.00 for nonpecuniary, compensatory damages and the restoration of 40 hours of sick leave. The Agency concluded that Complainant was not entitled to pecuniary damages.

On February 19, 2019, Complainant appealed the Agency's February 5, 2019 decision. On appeal, Complainant claimed that the Agency failed to perform the supplemental investigation and failed to allow his coworkers to write statements in support of his compensatory damages. The Commission docketed this appeal under EEOC Appeal No. 2019003361.

The Commission, consolidating Complainant's Petition No. 2019001549 and Appeal No. 2019003361 (October 24, 2019), granted the petition, in part, and vacated the appeal. Regarding the matters claimed in the petition, the Commission found that the Agency was required to pay Complainant backpay and other benefits, including the reimbursement for commuting costs to and from work and the use of a car. The Commission however found that Complainant was not entitled to the restoration of annual leave (86 hours) or sick leave (126 hours) as part of his backpay award or the change of his Performance Appraisal Reports to higher ratings.

Regarding Complainant's claim of a promotion to the GS-12, step 3, the Commission remanded the subject matter to the Agency due to insufficient evidence in the record to determine whether Complainant was entitled to that promotion.

Regarding Complainant's compensatory damages award, the Commission found that there was insufficient evidence in the record to make a determination. Specifically, the Commission stated that the record was devoid of: Complainant's November 14, 2018 email in support of his compensatory damages claim; all of his underlying evidence provided to the Agency in support of his compensatory damages claim; and the Agency's December 4, 2018 brief in response to his request for compensatory damages. Thus, the Commission vacated the Agency's February 5, 2019 final decision concerning Complainant's compensatory damages and remanded the matter for further processing. Specifically, the Commission ordered the Agency to take the following remedial actions to the extent it had not already done so:

- (1) As set forth in EEOC Appeal. No. 0120162225 (July 27, 2018), within 30 days of receipt of this Order, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. §1614.501. *Part of the Agency's efforts shall include, but is not limited to, determining the appropriate amount of reimbursed transportation costs due to Complainant.* Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. 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."
- (2) Within 60 days of receipt of this Order, the Agency shall determine whether Complainant would have received a promotion to the GS-12 level had he not been subjected to unlawful discrimination and place Complainant at the appropriate grade level. Complainant's grade level should reflect the grade level he likely would have risen to by his "reinstatement start-date" assuming he started his position on December 11, 2014 (i.e., the date the Agency denied Complainant's appeal after receiving sufficient medical information) at the GS-7 grade level. *The Agency shall look to similarly situated comparison employees, especially Comparator. The Agency shall provide evidence of the exact date that Complainant commenced his reinstated position.* In addition, the Agency shall provide Complainant any necessary training as quickly as possible so that his pay status is equivalent to his operational status. The Agency shall then include its grade level determination into Complainant's back pay award.
- (3) Within 90 days of receipt of this Order, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-

pecuniary damages and guidance on what evidence is necessary to prove pecuniary and non-pecuniary damages. See EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov.); See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages no later than 30 days after the completion of the investigation.

On April 28, 2020, the Agency issued a final decision. The Agency stated that Complainant acknowledged that he was promoted to a GS-12, step 4, on December 30, 2019. The Agency also stated that Complainant was paid all back pay and other equitable relief in accordance with the Commission's foregoing order.

Regarding compensatory damages, the Agency stated that on November 13, 2019, Complainant was asked to submit detailed information on any emotional distress or other injuries that he suffered due to the Agency's discrimination, as well as any documents to support the claim. The Agency indicated that on December 13, 2019, Complainant, seeking \$150,000 for his compensatory damages, submitted: a Veterans Affairs Problem List medical documentation; his doctor's November 20, 2018 assessment report; and statements from two coworkers, his best friend, and his brother.

The Veterans Affairs Problem List, dated December 13, 2019, reflects that Complainant had medical conditions, including prescribed medications, for: eosinophilic esophagitis on October 7, 2019, hyperlipidemia on March 6, 2019, obstructive sleep apnea of adult on March 10, 2017, gastroesophageal reflux disease on January 7, 2019, and impotence on January 7, 2016.

The November 20, 2018 assessment report indicates that Complainant was evaluated by a psychologist on that day for 30 minutes. In the report, the psychologist noted that Complainant had a service-connected disability; he was diagnosed for adjustment disorder with anxiety, including ventricular arrhythmias (sustained), deformity of the penis, chest pain, dyslipidemia, gastroesophageal reflux disease, paroxysmal supraventricular tachycardia, impotence, obstructive sleep apnea of adult, difficulty concentrating, decreased appetite, losing hair and graying, stomach distress, anxious, feeling singled out and targeted by employer, and panic attacks; he denied any current suicidal ideation or any history of suicide attempts; and his sister died on September 11, 2018, from a heart attack and she was a second mom to him.

Complainant's coworker (C1) stated in his November 15, 2019 statement that he worked with Complainant at the Agency since 2010. C1 indicated that Complainant told him that he had sleepless nights, marital strain, digestive issues, and he contemplated suicide. C1 stated that Complainant had a mild panic attack and C1 had to drive him to the hospital; he sought daily counseling from the Employee Assistance Program (EAP); and his not getting the position affected his health, appearance, emotional wellbeing, professional relationships, morale and marriage.

Complainant's best friend stated in his November 15, 2019 statement that Complainant stopped playing pool and racing his car; and he was aging, not sleeping well, anxious, and depressed. The friend indicated that Complainant told him that: he used to go to counseling daily; people at work were calling him names and making jokes about a disability he did not want anyone to know he had; and he was prevented from any upward mobility because of disability.

Complainant's coworker (C2) stated in his November 19, 2019 statement that he worked with Complainant over ten years. C2 indicated that Complainant told C2 of his loss of sleep and appetite, marital strain, and thoughts of suicide. C2 stated that Complainant was depressed, anxious, angry, and frustrated.

Complainant's brother stated in his November 19, 2019 statement that after the Agency's rescission of the position at issue, Complainant developed gastric reflux and severe heart burn for which he took medication; he developed adult sleep apnea; he had hair loss; his hair was thinning and graying; he had marital issues; and he stopped racing his car. Complainant's brother indicated that Complainant told him that he was contemplating running away or committing suicide.

In his December 13, 2019 statement, Complainant indicated that \$150,000.00 was a reasonable amount of nonpecuniary damages for the distress he endured because of the discrimination. Specifically, Complainant indicated that he had none of the physical, mental, as well as medical conditions and manifestations prior to the Agency's decision rescinding his position offer. Complainant stated that he had sleeplessness, anxiety, depression, marital strain, sexual dysfunction, humiliation, emotional distress, loss of self-esteem, excessive fatigue, nervous breakdowns, thoughts of suicide, loss of self-worth, hair loss, hair graying, feelings of being ostracized, posttraumatic stress disorder, physical illnesses, digestive and gastrointestinal issues, and appetite issues; his professional and personal relationships being ruined; his professional development was hindered and stagnant; he was becoming uncontrollably emotional at times and socially withdrawn; and he sought the EAP for counseling almost daily.

Based on the foregoing evidence and supporting documentations submitted by Complainant, the Agency stated that an award of \$15,000.00 was appropriate for his compensatory damages. The Agency indicated that Complainant had a serious preexisting condition, ventricular arrhythmia, as well as adult sleep apnea. However, stated the Agency, Complainant failed to provide any evidence that his preexisting conditions were worsened because of the discrimination; or that his medical conditions, including impotency, sleep apnea, eosinophilic esophagitis, high cholesterol, gastrointestinal disorders, and heart condition, were caused by the discrimination.

Specifically, the Agency indicated that although C1 stated that Complainant had a mild panic attack at work, C1 failed to provide any details of when Complainant had the panic attack or what Complainant was doing at the time of the attack or whether it was connected to the harassment Complainant had been experiencing.

The Agency also indicated that although Complainant claimed that he suffered from depression, anxiety, and posttraumatic stress disorder since the job rescission, he failed to show any evidence that he sought any psychological medical care for these conditions. The Agency stated that Complainant also failed to provide any evidence that he actually sought EAP counseling. The Agency also stated that the death of Complainant's sister was the actual cause of his anxiety diagnosis. The Agency concluded that the evidence Complainant provided failed to establish that the discriminatory job rescission in 2014 directly or proximately caused him the kinds of emotional distress that would warrant an award of \$150,000.00 as he requested.

Complainant appeals from the Agency's April 28, 2020 decision. In his May 18, 2020 statement, Complainant indicates that the Agency failed to conduct a supplemental investigation and failed to take into consideration the statements and medical documentation he submitted concerning his compensatory damages. On May 29, 2020, Complainant submits to the Commission that he is withdrawing his appeal of the Agency's decision concerning the matters which the Commission decided in EEOC Petition No. 2019001549. Complainant indicates that the parties entered into a settlement agreement on May 27, 2020, wherein which the Agency agreed to pay him \$7,545.00 as tax consequences he could or will incur as a result of the backpay he was awarded. As such, states Complainant, he is appealing the Agency's final decision solely concerning his compensatory damages award. The record indicates that Complainant was paid \$15,000.00 for compensatory damages.

ANALYSIS AND FINDINGS

Initially, we note that Complainant was promoted to the Electronics Technician, GS-12 position including back pay and other benefits. The sole issue here concerns Complainant's claim for compensatory damages as a result of the Agency's discrimination. Any other remaining claims as a result of the Agency's discrimination, if any, were withdrawn by Complainant. Accordingly, we will review whether the Agency's award of \$15,000.00 was appropriate for Complainant's compensatory damages.

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of make-whole relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000.00. 42 U.S.C. § 1981a(b)(3).

Pecuniary losses are out-of-pocket expenses incurred because of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses.

Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement. EEO MD-110, at Chap. 11, VII.B.2 (Aug. 5, 2015) (internal citations omitted). Future pecuniary damages are losses likely to occur after the resolution of the complaint.

In a claim for pecuniary, compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the Agency's discriminatory conduct. To recover damages, a complainant must prove that the employer's discriminatory actions were the cause of the pecuniary loss. Id. (citations omitted).

Nonpecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that nonpecuniary, compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from a complainant concerning his emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id.

Statements from others including family members, friends, health care providers, and other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id.

The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

Complainant has the burden of proving the existence, nature and severity of the alleged emotional harm. Man H. v. Dept. of Homeland Security, EEOC Appeal No. 0120161218 (May 2, 2017). Complainant must also establish a causal relationship between the alleged harm and the discrimination. Id. Absent such proof of harm and causation, a complainant is not entitled to compensatory damages, even if there were a finding of unlawful discrimination. Id.; Wilda M. v. U.S. Postal Service, EEOC Appeal No. 0120141087 (Jan. 12, 2017) (awards for emotional harm are warranted only if complainant establishes a sufficient causal connection between the agency's illegal actions and her injury).

Regarding pecuniary damages, we note that Complainant has not asserted on appeal that he is due pecuniary damages. To the extent that he is still requesting pecuniary damages, we find that Complainant did not establish that he was entitled to pecuniary damages because he has not submitted any documentary evidence of such damages or shown that any such damages were caused by the discrimination at issue.

Turning to nonpecuniary damages, we find that Complainant suffered some emotional harm as a result of the Agency's rescission of the Electronics Technician, GS-7 position on December 11, 2014. Considering the evidence in the record, including the documents submitted by Complainant, we find that he had preexisting physical and mental conditions before the Agency's discrimination. Specifically, the record reveals that a Veterans Affairs cardiologist indicated in his Progress Notes, dated April 11, 2008, that he interviewed and examined Complainant on April 10, 2008. The cardiologist indicated that: Complainant had a cardiac main symptoms of dyspnea on exertion, fatigue, diminished exercise tolerance, and palpitation (irregular beats) at rest and with effort, particularly with exercise; he had chest pain (with palpitation); there was one episode of syncope while in military service 5 years ago; and his risk factor was dyslipidemia.

The record also indicates that on January 20, 2012, Complainant saw a Veterans Affairs cardiologist for chest discomfort and lightheadedness at peak exercise.

The record indicates that on August 28, 2014, Complainant underwent his fitness for duty examination by an Agency Health Care Programs Unit. The doctor, who examined Complainant, submitted his report, dated October 30, 2014, indicating that: Complainant had medical history of palpitations, gastroesophageal reflux disease, and elevated lipids which were treated by prescribed medications; he lost consciousness on two occasions; he had problems with irregular heartbeats on lifting and carrying; and he was granted a 60% service-connected disability rating for ventricular arrhythmias (sustained).

Based on the evidence he submitted, we find that Complainant failed to show that his physical and mental conditions were directly related to or exacerbated by the Agency's discrimination. Further, there is no evidence that Complainant sought any medical assistance for his emotional distress or depression he claimed he sustained, or that he sought daily EAP counseling as a result of the discrimination.

Taking into consideration the evidence of nonpecuniary damages submitted by Complainant, we find his request for \$150,000.00 to be excessive. Rather, given that Complainant had preexisting physical and mental conditions and having reviewed the entire record and the nature of the Agency's violation, we find that the Agency's award of \$15,000.00 in nonpecuniary, compensatory damages is reasonable and appropriate. This amount takes into account the severity of the harm caused by the Agency's rescission of his job offer in December 11, 2014. See Queen L. v. Dep't of Agric., EEOC Appeal No. 0120160554 (Mar. 22, 2018) (complainant was discriminatorily demoted and otherwise discriminated against; complainant was awarded \$15,000 in nonpecuniary, compensatory damages for depression, anxiety, chronic diarrhea, nausea, sleeplessness and night sweats; doctor's letter did not address the severity, nature, or expected duration of medical conditions; complainant submitted statements from her brother, ex-husband, niece, and two friends indicating she experienced stress and anxiety as a result of her work situation); Wilda M. v. U.S. Postal Serv., EEOC Appeal No. 0120141087 (Jan. 12, 2017) (complainant was discriminatorily harassed; complainant was awarded \$15,000.00 in nonpecuniary, compensatory damages for crying spells, anxiety, exacerbated arthritis, and feeling depressed, isolated, and loss of her self-esteem).

Based on the foregoing, we find that \$15,000.00 is adequate to compensate Complainant for the harm suffered as a result of the Agency's discrimination, is not "monstrously excessive", is not the product of passion or prejudice and is consistent with prior Commission precedent. The record indicates that the Agency paid Complainant \$15,000.00 in nonpecuniary, compensatory damages and therefore there is no need to order such payment.

CONCLUSION

Accordingly, the Agency's final decision concerning compensatory damages is AFFIRMED.

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 (S0610)

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. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

June 7, 2021
Date