



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

[REDACTED]
Merlin W.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2020002711

Agency No. 19-4523A-00428

DECISION

On February 25, 2020, 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 March 25, 2020,² final decision concerning his 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.

ISSUES PRESENTED

The issues are whether Complainant established that the Agency failed to provide a religious accommodation; or subjected him to discrimination or harassment based on religion or in reprisal for requesting a religious accommodation.

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.

² While we note that Complainant's February 25, 2020 appeal was premature, the Commission finds that the appeal is now ripe for adjudication as the Agency subsequently issued a final decision on March 25, 2020.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Health Physicist (HP) at the Agency's Radiological Controls Office, Puget Sound Naval Shipyard & Intermediate Maintenance Facility (PSNS&IMF) in Yokosuka, Japan. Complainant stated that he would "PCS" (permanent change of station) to the San Diego Detachment in July 2019. Report of Investigation (ROI) at 213.

Complainant's first-line supervisor (S1) (Christian) stated that in December 2017, it was identified that the HPs would need respirators to work in some areas, and he developed a plan to get them qualified before the 2019 Selected Restricted Availability term for the next maintenance period. ROI at 482. Complainant stated that he would need the respirator qualification from January to May 2019, and that he informed S1 that he would be taking 12 weeks of paternity leave starting in February 2019. ROI at 460.

On August 27, 2018, Complainant emailed S1 regarding the respirator qualification. Complainant stated that he had strong beliefs against shaving his beard due to a promise he made to his late father. Complainant stated that this promise was the same as the one his late father made to God. When S1 asked that Complainant reconsider, he responded that his request was due to his strong religious beliefs against shaving his beard. ROI at 367-8. Complainant stated that on August 30, 2018, the Director Radiological Control (DRC) (Catholic) asked if Complainant was "drawing a line in the sand," and stated that Complainant should reconsider because it may affect his return rights. On August 31, 2018, S1 informed Complainant that they could not accommodate his request. ROI at 373. Complainant stated that on September 6, 2018, his second-line supervisor (S2) (unspecified religion) informed him that DRC was ready to send Complainant home. ROI at 462-3.

Complainant stated that on September 11, 2018, S1 instructed him to cancel his temporary duty travel (TDY) that was scheduled for him to obtain certifications. Complainant stated that S1 informed him that he could obtain his Casualty Response Health Physicist certification when the instructor would come to Japan in October, and that his Top-Level Domain qualification was not due until March 2019, and they would send Complainant at a later date. ROI at 467-8.

On September 19, 2018, Complainant filed a formal request for a reasonable accommodation with the Puget Reasonable Accommodation Office for a waiver to obtain a respirator qualification due to his religious beliefs. ROI at 218-20, 459. Complainant stated that on September 21, 2018, he was informed that the Agency did not have a process for his request, which was not connected to a disability, and that his management needed to address his religious accommodation request. ROI at 460.

Complainant stated that on September 20, 2018, a coworker (CW) informed him that the Branch Head (BH1) (unspecified religion) placed Complainant on a "do not hire list," and that he was essentially blacklisted. ROI at 467.

On October 2, 2018, Complainant received an Acceptable performance evaluation, with a Needs Improvement in the category of Appropriately Initiates Assignments. ROI at 90-1.

On October 24, 2018, Complainant was issued a Management Directed Exercise of Return Rights back to his position as a Physical Science Technician with the Portsmouth Naval Shipyard in San Diego, California. ROI at 183. Complainant stated that he had 10-30 days to leave Japan. ROI at 475. On October 29, 2018, Complainant was informed that he was directed to exercise his return rights prior to January 1, 2019, or to provide documentation of any extenuating circumstances that prevented him from exercising his return rights prior to the end of the year. ROI at 422. Complainant provided medical documentation recommending that Complainant's wife not fly due to her pregnancy. ROI at 444.

Complainant stated that on May 10, 2019, he was informed that he was essentially blacklisted in San Diego. ROI at 467. On May 14, 2019, a witness (W1) informed Complainant that when W1 asked a San Diego Branch Head (BH2) to "push" a job offer to Complainant in San Diego, BH2 responded, "no I can't do that. That's a non-starter." When W1 asked what BH2 meant, he just repeated that Complainant had "no chance" to be hired in San Diego. ROI at 451. Complainant stated that he decided to leave federal service, and that his last day in Japan was on or around July 12, 2019. ROI at 479.

EEO Complaint

On September 4, 2018, Complainant filed an EEO complaint alleging that the Agency subjected him to discrimination and harassment based on his religion (Catholic), and in reprisal for prior protected EEO activity, when:

1. on August 31, 2018, management told Complainant that, as a function of his job, he would be required to shave his beard to meet a respirator qualification;
2. on August 31, 2018, management failed to consider Complainant's request for a religious accommodation;
3. on September 11, 2018, management required Complainant to cancel his TDY, which was already approved, for certifications (Casualty Response Health Physicists and 8800 Top Level Domain Processor);
4. on October 2, 2018, management gave Complainant a negative evaluation;
5. on or around September 2018, the Agency denied Complainant's request for a reasonable accommodation;
6. on an unspecified date Complainant was "blacklisted" at PSNS&IMF;

7. on or around October 24, 2018, management issued Complainant a memo, which directed him to exercise his return rights to Portsmouth Naval Shipyard in San Diego, California, instead of PSNS&IMF in Bremerton, Washington.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of his right to request a hearing before an EEOC Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency found that Complainant had a bona fide religious belief; his practice conflicted with his employment; and he informed the Agency of his conflict. However, the Agency found that since Complainant was not forced to shave his beard, he did not establish a prima facie case of religious discrimination. The Agency also found that Complainant remained in his position until July 2019, and that management officials effectively abandoned Complainant's certification initiative. The Agency determined that Complainant's request for a religious accommodation was not feasible nor unreasonably denied.

The Agency also found that Complainant established a prima facie case of reprisal for requesting a religious accommodation, and that management officials provided legitimate, nondiscriminatory reasons for its actions. For claim 3, the Agency determined that it would be fiscally irresponsible to send Complainant on international travel for unnecessary certifications if he were unable to obtain necessary certifications. Regarding claim 4, S1 provided two examples to support the Needs Improvement in one category, which was one of many categories, and it did not result in Complainant receiving a "poor" rating. For claim 7, DRC stated that, since Complainant could not obtain respirator certification, they could not justify his salary because they deemed this certification critical to operational efficiency. The Agency noted that Complainant only provided rebuttal statements for claim 7, but that he did not meet his burden to rebut the management officials' responses.

Regarding Complainant's harassment allegation, the Agency found that there was no supporting evidence that management officials subjected him to a hostile work environment on account of his religion or in retaliation for asking for a religious accommodation, and that Complainant only provided his subjective and unsubstantiated opinion that his religion or reprisal were the reasons for the actions taken against him. The Agency further found that the incidents did not rise to the level of unlawful severity or pervasiveness. The Agency concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

Complainant filed the instant appeal, prior to the Agency's issuance of its final decision, and he requested a default judgment due to the untimely issuance of the final decision, which was over 200 days late. The Agency did not respond to Complainant's appeal.

STANDARD OF REVIEW

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

ANALYSIS AND FINDINGS

Request for Sanction

On appeal, Complainant requested that the Commission issue a default judgment as a sanction for the Agency's failure to timely issue the final decision. 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 or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. 29 C.F.R. § 1614.110(b). Because we reverse the Agency's final decision, in part, we decline to address Complainant's request for a default judgment as a sanction.

Religious Accommodation (Claims 1, 2, and 5)

A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with his religious beliefs. EEOC Compliance Manual Section 12, "Religious Discrimination," No. 915.063, § IV.A (January 15, 2021) (Compliance Manual). The employer's duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement that creates a conflict so that the employee or applicant will be able to observe or practice his or her religion. Accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work. Id.

Under Title VII, employers are required to accommodate the religious practices of their employees unless a requested accommodation is shown to impose an undue hardship. 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2(b)(1). The traditional framework for establishing a prima facie case of discrimination based on religious accommodation requires an employee to demonstrate that: (1) he has a bona fide religious belief, the practice of which conflicted with his employment; (2) he informed the agency of this belief and conflict; and (3) the agency nevertheless enforced its requirement against the employee. Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993); Turpen v. Missouri-Kansas-Texas R.R. Co., 736 F.2d 1022, 1026 (5th Cir. 1984).

In this case, it is undisputed that Complainant has a bona fide religious belief and that he informed the Agency that his belief conflicted with the new requirement for HPs to obtain a respiratory certification. While the Agency did not ultimately enforce the requirement for Complainant to obtain a respirator certification, we find that the Agency denied Complainant's request for a religious accommodation on August 31, 2018, and instead, directed Complainant to exercise his return rights on October 24, 2018.³ As such, Complainant established a prima facie case of discrimination based on religious accommodation.

"A refusal to accommodate is justified only when an employer ... can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation." 29 C.F.R. § 1605.2(c). Pursuant to 29 C.F.R. § 1605.2(d), alternatives for accommodating an employee's religious practices include, but are not limited to, voluntary substitutes and swaps, flexible scheduling, and lateral transfers and job changes. See Samuel R. v. Dep't of Commerce, EEOC Appeal No. 2019001557 (Aug. 19, 2020).

Here, there is evidence of a possible alternative accommodation to Complainant's request for a waiver of the respirator certification. Another coworker (CW2) stated that, independent of Complainant's religious accommodation request, CW2 raised the idea of using a Powered Air-Purifying Respirator (PAPR), which was a full hood that sealed at the neck, torso or shoulders, instead of the face.⁴ CW2 stated that he contacted S1 and S2, and he was directed to contact other Agency officials, including an official in Safety, who did not respond to him. ROI at 122. While CW2 stated that the process to get the PAPR approved would have taken months, we find that the Agency had a few months from when Complainant requested a religious accommodation in August 2018, until the certification requirement would have gone into effect in January 2019. ROI at 122, 460.

While DRC stated that the alternate respirator "would not be available in Japan," there is no explanation for why it would have been unavailable, nor is there an argument that obtaining the PAPR would have been an undue hardship. ROI at 495. Further, Complainant stated that the respirator qualification was never used, and that management decided that it would no longer be a requirement. ROI at 460. We find that the Agency has not met its burden to show that it could not have reasonably accommodated Complainant's religious belief. Accordingly, we REVERSE the Agency's finding that it did not fail to provide Complainant with a religious accommodation, and we ORDER the Agency to take further action, in accordance with the Order below.

³ While Complainant's personal circumstances prevented the early end of his assignment in Japan, the focus should properly be on the Agency's actions.

⁴ CW2 provided his response during the informal counseling stage, but we note that there is no explanation for why the Agency did not obtain CW2's statement during the EEO investigation.

Disparate Treatment and Harassment (Claims 3, 4, and 6)

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, he must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13. Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is his obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Serv. v. Aikens, 460 U.S. 711, 715-716 (1983).

Assuming, arguendo, that Complainant established a prima facie case of discrimination based on religion and in reprisal for requesting a religious accommodation, we find that the Agency proffered legitimate, nondiscriminatory reasons for its actions. For claim 3, S1 stated that the trip was for Complainant to obtain several qualifications, including the respirator training, and that the trip was canceled until they could determine what was going on. ROI at 483. DRC corroborated that the trip was canceled to provide time to resolve the respirator training issue because it did not make sense to send someone for a training that may not be completed. ROI at 496.

Regarding claim 4, S1 stated that he gave Complainant an "Improvement Needed" in one element because he did not appropriately initiate some tasks, such as the "BUMED" response and an Environmental Monitoring Program evaluation. S1 stated that Complainant received an overall Acceptable rating, and he was informed of one area to improve. ROI at 483-4.

For claim 6, CW stated that he heard BH1 state that Complainant was on a blacklist, but that it was for "some unknown reason." ROI at 514-5. BH2 stated that when someone approached him in December 2018 about hiring Complainant, BH2 requested that Complainant forward his resume. BH2 stated that Complainant did not send his resume, and that when the topic came up again about hiring Complainant, BH2 stated that it was a "non-starter" because Complainant did not send his resume. BH2 also stated that he heard that Complainant had return rights to Portsmouth or Bremerton, so he did not think it was worth pursuing a hiring action for Complainant. ROI at 510.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination.

Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opore-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008). Complainant did not provide any evidence to show that the management officials' responses were not worthy of belief. As such, we find that Complainant did not establish that the Agency discriminated against him based on religion, or in reprisal for requesting a religious accommodation, for claims 3, 4, or 6.

As discussed above, we found that Complainant did not establish a case of discrimination on any of his alleged bases. Further, we conclude that a case of harassment is precluded based on our finding that Complainant did not establish that any of the actions taken by the Agency were motivated by his protected bases. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Accordingly, we find that Complainant did not show that the Agency subjected him to harassment based on religion or reprisal for claims 3, 4, or 6.

Retaliatory Harassment (Claim 7)

Harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of a complainant's employment. See Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002, at 3 (Mar. 8, 1994). To establish a claim of harassment, Complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) the harassment had the purpose or effect of unreasonably interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998).

To prevail in a retaliatory harassment claim, a complainant must show that a reasonable person would have found the challenged action materially adverse, i.e., an action that might well have dissuaded a reasonable worker from making or supporting a charge of discrimination in the future. Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006). "The threshold for establishing retaliatory harassment is different than for discriminatory hostile work environment. Retaliatory harassing conduct can be challenged under the Burlington Northern standard even if it is not severe or pervasive enough to alter the terms and conditions of employment." EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004, Sect. II.B, ex. 17. (Aug 25, 2016). Although petty slights and trivial annoyances are not actionable, adverse actions such as reprimands, threats, negative evaluations, and harassment are actionable. Id. at II.B.

We find that Complainant belongs to a statutorily protected class based on his protected EEO activity of requesting a religious accommodation, and that he was subjected to unwelcome verbal conduct. We further find that Complainant established that he was subjected to retaliatory harassment when the Agency directed him to exercise his return rights on October 24, 2018. Complainant expected to remain in Japan until July 2019, but the Agency instructed him to return to San Diego,⁵ after it denied his request for a religious accommodation. We find that the Agency's instruction for Complainant to prematurely end his assignment in Japan, which meant that Complainant and his family had to unexpectedly relocate overseas within 30 days, was materially adverse, and it would deter a reasonable person from engaging in protected EEO activity. Accordingly, we REVERSE the Agency's finding that Complainant did not establish that he was subjected to retaliatory harassment and ORDER the Agency to take further action.

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 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 this "make whole" relief. 42 U.S.C. § 1981a(b)(3). As such, the Agency is ordered to conduct a supplemental investigation regarding any compensatory damages, attorney's fees, and costs for its denial of Complainant's request for a religious accommodation on August 31, 2018, and the retaliatory harassment of issuing Complainant a directive to exercise his return rights on October 24, 2018.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision. We AFFIRM the Agency's finding that Complainant did not establish that the Agency subjected him to discrimination or harassment based on his religion, or in reprisal for prior protected EEO activity, when it canceled his TDY orders, issued his performance evaluation, and "blacklisted" Complainant. We REVERSE the Agency's findings that Complainant did not establish that the Agency failed to provide a religious accommodation, or subjected him to retaliatory harassment, and we ORDER the Agency to take further action, in accordance with the Order below.

⁵ The record indicates that the Agency considered changing Complainant's return rights to Bremerton, Washington from San Diego, California, but it did not finalize the change prior to the October 24, 2018 notice.

ORDER

1. Within ninety (90) days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages, attorney's fees, and costs related to the Agency's denial of his request for a religious accommodation on August 31, 2018, and the retaliatory harassment when it directed Complainant to exercise his return rights on October 24, 2018. 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, attorney's fees, and costs no later than thirty (30) days after the completion of the investigation.
2. Within ninety (90) days of the date this decision is issued, the Agency shall consider developing internal procedures for processing requests for religious accommodation, based on the EEOC's recommended best practice of having internal procedures for processing requests for religious accommodations. See Compliance Manual, § IV. To support the Agency's efforts, the EEOC's Federal Sector Programs will provide one hour of technical assistance.
3. Within ninety (90) days of the date this decision is issued, the Agency shall provide one (1) hour of EEO training for all PSNS&IMF supervisors and managers on the Agency's duty to appropriately respond to employees' requests for a religious accommodation. In addition, the Agency shall provide four (4) hours of interactive EEO training to DRC; this training shall emphasize the obligation to not engage in retaliatory harassment, to ensure that similar violations do not occur.
4. Within sixty (60) days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1 and DRC. 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 have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
5. The Agency shall immediately post a notice in accordance with the paragraph below.

POSTING ORDER (G0617)

The Agency is ordered to post at its Puget Sound Naval Shipyard & Intermediate Maintenance Facility in Yokosuka, Japan copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

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

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

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

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

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

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

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

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

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

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

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

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

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

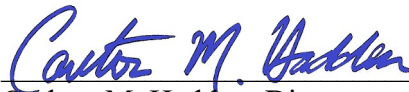
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from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

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

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 2, 2021

Date