



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

[REDACTED]  
Marleen G.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020003464

Hearing No. 410-2019-00444X

Agency No. 4K-300-0322-18

**DECISION**

Complainant timely 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 5, 2020, final order concerning her 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. For the following reasons, the Commission MODIFIES the Agency's final order.

**ISSUE PRESENTED**

The issue presented on appeal is whether the Agency discriminated against Complainant when it removed the accommodation provided to her for his disability and subjected him to reprisal.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Rural Mail Carrier at the Agency's Post Office in Suwanee, Georgia. Report of Investigation (ROI), at 6.

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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.

The Supervisor of Customer Services served as Complainant's first level supervisor (S1), and a second Supervisor of Customer Services served as Complainant's second level supervisor (S2). Complainant was also managed by the Acting Supervisor, Postmaster, and the Former Postmaster.<sup>2</sup>

According to Complainant, she was first diagnosed with Osteoarthritis, Degenerative Joint Disease of Bilateral Knees on August 17, 2015, after she suffered from a work-related injury. ROI, at 42. As a result of her conditions, Complainant's medical restrictions consisted of a 1-2 hour walking and standing restriction, as well as a lifting restriction of 1-2 hours per day, among other restrictions. Id. at 15. As a result of her restrictions, Complainant worked under a modified limited duty assignment dated May 30, 2018. Id. at 21. The duties of the modified job assignment included answering the phone for 4-6 hours; filing 1-3 hours; lobby greeting for 30 minutes to 1 hour; and 6 hours of administrative duties. Id. The physical requirements of the modified job assignment required standing/walking 1-2 hours on an intermittent basis; fine manipulation 4-6 hours; and lifting no greater than 10 pounds – 2 hours intermittent. Id.

However, according to Complainant, management violated her medical restrictions by assigning her to run the "Blue Door," requiring that she walk to the warehouse to speak with supervisors and carriers concerning customer complaints. Id. at 67-68. Complainant maintained that the required walking to run the Blue Door forced her to walk an average of 4-6 hours per day, well in excess of her 1-2 hour per day walking restriction. Id. Complainant further maintained that she was required to deliver Express Mail, which also exceeded her medical restrictions because she was required to walk stairs and hills and carry items in excess of 10 pounds. Id.

Complainant averred that she notified the Postmaster, Former Postmaster, S1, the Acting Supervisor, and S2 that she believed she was being worked outside of her medical restrictions. But, according to Complainant, she was warned she would be sent home if she could not perform the work. Id. at 70. Complainant attested that she therefore continued to perform the duties assigned to her, which exceeded her medical restrictions, out of fear of being sent home or terminated until she incurred further injury. Id. at 70. Complainant stated, moreover, that when she notified S1 that she was working outside her medical restrictions, S1 responded by threatening to discipline her. Id. at 72.

A Former Rural Carrier attested that Complainant showed her a form from her physician, reflecting that Complainant's medical restrictions consisted of 1-2 hours of intermittent walking/standing. Id. at 312-313. The Former Rural Carrier stated that management officials assigned Complainant to the Blue Door, consisting of walking/standing, getting customers' mail, registers, express mail and packages resulting in Complainant being on her feet about 4-6 hours per day. Id. The Former Rural Carrier recalled that S1 would warn Complainant that she would be sent home if she could not perform the work. Id.

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<sup>2</sup> The Former Postmaster did not respond to the investigator's request to provide an affidavit for the record.

The Former Rural Carrier also averred that she heard Complainant tell S1 that a customer wanted to speak to a supervisor, but S1 refused to go and told Complainant to tell the customer that she was the supervisor. Id. The Former Rural Carrier observed Complainant at the Blue Door walking to get customers' hold mail from the routes, getting their packages, and signature mail. Id. The Former Rural Carrier further attested that she witnessed management officials bully, threaten, mistreat, and demean injured carriers on numerous occasions. Id.

A second Former Rural Carrier attested for the record as follows:

My only knowledge is the culture of putting light or restricted duty employees in situations which exceeded their medical restrictions. I observed this practice, both when I was on restricted duty, and watching co-workers in similar situations. It was and is an ongoing practice at the Suwanee Post Office.

Id. at 306.

On August 7, 2018, Complainant contacted an EEO Counselor and filed a formal EEO complaint on November 20, 2018, alleging that the Agency discriminated against her on the bases of disability (Osteoarthritis, Degenerative Joint Disease of Bilateral Knees) and reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when:

1. July 9-July 13, 2018, July 16-July 20, 2018, and July 24-July 26, 2018, Complainant was required to sign out whenever she left the workroom floor for lunch, breaks, and/or to use the restroom;
2. From August 8, 2018, Complainant was consistently provided with duties which she believed exceeded her medical restrictions; and
3. On or about August 28, 2018, the Postmaster threatened to send Complainant home if she refused to perform all of the duties as assigned.

Following the investigation, Complainant was provided a copy of the investigative file and requested a hearing before an EEOC Administrative Judge (AJ). The AJ issued a decision without a hearing finding no discrimination. The AJ specifically found that Complainant did not establish that the Agency's actions were severe or pervasive enough to rise to the level of a hostile work environment. In so finding, the AJ noted that the incidents in this case were indicative of everyday workplace interactions, regarding management's supervision of Complainant's performance of her duties which did not constitute harassment. The AJ also found no evidence that the Agency was motivated by discriminatory or retaliatory animus and found no indication that the assignments given to Complainant were outside of her medical restrictions. The AJ noted that even assuming that Complainant's performance of the Blue Door Assignment resulted in her exceeding her walking restrictions, the evidence showed that Complainant was not to perform duties beyond these restrictions.

The AJ found that Complainant could have performed the designated tasks in a manner where she only had to walk intermittently for 1 to 2 hours in accordance with her restrictions.

On March 5, 2020, the Agency issued a final order adopting the AJ decision finding no discrimination.

### CONTENTIONS ON APPEAL

#### *Complainant's Brief on Appeal*

On appeal, Complainant, through her attorney, maintains that her modified job assignment required that she work the Blue Door, which required her to walk in excess of her restrictions. Complainant maintains that she was required to walk to the warehouse and speak with supervisors and carriers concerning complaints, which required her to walk an average of 4-6 hours per day. Complainant asserts that her modified job offer noted that she would only be required to walk and stand for lobby greeting for 30 minutes to one hour per day. She asserts that when she notified management that she was being worked in excess of her medical restrictions, she was warned she would be sent home. Complainant maintains that she continued to work in pain for fear of being sent home without pay and she further injured herself while performing duties outside of her medical restrictions. Complainant contends that management had knowledge of her medical restrictions, but nevertheless improperly made her work in excess of her restrictions causing her to further injure herself.

#### *Agency's Response*

In response, the Agency asserts that there is no evidence indicating that the incidents in this case were so objectively offensive that it altered the conditions of Complainant's employment. The Agency also argues that there is no evidence that its actions were due to Complainant's protected EEO activity. The Agency argues that the AJ made no error of law or fact and requests that we affirm its final order adopting the AJ's decision finding no discrimination.

### STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chap. 9, § VI.A. (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

#### *Summary Judgment*

The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is “genuine” if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is “material” if it has the potential to affect the outcome of the case.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment “where the [party opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition.” Anderson, 477 U.S. at 250. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an AJ could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

After a careful review of the record, we find that summary judgment was appropriate because no genuine dispute of material fact exists. However, we find that the AJ erred in finding in favor of the Agency, as the record reflects that Complainant was denied reasonable accommodation for her disability.

We note that in finding no discrimination, the AJ conducted a disparate treatment analysis and harassment analysis with respect to Complainant's claims. However, as explained below, the record reflects that Complainant established that she was denied a reasonable accommodation for her disability with respect to claims 2 and 3 when Agency management required that she work the Blue Door, which required her to walk in excess of her medical restrictions.

### *Reasonable Accommodation*

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o) and (p). To establish the Agency denied Complainant a reasonable accommodation, Complainant must show that: (1) she was an individual with a disability; (2) she was a qualified individual with a disability; and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

### *Individual with a Disability*

The threshold question is whether a complainant is an individual with a disability within the meaning of the regulations. An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; and the operation of a major bodily function. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(1)(ii).

In the instant case, while the AJ and Agency did not directly address whether Complainant was an individual with a disability, the record clearly shows that Complainant was first diagnosed with Osteoarthritis, Degenerative Joint Disease of Bilateral Knees on August 17, 2015, after she suffered from a work-related injury. As a result of her conditions, Complainant's medical restrictions consisted of a 1-2 hour walking and standing restriction, as well as a lifting restriction of 1-2 hours per day, among other restrictions. As lifting and walking are considered major life activities, we find that Complainant was an individual with a disability.

### *Qualified Individual with Disability*

Having found that Complainant meets the threshold requirement which would entitle her to the protections of the Rehabilitation Act, Complainant must also show that she was a "qualified" individual with a disability within the meaning of 29 C.F.R. § 1630.2(m). The regulation defines such an individual as a disabled person who, with or without a reasonable accommodation, can perform the essential functions of the position in question.

Here, the record reflects that the Agency believed that Complainant could perform the essential functions with accommodation. In so finding, we note that the Agency presented Complainant with a modified assignment dated May 30, 2018. The physical requirements of the modified job assignment required standing/walking 1-2 hours on an intermittent bases; fine manipulation 4-6 hours; and lifting no greater than 10 pounds. Because the record clearly establishes that Complainant was a qualified individual with a disability, we find that the Agency had an obligation to provide reasonable accommodation to her absent a showing of undue hardship.

### *Denial of Reasonable Accommodation and Reprisal*

Federal agencies are charged with being a “model employer” of individuals with disabilities. See 29 C.F.R. § 1614.203(a). Inherent in this duty is an obligation to break down artificial barriers which preclude individuals with disabilities from participating on an equal footing in the work force. Accordingly, the Rehabilitation Act requires federal agencies to make various types of “reasonable accommodation” for federal employees who have disabilities. This requirement helps ensure that federal employees with disabilities will be able to perform the essential functions of their positions and enjoy all the benefits and privileges of employment enjoyed by non-disabled employees. See Appendix to Part 1630 - Interpretive Guidance on Title I of the Americans with Disabilities Act (Appendix to Part 1630), at § 1630.2(o): Reasonable Accommodation.

After receiving a request for reasonable accommodation, an agency “must make a reasonable effort to determine the appropriate accommodation.” 29 C.F.R. Part 1630, app. § 1630.9. Thus, “it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. § 1630.2(o)(3); see also 29 C.F.R. pt. 1630 app. § 1630.9, Enforcement Guidance on Reasonable Accommodation, at Q. 5. The term “reasonable accommodation” means, in pertinent part, modifications or adjustments to the work environment, or to the manner or circumstances under which the position held is customarily performed that enable a qualified individual with a disability to perform the essential functions of the position in question. See 29 C.F.R. §1630.2(o)(1)(ii). Reasonable accommodations may include but are not limited to: job restructuring; part-time or modified work schedules; reassignment to a vacant position; or acquisition or modifications of equipment or devices. 29 C.F.R. § 1630.2(o)(2)(ii). An agency has the obligation to provide accommodations to a qualified individual with disability absent a showing of undue hardship.

Upon review, we find that the record reflects that Complainant was denied a reasonable accommodation for her disability when Agency management required that she work the Blue Door, which required Complainant to walk in excess of her medical restrictions causing her further injury. Complainant asserted that she notified multiple management officials that she was being made to work in excess of medical conditions.

Complainant asserted, moreover, that when she reported that her assignment was violating her restrictions, she was warned she would be sent home if she could not do the work. Complainant also stated that when she notified S1 that she was working outside her medical restrictions, S1 responded by threatening to discipline her.

We note that Complainant's medical restrictions restricted her to standing/walking 1-2 hours on an intermittent bases, yet she was made to work the Blue Door assignment wherein she was made to walk and stand for 4-6 hours per day. As noted above, a Former Rural Carrier observed Complainant working the Blue Door assignment, attesting that Complainant was made to walk 4-6 hours per day despite her complaints to management. ROI at 312-313. The Former Rural Carrier also attested that she witnessed management officials bully, threaten, mistreat and demean injured carriers on numerous occasions. Id. The Former Rural Carrier also averred that when Complainant told management that she was being worked outside her restrictions, management would threaten to send her home. Id.

A second Former Rural Carrier attested as follows:

My only knowledge is the culture of putting light or restricted duty employees in situations which exceeded their medical restrictions. I observed this practice, both when I was on restricted duty, and watching co-workers in similar situations. It was and is an ongoing practice at the Suwanee Post Office.

ROI at 306.

We note that the record reflects that Complainant informed multiple management officials herein that she was provided with duties in excess of her restrictions, but no action was taken to address Complainant's concerns. In fact, management engaged in retaliatory actions by threatening to send Complainant home for exercising her right to seek out an accommodation and be allowed to work within her restrictions. Based on a review of the record, we find that Complainant established that she was denied reasonable accommodation for her disability when she was made to work in excess of her medical restrictions and subjected to reprisal for attempting to exercise her rights under the Rehabilitation Act.

Where a discriminatory practice involves the provision of a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for his disability. See 42 U.S.C. § 1981a(a)(3); and Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). Here, in light of the statements of the two Former Rural Carriers, as described above, and the fact that the Agency took no action to address Complainant's complaints that she was made to work in excess of her restrictions, we find that the Agency did not show that it acted in good faith in this case.

### 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 order. We AFFIRM the Agency's decision with respect to claim 1.<sup>3</sup> We REVERSE the Agency's final order with respect to claims 2 and 3.

### ORDER

The Agency is ordered to take the following remedial actions within 120 calendar days of the date this decision is issued:

1. The Agency shall ensure Complainant is provided a reasonable accommodation for her disability, which allows Complainant to work within her medical restrictions.
2. The Agency shall give Complainant a notice of her right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) in support of her claim for compensatory damages within forty-five (45) calendar days of the date Complainant receives the Agency's notice. The Agency shall complete the investigation on the claim for compensatory damages within forty-five (45) calendar days of the date the Agency receives Complainant's claim for compensatory damages. Thereafter, the Agency shall process the claim in accordance with 29 C.F.R § 1614.110.
3. The Agency shall provide a minimum of eight (8) hours of in-person or interactive training to the responsible management officials identified as S1, S2, the Acting Supervisor, and the Postmaster in this case regarding their responsibilities with respect to eliminating discrimination in the federal workplace. The training must emphasize the Agency's obligations under Section 501 of the Rehabilitation Act and in particular, its duties regarding reasonable accommodation.
4. The Agency shall consider taking appropriate disciplinary action against the responsible management officials identified as S1, S2, the Acting Supervisor, and the Postmaster in this case. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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).

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<sup>3</sup> We find that Complainant did not establish that she was subjected to disparate treatment or a hostile work environment with regard to claim 1. We find that the Agency articulated legitimate nondiscriminatory reasons with respect to claim 1, and Complainant did not show that those reasons were pretextual. Moreover, there is no evidence that management was motivated by discriminatory or retaliatory animus regarding claim 1.

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

#### POSTING ORDER (G0617)

The Agency is ordered to post at Post Office in Suwanee, Georgia 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).

#### 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

September 7, 2021

Date