



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ricardo K.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2020003751

Hearing No. 430-2017-00257X

Agency No. 2004-0659-2016100669

DECISION

On June 12, 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 May 14, 2020, final order 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 order.

ISSUES PRESENTED

The issues presented on appeal are: (1) whether the award of \$5,000 in nonpecuniary compensatory damages was sufficient; and (2) whether the EEOC Administrative Judge (AJ) properly reduced attorney's fees.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-0350-5 Reproduction Specialist in the Logistics Service at the Agency's VA Medical Center (VAMC) in

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.

Salisbury, North Carolina. Complainant initiated contact with an EEO Counselor on November 10, 2015.

On February 19, 2016, Complainant filed an EEO complaint, which he amended on April 28, 2016, alleging that the Agency discriminated against him on the basis of reprisal for prior protected EEO activity when:

1. On October 10, 2015, the Chief of Logistics (S1) took no action when Complainant informed him that he was being stalked by an Office Automation Reproduction Clerk (C1);
2. Between October 10, 2015, and November 10, 2015, a Maintenance Technician (C2) sent text messages to C1 regarding Complainant not performing his duties, which C1 forwarded to a former Logistics Supervisor (S2). C1 sent Complainant harassing text messages telling him that C2 was “creeping her out” and randomly showing up to her house, and C2 informed Complainant that C1 had been “trashing him” via text;
3. Between October 10, 2015, and November 10, 2015, an Agency employee told Complainant to “watch his back because [C1] was trying to make him look bad”;
4. On or about November 3, 2015, C1 attempted to alienate Complainant from the rest of the office staff by attacking his character in text messages and sending them to S2;
5. On or about November 4, 2015, management took no action when Complainant told them that C2 had walked into the print shop, slammed the door, and began to curse and threaten Complainant;
6. On December 2, 2015, the Assistant Chief of Logistics (S3) yelled and raised his voice while speaking with Complainant on the phone;
7. On or about December 26, 2015, management initiated a police investigation regarding Complainant’s improper storage of oxygen tanks in the workplace;
8. On January 14, 2016, S1 issued Complainant a Proposed Letter of Reprimand, which was reduced to a Letter of Admonishment on January 28, 2016; and,
9. On April 12, 2016, S1 issued Complainant a 14-day suspension for the period of May 1-14, 2016.

At the conclusion of the investigation, the Agency provided Complainant with notice of his right to request a hearing before an Equal Employment Opportunity Commission AJ.² Complainant timely requested a hearing.

On May 31, 2017, Complainant filed a Motion for Sanctions, requesting that the AJ sanction the Agency for its failure to timely complete its investigation into his EEO complaint.

² Complainant alleged that the Agency did not provide him with a copy of the report of investigation with the notice. According to Complainant, he did not receive a copy until his attorney requested one.

Complainant requested that the AJ issue a default judgment in his favor or that, in the alternative, the AJ order the Agency to pay all of Complainant's attorney's fees and costs associated with discovery. According to Complainant, the investigation should have been completed by October 25, 2016, 180 days after he amended the complaint. Complainant averred that the Agency did not begin the investigation until August 17, 2016, and did not complete it until approximately six months later on February 8, 2017.

In the Agency's Response to Complainant's Motion for Sanctions, the Agency contended that it acted in good faith and Complainant was not prejudiced by the delay because the investigation was thorough and both Complainant and the AJ received the report of investigation before the initial conference. The Agency argued that no sanctions were warranted and that, even if a sanction were warranted, default judgment was too extreme.

On April 10, 2018, the AJ issued a Notice of Intent to Issue Default Judgment. In the notice, the AJ stated that the Agency had failed to provide sufficient cause for its failure to conduct a timely investigation. The AJ permitted the parties until April 27, 2018, to respond to the notice. On April 27, 2018, the Agency filed a response reasserting the arguments previously raised in its Response to Complainant's Motion for Sanctions and stating that it had no additional arguments to offer.

On August 16, 2019, the AJ issued an Order of Default Judgment and Relief. The AJ found that the Agency failed to establish good cause for its failure to investigate Complainant's EEO complaint within the regulatory deadlines. According to the AJ, a lesser sanction than default judgment would not adequately address, or have the potential to deter, the Agency's disregard for the regulations and the Commission. Further, the AJ noted that the record did not appear to support a prima facie case of retaliatory discrimination because Complainant had engaged in protected activity in 2007, years before the alleged discrimination. The AJ, however, provided Complainant with an opportunity to demonstrate his claim for relief and support his claim for damages.

In Complainant's August 30, 2019 response to the Order of Default Judgment and Relief, Complainant stated that, although the Commission had held that it was not necessary to establish a prima facie case of discrimination to be awarded compensatory damages and attorney's fees where a default judgment was entered, he had done so. According to Complainant, he engaged in protected activity when he contacted an EEO Counselor to initiate the underlying complaint on November 10, 2015, and management was aware of this protected EEO activity before his April 12, 2016 suspension. Complainant requested \$100,000.00 in nonpecuniary compensatory damages, the restoration of 504.5 hours of sick leave, and attorney's fees and costs. Additionally, he asked for the ability to submit additional evidence of damages, noting that he was in the process of obtaining medical documents and documentation of out-of-pocket expenses within 30 days.

In support of his request for compensatory damages, Complainant stated that, prior to the Agency's actions, he was a happy-go-lucky, jovial, and confident individual who was eager to go above and beyond at his job. Complainant averred that, as a result of the Agency's actions, he experienced several years of anxiety, insomnia, high blood pressure, paranoia, insecurity, anger, and depression. As a result of the anxiety, asserted Complainant, he experienced respiratory illnesses, stomach pain, and chest pain on a monthly basis. Additionally, he began to experience rashes and eczema for the first time. Complainant stated that he went through periods of binge eating and periods where he had no appetite, causing his weight to fluctuate. Complainant averred that, although he only drank occasionally before the Agency's actions, he started drinking during the week to calm his nerves after work. Complainant reported that he lost interest in pursuing romantic relationships or cultivating new friendships and that he withdrew from his family and close friends. Complainant stated that he no longer trusts people.

In its September 13, 2019, response to the Order of Default Judgment and Relief, the Agency requested that the AJ reconsider the sanction of default judgment, arguing that the AJ's order appeared to insinuate that it was appropriate due to the Agency's failure to participate in discovery, when the basis for sanctions was actually its failure to timely produce the report of investigation. The Agency also argued that Complainant failed to establish he was entitled to the relief sought.

On September 27, 2019, Complainant filed a supplemental response to the Order of Default Judgment and Relief, which included medical records as well as affidavits from his son, sister, and brother-in-law. Complainant's medical records showed that he was prescribed Cozaar for his hypertension, in April 2017, and Lexapro to treat his depression and anxiety, in August 2017. On September 26-27, 2017, Complainant was hospitalized for chest pain and hypertension. A note related to the hospitalization stated that the acute chest pain was likely the result of anxiety. He was again treated at a hospital for chest pain and hypertension, on January 8, 2019.

Complainant's son stated that he had witnessed a change in Complainant's personality, from a social butterfly with an active social life, who loved his job, to someone who dreads work and has withdrawn from friends and family. Complainant's sister stated that Complainant now becomes agitated and upset when talking about work, and that his attitude is more pessimistic. According to Complainant's sister, although he used to be very active, Complainant now lacks the energy to see his friends and has stopped exercising. She also noted that Complainant constantly seems stressed, has trouble sleeping, and does not seem to enjoy anything anymore. Similarly, Complainant's brother-in-law, who has been friends with Complainant since the 1970s, stated that while Complainant had always been very social and talkative, he was now a different person who is withdrawn and seems worn down. Complainant used to enjoy golfing and running, explained his brother-in-law, but he stopped exercising and constantly eats junk food, resulting in significant weight gain.

On February 7, 2020, Complainant submitted a Petition for Attorneys' Fees and Costs, requesting \$46,231.90 in attorney's fees and \$222.94 in costs.

Complainant retained a law firm based in the Washington, D.C. area, and, according to the fee petition, three attorneys (A1, A2, and A3) and five paralegals performed billable work. A1 has more than 31 years of experience, A2 has 11-15 years of experience, and A3 has 8-10 years of experience. The petition stated that the law firm had exercised billing judgment, not seeking reimbursement for administrative tasks or for \$9,737.60 in fees for services that were primarily administrative in nature or reflected duplicative hours. The petition stated that the firm minimized fees where possible, noting that appropriate tasks were assigned to non-attorney staff and that services provided by more than one attorney were reasonable and not duplicative. Further, the petition noted that A2, who has less experience and bills at a lower rate than A1, served as the senior attorney on the matter. The petition stated that the fees were based on the Laffey Matrix prepared by the U.S. Attorney's Office for the District of Columbia and that it was reasonable for Complainant to obtain out-of-town counsel because of the law firm's expertise in federal sector employment law. A1, A2, and A3 provided affidavits describing their experience.

On February 18, 2020, the Agency submitted its Response to Award of Attorney's Fees. The Agency argued that the requested fees should be reduced due to Complainant's failure to establish entitlement to relief, as well as the monstrously excessive nature of the requested amount. According to the Agency, the case was not unusually complex or difficult to require the involvement of experienced attorneys like A1 and A2 or multiple paralegals.

On April 21, 2020, the AJ issued an Order of Default Judgment and Order of Relief. The AJ entered default judgment against the Agency as a sanction. The AJ determined that Complainant was entitled to compensatory damages and awarded him \$5,000.00 in nonpecuniary compensatory damages. Further, the Agency was ordered to provide Complainant with back pay for the period of his suspension, May 1-14, 2016. Regarding attorney's fees, the AJ found that the fees requested were excessive, noting that there were multiple instances where attorneys conferred to address a matter where one attorney alone could have completed the task and reduced the number of billed hours. Consequently, the AJ reduced the attorney's fees by one-third, awarding \$30,821.00 in attorney's fees and \$222.94 in costs.

The Agency subsequently issued a final order fully implementing the AJ's decision and the relief ordered. The Agency also ordered that: (1) any references to Complainant's suspension be expunged from all official Agency records; (2) it would commit to Complainant, in writing, that it would cease engaging in reprisal and would not engage in similar unlawful employment practices; (3) it would provide two hours of EEO training, with an emphasis on the prohibition of reprisal, to S1; (4) it would consider discipline against S1; and (5) a notice be posted at the Salisbury, North Carolina VAMC.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the award of \$5,000.00 in nonpecuniary compensatory damage was inconsistent with amounts awarded in similar cases and did not adequately remedy the harm caused by the Agency. Complainant also argues that the AJ erred in reducing attorney's fees by one-third.

According to Complainant, the attorneys did not overbill for conferring with each other, noting that the hours requested reflected a reduction. Complainant also suggests that, if the attorneys and paralegals could not confer, the fees requested likely would have been higher because the work would be completed by a senior attorney billing at a higher rate. Complainant maintains that the work completed by A2 and A3 was not duplicative. As for the multiple paralegals that worked on his case, Complainant asserts that this was due to staff turnover and that the paralegals did not all work on his case at the same time.

In accordance with Agency counsel's request, Complainant emailed her appellate brief to the Agency on July 8, 2020. The Agency's deadline to file a responsive statement was August 7, 2020, 30 days after receipt of Complainant's brief. See 29 C.F.R. § 1614.403(f). However, the Agency did not file its response until August 10, 2020. Given the untimely submission, we decline to consider the arguments raised by the Agency in its response.

ANALYSIS AND FINDINGS

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 Chapter 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").

Here, the Agency does not challenge the AJ's default judgment as a sanction for its failure to comply with EEOC regulations and the AJ's orders regarding the report of investigation. We find that Complainant established a prima facie case of reprisal and is entitled to relief, including compensatory damages. Therefore, the default judgment against the Agency is summarily affirmed and will not be discussed further in this decision. Rather, this appeal concerns the award of nonpecuniary compensatory damages and the attorney's fees.

Nonpecuniary Compensatory Damages

When discrimination is found, the Agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore him as nearly as possible to the position he would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). 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 nonpecuniary losses (e.g., pain and suffering, mental anguish) as part of this “make whole” relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 119 S.Ct. 1906 (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 nonpecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

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 Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.302 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 be “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 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.

Here, the AJ awarded Complainant \$5,000.00 in nonpecuniary compensatory damages. The record reflects that Complainant’s personality changed, from jovial and social to depressed and withdrawn. Complainant also experienced anxiety, insomnia, high blood pressure, paranoia, anger, and depression. Complainant started taking medication for high blood pressure and anxiety and sought medical care for chest pain which was attributed to anxiety. His weight fluctuated when Complainant would experience alternating periods of binge eating unhealthy foods and a lack of appetite.

We find that an award of \$10,000.00 in nonpecuniary damages is more appropriate and is consistent with Commission precedent. See Alexia D. v. U.S. Postal Serv., EEOC Appeal No. 0120170451 (April 24, 2019) (award of \$10,000 where discrimination caused anxiety, depression, insomnia, loss of enjoyment in daily activities, feelings of hopelessness, and social withdrawal); Karol K. v. Dep’t of State, EEOC Appeal No. 0120151671 (Oct. 27, 2017) (\$10,000 in nonpecuniary damages following default judgment where complainant was

depressed, numb, frustrated, angry, short-tempered, and had crying spells and weekly struggles with sleep); Wilda M. v. U.S. Postal Serv., EEOC Appeal No. 0120160472 (Aug. 25, 2017) (affirming \$10,000 in nonpecuniary compensatory damages where complainant experienced weight loss, anxiety, stress, depression, and low libido; was prescribed anti-anxiety medication; and her marriage was negatively impacted). An award of \$10,000 will more appropriately compensate Complainant for the harm he suffered as a result of the Agency's actions.

Attorney's Fees

Title VII authorizes the award of reasonable attorney's fees, including for an attorney's processing of a compensatory damages claim. 29 C.F.R. § 1614.501(e). To establish entitlement to attorney's fees, Complainant must first show that he or she is a prevailing party. Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598 (2001). A prevailing party for this purpose is one who succeeds on any significant issue and achieves some of the benefit sought in bringing the action. Davis v. Dep't of Transp., EEOC Request No. 05970101 (Feb. 4, 1999) (citing Hensley v. Eckerhart, 461 U.S. 427, 433 (1983)).

The fee award is ordinarily determined by multiplying a reasonable number of hours expended on the case by a reasonable hourly rate, also known as a "lodestar." See 29 C.F.R. § 1614.501(e)(2)(ii)(B); Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998). In determining the number of hours expended the Commission recognizes that the attorney "is not required to record in great detail the manner in which each minute of his time was expended." *Id.* However, the attorney does have the burden of identifying the subject matters which he spent his time by submitting sufficiently detailed and contemporaneous time records to ensure that the time spent was accurately recorded. *Id.*

Further, a reasonable fee award may be assessed in light of factors such as: (1) the time required (versus time expended) to complete the legal work; (2) novelty or difficulty of the issues; (3) the requisite skill to properly handle the case; (4) the degree to which counsel is precluded from taking other cases; (5) the relief sought and results obtained; and (6) the nature and length of the attorney-client relationship. See Cerny v. Dep't of the Army, EEOC Request No. 05930899 (Oct. 19, 1994). Complainant is only entitled to an award for time reasonably expended. It does not always follow that the amount of time actually expended is the amount of time reasonably expended. Elvin v. Dep't of Labor, EEOC Request No. 01943425 (Aug. 31, 1995). Rather, "billing judgment" is an important component in fee setting, and hours that would not be properly billed to a private client are also not properly billed to an agency pursuant to a successful EEO claim. *Id.* Counsel for the prevailing party should make a "good faith effort to exclude from a fee request hours that are excessive, redundant or otherwise unnecessary." See Bernard, EEOC Appeal No. 01966861.

Here, the AJ reduced the requested attorney's fees by one-third, finding that, although the law firm reduced the number of billed hours, the requested fees appeared to be excessive based on the complexity of the case. The AJ also questioned the need for the attorneys to confer with each other so frequently.

We agree with the AJ that the fee petition reflects excessive hours billed in a case where there was no discovery ordered. When reviewing fee petitions which contain many excessive, redundant, unnecessary, or inadequately documented expenditures of time, in lieu of engaging in a line-by-line analysis of each charge claimed, the Commission may calculate the number of hours compensable by applying an across-the-board reduction to the number of hours requested. See Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998). We find that the AJ appropriately applied an across-the-board reduction of one-third for excessive and unnecessary hours. See Elliot J. v. Dep't of Commerce, EEOC Appeal No. 0120171366 (April 25, 2019) (upholding 33 percent across-the-board reduction of attorney fees by AJ for excessive and unreasonable hours); Watts v. Dep't of Agriculture, EEOC Appeal No. 0120093410 (June 11, 2012) (finding that a 60 percent across-the-board reduction of attorney's fees was warranted where some of the counsel's hours were excessive and there was no evidence to support the reasonableness of the requested hourly rate and hours expended). Accordingly, we affirm the award of \$30,821.00 in attorney's fees and \$222.94 in costs.

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 and REMAND the matter to the Agency for further processing in accordance with this decision and the ORDER below.

ORDER

The Agency is ORDERED to take the following remedial actions:

1. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$10,000 in nonpecuniary compensatory damages, less any amount already paid to Complainant as nonpecuniary compensatory damages.
2. To the extent it has not already done so, within 30 calendar days of the date this decision is issued, the Agency shall pay Complainant attorney's fees in the amount of \$30,821.00 and costs in the amount of \$222.94.
3. Complainant is entitled to additional attorney's fees and costs incurred in the processing of the instant appeal. The Agency shall process any additional claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of 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)

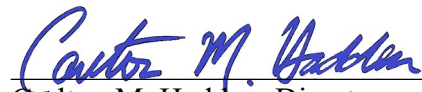
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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:



Carlton M. Hadden, Director
Office of Federal Operations

November 16, 2021
Date