



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

[REDACTED]
James R.,¹
Complainant,

v.

Debra A. Haaland,
Secretary,
Department of the Interior
(Bureau of Reclamation),
Agency.

Appeal No. 2020004036

Hearing Nos. 550-2018-00336X & 550-2018-00337X

Agency Nos. DOI-BOR-17-0302 & DOI-BOR-17-0304

DECISION

On June 17, 2020, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), having not received a copy of a final decision from the Agency almost a year after the Agency had been ordered to issue such a decision by an EEOC Administrative Judge (AJ). The Agency issued its final decision on June 2, 2020.² The decision concerned Complainant's 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Engineering Technician, GS-09, at the Agency's Bureau of Reclamation, Great Plains Regional Office facility in Billings, Montana.

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 Complainant maintains he had not received the FAD at the time of his appeal.

On May 4, 2017, Complainant filed two EEO complaints. The first complaint, under Agency No. DOI-BOR-17-0302, alleged that the Agency discriminated against him on the bases of disability (profound deafness, Myasthenia Gravis, and lung restrictive diseases) and reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when:

1. On March 24, 2017, Complainant discovered that the Agency determined that he was not qualified and not referred for the position of Hydrologic Technician under Vacancy Announcement Nos. BR-GPMT-17-05 and BR-DEGP-MT-17-03 (Position 1).

The second complaint, under Agency No. DOI-BOR-17-0304, alleged that the Agency discriminated against him on the bases of disability, reprisal, and Veteran's status³ when:

2. On November 29, 2016, Complainant discovered that the Agency did not refer him for the position of Cartographer, GS-1370, under Vacancy Announcement No. BR-GP-NK-17-01 (Position 2).

At the conclusion of the investigations, the Agency provided Complainant with copies of the reports of investigation and notice of his right to request a hearing before an AJ. Complainant requested a hearing and the complaints were consolidated. The AJ subsequently denied the hearing request on the grounds that Complainant refused to comply with the Agency's discovery request. On June 14, 2019, the AJ remanded the complaint to the Agency and ordered the Agency to issue a final decision pursuant to 29 C.F.R. § 1614.110(b) within sixty days of the AJ's order. The Agency, however, did not issue a decision until June 2, 2020. The decision (FAD) concluded that Complainant substantially proved that the Agency subjected him to discrimination as alleged.

Specifically, the Agency first found that Complainant was a person with a disability based on his diagnoses of profound deafness, Myasthenia Gravis, and lung restrictive diseases. The Agency next found that Complainant established prima facie cases of reprisal discrimination when he was not referred to either position, and further found that Complainant established a prima facie case of disability discrimination with regard to Position 2 but not with regard to Position 1. Specifically, the FAD found that Complainant failed to establish that he was qualified for Position 1. The FAD noted that "Complainant has not established a prima facie case of disability discrimination [for Position 1], although we will assume, arguendo, that he has."

The Agency further found that, with regard to Position 2, Agency officials articulated a sufficiently clear and specific legitimate nondiscriminatory reason to afford Complainant a full and fair opportunity to demonstrate pretext. Specifically, the FAD found that management officials explained that Complainant did not have enough upper-level courses to meet the educational requirements for the position.

³ We note that Veteran's status is not a basis recognized under our rules and regulations and the Agency correctly dismissed this portion of Complainant's complaint.

With regard to Position 1, however, the FAD found that a Human Resources Specialist (HRS1) who evaluated the applicants for the position could not remember doing so and, having retired from the Agency by the time of the supplemental investigation, could not be reached to provide additional information and could not explain why Complainant was not referred. The FAD found that the selecting official could explain why the selectee was selected for the position but could not explain why Complainant was not referred for the position since he was not involved in the referral process. The FAD therefore concluded that management failed to articulate a reason for denying Complainant a referral and that Complainant was thereby denied a full and fair opportunity to demonstrate pretext and the Agency thus failed to overcome Complainant's prima facie case of discrimination with regard to Position 1.

With regard to Position 2, while the Agency found that management officials articulated a legitimate nondiscriminatory reason for not referring Complainant for the position, the Agency further found that Complainant successfully established that such a reason was a pretext. Specifically, the FAD found that management officials failed to substantiate their contention that Complainant's college-level courses were insufficient to meet the requirements of the position. In addition, the FAD noted that while management officials claimed no knowledge of Complainant's disabilities, he had in fact mentioned them in his application package and had notified the Agency that he would need a reasonable accommodation. Furthermore, the FAD noted that the HR Officer who failed to refer Complainant's application was the same individual who had been one of the subjects of a previous EEO complaint filed by Complainant and that a decision by this Commission addressing that prior complaint was issued shortly before the non-referral.

The Agency concluded that Complainant successfully established that he had been subjected to reprisal with regard to his non-referral for Position 1 and that he had been subjected to both disability discrimination and reprisal with regard to Position 2. The Agency found that Complainant was entitled to compensatory damages and costs and agreed to provide eight hours of anti-discriminatory training, although the FAD did not specify which management officials would be required to take such training. The Agency further noted that:

In addition to making Complainant whole, a remedy must be tailored to correct the particular source of the identified discrimination and to minimize the chance of its recurrence. Therefore, pursuant to 29 C.F.R. § 1614.501(a)(2), BOR will take whatever corrective, curative, and preventive actions and will adopt whatever measures are necessary to ensure that violations of federal EEO law similar to those found in this case do not recur.

On appeal, Complainant argues that due to the delay in issuing the FAD:

[T]he Agency has forfeited the right to any further involvement as respondents in this matter. Complainant moves for a hearing for this appeal with the Agency acting in capacity to show cause why sanctions should not be imposed and in capacity as witness only since the Agency lost claim to other further response and

comment when they failed to file the FAD in a timely manner. The extended deadline was moved from August 13, 2019 to January 13, 2020 which is before the first case of Covid-19 was discovered in the United States. The Agency should not be allowed to use this National Emergency as an excuse to fail to provide the FAD in a timely manner particularly since they had been granted an extension. The claimant filed with OFO formal notification to appeal on June 1, 2020 via USPS Priority Mail DOI Talent and mailed a copy to the Agency which USPS records show was delivered and accepted. On June 2, 2020 the Agency submitted the FAD to the claimant. The Agency only submitted the FAD after the claimant had filed informal and formal notice to appeal. The FAD should be considered nonbinding and to have no legal weight because it was not filed in a timely manner as described above.

Complainant further requests the reopening of his earlier claims under EEOC Appeal Nos. 0120132052 and 0120150844, both previously decided on February 4, 2016, and that those claims be combined with the instant complaint.

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”).

We note initially that with regard to Complainant’s request to disregard the FAD, while we appreciate his frustration with the lengthy delay in the FAD being issued, we discern no valid purpose in disregarding a FAD that finds in Complainant’s favor and that substantially agrees with his claims that he was subjected to discrimination and reprisal as alleged. We further find that the Agency’s delay in issuing its FAD has no bearing on the matters addressed in 0120132052 and 0120150844 and we decline Complainant’s request to reopen those claims. If Complainant feels that the Agency has failed to comply with the Order contained in those earlier combined decisions, he may choose to file a Petition for Enforcement regarding those claims.

Where, as here, Complainant does not have direct evidence of discrimination, a claim alleging disparate treatment is examined under the three-part test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Under this analysis, a complainant initially must 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. See St Mary's Honor Center v. Hicks, 509 U.S. 502, 507 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas 411 U.S. at 802. Next, in response, the agency must articulate a legitimate, nondiscriminatory reason for the challenged actions. See Burdine, 450 U.S. at 253-54; McDonnell Douglas, 411 U.S. at 802. Finally, it is complainant's burden to demonstrate by a preponderance of the evidence that the agency's action was based on prohibited considerations of discrimination, that is, its articulated reason for its action was not its true reason but a sham or pretext for discrimination. See Hicks, 509 U.S. at 511; Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 804.

The record shows, and the FAD found, that Complainant engaged in prior protected activity, that management officials were aware of such protected activity, and that adverse action in the form of non-referrals occurred such that retaliatory motive may be inferred. We therefore agree with the FAD that Complainant established a prima facie case of reprisal with regard to positions 1 & 2.

With regard to his disability discrimination claim, the FAD concluded that Complainant is “a member of a protected group based upon his diagnoses of profound deafness, Myasthenia Gravis, and lung restrictive diseases” and Complainant does not dispute this finding. We therefore find that Complainant has shown that he is an individual with a disability.

We next address the matter of whether or not Complainant is a qualified individual with a disability. With regard to Position 2, the FAD found, and we agree, that Complainant was qualified for the position, that he was therefore a “qualified individual with a disability” and further, that he successfully established a prima facie case of disability discrimination when he was not referred for Position 2.

With regard to Position 1, however the FAD found that Complainant was not qualified for the position and that he therefore failed to establish a prima facie case of disability discrimination with regard to that position. Complainant, on the other hand, maintains that he did possess the required experience to make him qualified for the position.

In his appeal brief, Complainant states:

OPM qualification standards for Hydrologic Technician GS-1316 (attached) . . . specifically state that examples of qualifying specialized experience for GS-1316 other than hydrographic technician include engineering technician, surveying technician, and drafter. [The Agency] asserts in the record FAD that [I] had no hydrologic technician experience. This is a false statement of fact. [My] resume states: “Acquired GS-09 specialized Hydrologic Technician experience when I collected, selected, computed, processed, and input hydrologic instrumentation data from 2002-2003 at Reservoir Operations group in the Facility Operations and

Maintenance Division at the Montana Area Office of the Bureau of Reclamation. I was one of the first at the state office level to use the internet-based system to input hydrologic instrumentation. I worked with Reclamation field personnel, irrigation district staff, MTAO office staff, and the Denver Technical Service Center to collect data and accomplish timely input to the DAMMS software system each month in accordance with program guidelines. I trained a civil engineer to use the system and received a Star award for performing these duties from Facilities O&M Division supervisor _____ [name omitted]."

The record shows that [I have] worked as an engineering technician for the Agency since June, 2001 and the Department Office of Civil Rights stipulates in the record FAD that [I have] a wealth of surveying and mapping experience. [I]n addition [I] detail ... extensive drafting experience in [my] resume. The Agency is ignoring [my] testimony and transcript evidence and is disregarding OPM qualification standards for GS-1316.

We note, however, that despite Complainant's claim that the FAD said that he had no hydrologic technician experience, a review of the FAD shows that it noted that:

In Complainant's application for the Hydrologic Technician position, he includes the following information about his experience related to the position from an Engineering Technician position that he held from 2001 to 2012: "Acquired GS-09 specialized Hydrologic Technician experience when I collected, selected, computed, processed, and input hydrologic instrumentation data from 2002-2003 at Reservoir Operations group in the Facility Operations and Maintenance Division at the Montana Area Office of the [Agency]. I was one of the first at the state office level to use the internet-based system to input hydrologic instrumentation." This is the only experience that Complainant can show specifically tailored to the Hydrologic Technician position. Complainant's experience is tailored towards Engineering Technician and Survey Technician work, rather than a Hydrologic Technician position.

The Agency thus acknowledged the very examples Complainant referenced and nevertheless found them to be insufficient. Complainant argues that the Agency "is disregarding OPM qualification standards for GS-1316" and that he has included OPM qualification standards for Hydrologic Technician GS-1316 that "specifically state that examples of qualifying specialized experience for GS-1316 other than hydrographic technician include engineering technician, surveying technician, and drafter." The document submitted by Complainant, however, has not been submitted in a format that allows it to be viewed. Even assuming *arguendo* that some level of engineering technician, surveying technician, and/or drafter experience is sufficient to count as qualifying specialized experience for the position in question, Complainant has not established that his own experience in those areas was sufficient to make him qualified for Position 1.

We therefore find that Complainant has not shown, by a preponderance of the evidence, that he is a qualified individual with a disability and hence we find he has not established a prima facie case of disability discrimination when he was not referred for Position 1.

Complainant having successfully established a prima facie case of reprisal discrimination for both positions, as well as disability discrimination for Position 2, we next address whether or not the Agency has articulated a legitimate nondiscriminatory reason for its actions. The FAD found that, with regard to Position 1, the Agency was unable to articulate a legitimate nondiscriminatory reason for its action because the referring official, HRS1, could not recall her participation in the matter and by the time of the supplemental investigation she could no longer be reached and so could not explain why Complainant was not referred. In addition, the FAD noted that the selecting official for the position could explain why he selected the selectee but since he was not involved in the referral process, he could not explain why Complainant was not referred. Following a review of the record we agree with the FAD's finding that the Agency failed to articulate a legitimate nondiscriminatory reason for not referring Complainant for Position 1, and thus failed to rebut Complainant's prima facie case. Because the Agency failed to rebut his prima facie case, we find that Complainant successfully established that he was subjected to reprisal discrimination when he was not referred for Position 1.

With regard to Position 2, the record shows that the Human Resources Specialist (HRS2) who referred candidates to the selecting official averred that the reason she did so was because she found that Complainant "did not meet the basic education requirements for the 1370 series based on the information he provided in his resume and the transcripts he submitted. I changed his status to reflect this." HRS2 provided no further elaboration regarding how Complainant's qualifications failed to meet the requirements of the position. The record also contains a notification that that stated "Application denied for GS-1370 series. Transcripts submitted do not show required course-work for 1370 series as outlined in the vacancy announcement. Not referred." The Agency having articulated legitimate nondiscriminatory reasons for its action, the burden shifts back to Complainant to establish, by a preponderance of the evidence, that the Agency's reasons were not its true reasons, but were pretexts for discrimination. See Hicks; Burdine; McDonnell Douglas. Following a review of the record we find that Complainant has successfully met this burden.

In his rebuttal statement, Complainant averred that "the educational credentials I submitted . . . meet OPM Classification Standards . . . for Cartographer, GS-1370 and included Bachelor of Science degree supplemented by 15 semester hours of cartography and related mapping/GIS/land surveying classes and 15 semester hours of algebra, trigonometry, and calculus." In addition, Complainant submitted a copy of the U.S. Office of Personnel Management standards for the Cartography Series 1370, which state that the basic requirements are:

Degree: cartography; or a major that included or was supplemented by at least 30 semester hours in cartography and/or directly related science, and related mathematics. Such course work includes, but is not limited to, cartography, astronomy, geodesy, photogrammetry, physical and geological oceanography,

computer science, land surveying, geophysics, physical geography, and remote sensing. The 30 semester hours must have included at least 6, but no more than 15, semester hours of college level, non-business mathematics or statistics (i.e., college level algebra, trigonometry, calculus, or scientific mathematics or statistics requiring equivalent college-level courses as prerequisites).

The FAD noted that “Complainant was credited for twenty-five credits of relevant, upper-level Courses” and found that Complainant was qualified for the position. With regard to HRS2’s denial of any knowledge of Complainant’s disabilities, the record shows that Complainant submitted copies of a prior request for a reasonable accommodation as well as a response from the Agency in his application package. We find that HRS2 had at least constructive knowledge of the materials in Complainant’s application package. The FAD further found that HRS2 was identified in a prior EEO complaint filed by Complainant and that shortly before she denied his referral, this Commission issued consolidated Decisions 0120132052 and 0120150844 which addressed that complaint and found that Complainant had been denied a reasonable accommodation. Because of HRS2’s inaccurate denial of any knowledge of Complainant’s disabilities, the proximity of her non-referral to the issuance of our Decisions finding denial of a reasonable accommodation, Agency management’s initial failure to comply with the investigation, and “Management’s failure to provide a legitimate nondiscriminatory reason for the non-selection” for Position 1, the FAD found that Complainant successfully established that the Agency’s articulated reason for not referring his application was a pretext for discrimination. Given that HRS2 did not explain why Complainant’s qualifications failed to meet the qualifications of the position, and her denial of any knowledge of Complainant’s disabilities and prior EEO activity despite being identified in a prior EEO complaint alleging denial of reasonable accommodation in which we issued a Decision in Complainants’ favor shortly before HRS2 denied his referral, as well as for the reasons provided in the FAD, we agree that Complainant has established that the Agency’s articulated reason for its action is a pretext. We therefore find that Complainant has established that he was subjected to discrimination based on disability and reprisal when he was not referred for selection for Position 2.

We turn next to Complainant’s requests for relief on appeal. Complainant asks that we direct the Agency to explain why documentary evidence included in a supplemental report of investigation was not included in the original report of investigation. This request is denied. Complainant next maintains that he has been denied a reasonable accommodation when the Agency required that he take a training module that does not accommodate his deafness. Such a claim is outside the purview of this complaint and Complainant may file a new claim addressing this matter if he has not already done so. However, the Agency is reminded that under the Rehabilitation Act and the Commission’s regulations, an agency is required to make reasonable accommodation of 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), 1630.2(p). With regard to Complainant’s requests to investigate the Agency and provide oversight, such requests are taken into consideration, but we decline to address them further herein.

Finally, with regard to compensatory damages and costs, we note that in its discrimination finding, the Agency found entitlement to compensatory damages and costs and directed Complainant to submit a claim for compensatory damages and costs within forty-five days of receipt of the FAD. We find that Complainant's decision to appeal the FAD instead does not preclude his entitlement to compensatory damages and/or costs.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that the Agency discriminated against Complainant based on reprisal when Complainant was not referred for the position of Hydrologic Technician under Vacancy Announcement Nos. BR-GPMT-17-05 and BR-DEGP-MT-17-03. We further find that the Agency discriminated against Complainant based on disability and reprisal when he was not referred for the position of Cartographer, GS-1370, under Vacancy Announcement No. BR-GP-NK-17-01. We therefore AFFIRM the FAD and REMAND this matter to the Agency in order to address remedies as contained in the order below.

ORDER

The Agency is ORDERED to take the following remedial action:

1. Within one hundred twenty (120) calendar days of the date this decision is issued the Agency shall conduct a supplemental investigation of Complainant's entitlement to compensatory damages. The Agency is directed to inform Complainant about the legal standards associated with proving compensatory damages and give Complainant examples of the types of evidence used to support a claim for compensatory damages. Complainant shall cooperate with the Agency's investigation in the matter of compensatory damages and shall be given thirty (30) calendar days from the date he receives the Agency's notice to provide all supporting evidence of his claim for compensatory damages. Within 30 calendar days of the date the Agency receives Complainant's submission, the Agency shall issue a new final decision determining Complainant's entitlement to compensatory damages, together with appropriate appeal rights. If Complainant fails to cooperate with the Agency's investigation into the matter of compensatory damages, he may forfeit entitlement to such damages.
2. To the extent the Agency has not already done so, the Agency shall pay Complainant's costs associated with the prosecution of this claim. The costs may include mailing, photocopying, and any other reasonable out-of-pocket expenses. A claim for costs must be filed with this office within sixty (60) calendar days of receipt of this. The claim must itemize the costs and be accompanied by documentary evidence, such as bills and receipts, to support

the claim. Failure to provide such documentation may result in denial of the claim.

3. To the extent possible, Complainant shall be offered the option of either the next available Cartographer GS-1370 position or the next available Hydrologic Technician GS-1316 position in the same geographical areas as the positions for which he applied, whichever Complainant prefers. Such positions shall be retroactive to the dates the selectees for those positions began their respective positions. The FAD indicates that because Complainant, pursuant to an earlier complaint, already accepted the position of Engineering Technician (Drawing), GS-0802-09, with the BOR, Great Plains Region, Montana Area Office, retroactive to September 14, 2012, Complainant was not offered retroactive placement to either the Cartographer or Hydrologic Technician positions. Complainant shall be given the option of either accepting the next available Cartographer or Hydrologic Technician position retroactive to the relevant dates, or of staying in his current position. If Complainant decides to forego his current position and accept retroactive placement in either the Cartographer or Hydrologic Technician positions, he may or may not have to repay past salary to the Agency depending on whether or not acceptance of the new position involves a reduction in pay or benefits.
4. If it has not already done so, the Agency is ordered to provide HRS2 with eight hours of EEO training which focuses on identifying and prohibiting disability discrimination and reprisal and addresses her responsibilities with respect to eliminating discrimination in the workplace, and provides education on the current state of law in employment discrimination. The EEO training may not be self-administered. Following the completion of the EEO training, the Agency's representative shall provide the Commission with a sworn statement from the person(s) responsible for administering the training, which offers a detailed synopsis of the training provided and identifies and confirms the date on which HRS2 completed it. If HRS2 has left the Agency's employ, the Agency shall furnish documentation of her departure date.
5. If it has not already done so, the Agency shall consider taking disciplinary action against HRS2. 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 HRS2 has left the Agency's employ, the Agency shall furnish documentation of her departure date.

POSTING ORDER (G0617)

If it has not already done so, the Agency is ordered to post at its Office of Bureau of Reclamation, Great Plains facility 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).

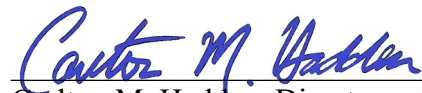
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

November 22, 2021

Date