



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ileen C.,¹
Complainant,

v.

Kilolo Kijakazi,
Acting Commissioner,
Social Security Administration,
Agency.

Appeal No. 2021000865

Agency No. DAL-19-114-SSA

DECISION

On November 16, 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 October 15, 2020, final decision concerning her 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. and 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 REVERSES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Social Insurance Specialist at the Agency's field office in Pasadena, Texas. Her duties consisted of reviewing and authorizing claims and other complex determinations for benefits, conducting interviews, assisting the public by explaining options for conducting business with the Agency, and examining evidence to evaluate its validity and acceptability.

Complainant has been diagnosed with posttraumatic stress disorder (PTSD), autoimmune deficiencies, sinusitis, asthma, pneumonia (chronic), respiratory issues, pneumonia (chronic), infections, allergies (highly allergic to dust), and bronchial infections.

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.

She also experiences hives, blisters, inflammation, swelling, muscle spasms, abdominal tumors, boils, and rashes related to allergic conditions. See Report of Investigation (ROI) at 000054 and 000154-73. Complainant indicated that moving to various workstations as part of her workday increased her exposure to dust and allergens. Id. at 000061. She noted that her assignment involved working at and moving to multiple workstations/windows during the day and that she must clean each workstation which would take approximately 20 to 25 minutes. Id. To substantiate the reason for the cleaning time and exposure to allergens, she provided a series of photos illustrating the extent the work surfaces including spaces under desks, power cords, and chairs, were covered in dust and the effort she took to clean each workstation. Id. at 000137-53. To limit her exposure to dust which would trigger her allergic reactions, Complainant had a reasonable accommodation in place where she was assigned to sit at a specific workstation instead of being moved among the other workstations. Complainant averred that she began the reasonable accommodation process in 2011 at which time she was assigned to window 10 for the day.² She noted that the reasonable accommodation had been in place by prior management officials and stayed in place until her District Manager retired in December 2018. Id. at 000059-60.

The new Assistant District Manager (AD Manager) determined he would not honor the reasonable accommodation Complainant was provided by the District Manager and asked Complainant to resubmit her reasonable accommodation request. Id. In a letter dated February 20, 2019, Complainant's physician provided a medical note which indicated that Complainant should be allowed to work in one (1) stationary spot at work each day. Id. at 000079. The physician explained that moving to various locations increased Complainant's exposure to dust and various other allergens, which would exacerbate her underlying medical conditions. Id. On February 21, 2019, Complainant submitted a new reasonable accommodation request. Id. at 0000174.

Complainant submitted additional medical documentation in a March 13, 2019, note from her physician. The note indicated that it was imperative that she work in an environment free of dust and debris, and that he recommended that she work at one station and not move between stations to minimize her exposure to antigens. See ROI at 000174.

On July 11, 2019, Complainant's request was denied in a Reasonable Accommodation Decision. Id. at 000174-75. The Agency determined that the medical documentation submitted by Complainant was insufficient to establish that a special allowance to work exclusively at window 21, or at any specific interviewing station, was necessary to enable Complainant to perform the essential functions of her job.

On November 19, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of national origin (Hispanic), sex (female), disability (PTSD, autoimmune deficiencies, sinusitis, asthma, chronic pneumonia, and respiratory

² Complainant noted that District Manager assigned her to window 21. ROI at 000059.

conditions), age (52), and reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when:

1. From February 15, 2019, the Agency failed to provide Complainant with a reasonable accommodation (RA) based on disability; and
2. From February 12, 2019, management inconsistently approved Complainant's time and attendance, removed her RA which was approved by her previous manager, denied her new request for RA, assigned her to front windows, and was yelled at during work.

In a February 4, 2020 email, Complainant sent attachments regarding the alleged harassment, including instances wherein management denied Complainant's time and attendance. She noted that while some of the harassment began in 2018, it became excessive once the new AD Manager denied her reasonable accommodation request in February 2019. See ROI at 000195. The attachments included Complainant's leave requests with a series of denials and approvals. In other emails from February 2020, Complainant detailed the experiences she had with management wherein her time at work was questioned and requests for time were occasionally denied. See ROI at 000205.

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

In the Agency's final decision, it was noted that as a part of Complainant's position, she must interact with the public via telephone, work from multiple front-end interviewing areas, change tasks multiple times throughout the day, stay current with her workloads, and report to management the status of her work. It was also noted by a management official that to his knowledge, Complainant did not have any work limitations. Moreover, the management official stated that allowing Complainant to sit at a single window would not have allowed her to perform her duties anymore than any other front-end interviewing window. As such, the accommodation was not granted. In the FAD, another management official stated that Complainant's reasonable accommodation would have caused the Agency an undue hardship; the office contained 41 windows, four of those used exclusively for eServices and hearing officers, reducing the available number to 37. As such, the management official maintained that the accommodation would create a hardship if granted.

The Agency determined that Complainant had established that she had actual physical and mental disabilities. She also established that she experienced severe rashes, welts, hives, and breathing problems, which force her to leave work or to seek medical attention.

The Agency found that she sometimes took medication which made it difficult to function, therefore causing her to take leave and preventing her from being present at work and serving the public, an essential function of her position. It was also confirmed that Complainant's employment at the Agency began in 1991 and she was able to perform her duties; moreover, she had held her current position since 2015 and management acknowledged that Complainant could perform her duties with no limitations. As such, the Agency determined that she was qualified for the position.

The FAD went on to clarify that management was aware of Complainant's medical conditions, which all officials acknowledged. Management was aware that Complainant had requested an accommodation to work at window 21. However, the Agency found that Complainant failed to establish that the accommodation requested was reasonable. The Agency determined that the record did not identify any specific functional limitations or explain how a special allowance to work at one specific interviewing station (window) would address limitations and enable Complainant to perform essential functions of her position.

The Agency found that management had taken reasonable actions to accommodate Complainant's disability. They noted that while Complainant was asked to provide documentation of her prior accommodation, she did not do so. The Agency found that Complainant had received face masks, gloves, and bleach-free wipes as an alternative accommodation to limit her exposure to dust and debris. Although Complainant contended that she did not have enough time to clean each new station throughout the day, the Agency determined that Complainant had not shown that the alternative accommodation was ineffective.

As to the undue hardship caused by the requested accommodation, the Agency reiterated that there were only 37 windows available (as four of the total 41 windows were used exclusively for eServices and disability hearing officers), and to designate a window for Complainant would eliminate it from use and reduce the Agency's ability to provide customer service.

As to Complainant's claims of harassment, the Agency determined that Complainant did not establish that management subjected her to personal slurs or other denigrating or insulting verbal or physical conduct relating to her protected class. It was also determined that Complainant failed to establish the existence of discriminatory intent on the part of any of the responding management officials. The Agency stated that even considering the conduct Complainant cited, she had not shown that reasonable accommodation, time and attendance, and other workplace incidents rose to the level of severe and pervasive conduct to establish harassment.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the FAD is inaccurate. She explains that her accommodation request is for management not to move her to another window after the initial assignment of the day, rather than to permanently assign her window 21, or any other window. She notes that her doctor did provide a statement towards the improvement of her condition if she was able to remain at one desk, once assigned, for the day.

She also responds to the denial of the alternate accommodation offered by the Agency; she clarifies that she denied the offer of cleaning supplies as she was already providing her own supplies and her problems had continued.

In response, the Agency argues that in 2019, the Pasadena office was serving over 2,000 customers weekly, and the office's leadership organized pursuant to receiving notice of several retirements. The Agency notes that while Complainant told new management that sometime in 2011 and in 2013, prior to her promotion, her prior manager granted her accommodation request to work at only one window, there was no documentation of the arrangement. The Agency also argues that Complainant's medical documentation did not provide support for her dust allergy, and that Complainant submitted no further documentation. In lieu of her requested accommodation, management offered her masks, gloves, wipes, and tissues for dust cleaning, as she had been purchasing her own.

The Agency also argues that Complainant's accommodation request was implausible given the job's essential functions, all of which Complainant was already performing successfully without the particular accommodation requested. The Agency contends that there was no nexus between her medical limitations and her preferred accommodation; the medical documentation failed to identify any functional limitations or state how Complainant's request would address those limitations so she could perform the essential functions of her position. It argues that Complainant has been fully successful in performing her essential functions, even without the accommodation desired.

In addition, the Agency clarifies on appeal that there is no obligation to grandfather any prior accommodation. They note that since the time of her prior accommodation, Complainant was promoted. The Agency also notes that Complainant was provided an effective accommodation of supplies, including masks, gloves, wipes, and tissues.

As to the undue hardship, the Agency argues for the first time that to allow Complainant to use one window throughout the day would obstruct operational needs. The Agency provides that as Complainant is a bilingual employee, her role requires added flexibility in moving from a desk in the back to any windows where customers need her. The Agency states that if an employee were to reserve a window but was late or absent, the window would go to waste when other employees needed to use it for efficiency in serving customers. Therefore, the Agency asserts on appeal it was unfeasible and an undue hardship to reserve a particular window.

Finally, the Agency argues that every action taken was based on business reasons and consistency in following procedure, whether in processing Complainant's accommodation request or in operating the field office and managing employees. The Agency indicates that upon her previous manager's retirement in January 2019, AD Manager introduced several new calendars impacting all employees' schedules and duties, leave, training, and compressed work schedules.

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”).

Denial of Reasonable Accommodation

Agencies are required to reasonably accommodate the known limitations of qualified individuals with disabilities unless they can show that doing so would result in undue hardship upon their operations. See 29 C.F.R. §§ 1630.2(o), (p); EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance), EEOC Notice No. 915.002 (Oct. 17, 2002); Barney G. v. Dep’t of Agric., EEOC Appeal No. 0120120400 (Dec. 3, 2015). 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 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).

Generalized conclusions will not suffice to support a claim of undue hardship. Rather, a showing of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and,
- the impact of the accommodation on the operation of the facility.

Prior to examining the matter, we note that while the parties have already stipulated that Complainant is a disabled individual, we simply affirm that based on the record, Complainant is an individual with a disability. 29 C.F.R. § 1630.2(g)(1). Further, the parties agreed, and we determine that Complainant is qualified as she was able to perform the duties and responsibilities of her position.

On appeal, for the first time, the Agency noted that because Complainant is bilingual, her position requires extra flexibility to accommodate specific customers. However, the Agency did not explain how this extra flexibility prohibited Complainant from remaining at a single window throughout the day, or how this would cause the Agency an undue hardship. Similarly, the Agency did not provide evidence for this argument. The essential function of Complainant's position involves reviewing and authorizing claims and other complex determinations for benefits, conducting interviews, assisting the public by explaining options for conducting business with the Agency. The Agency has not shown that her duties are impaired in the event that Complainant remains at a single workstation. Likewise, there is no evidence to show that customers in need of bilingual services could not be directed to Complainant's window or moved there after they were identified.

Therefore, upon review, we find that the record demonstrates that Complainant was capable of performing the essential functions of her job with an effective and reasonable accommodation. Due to her disabilities, Complainant sought to remain at a single window throughout the workday, rather than be moved to multiple windows throughout the day.

Complainant and her doctor determined that remaining in one space with limited airborne substances best fit her condition.

The record establishes that Complainant's former manager allowed her to remain at a single workstation per day, from at least 2011 to 2019 as an accommodation. See ROI at 0000055-56. Upon informing the new AD Manager that she previously had a reasonable accommodation, Complainant was told to make a new request for the reasonable accommodation she had been provided. Complainant did not have documentation of her prior accommodation. While the Agency has not acknowledged Complainant's previous accommodation, the Agency has not contested the existence of her previous reasonable accommodation. Therefore, we find that Complainant's new supervisor, AD Manager, essentially removed the effective accommodation that her former supervisor had previously provided to her and advised Complainant to submit a new reasonable accommodation request. Faustino M. v. U.S. Postal Serv., EEOC Appeal No. 0120160319 (Feb. 25, 2016) (new manager revoked a previously approved accommodation without sufficient explanation).

Thereafter, Complainant submitted a new request. The Agency denied Complainant's reasonable accommodation request to be seated at a single station per day, as they determined that such a request was not supported by medical documentation. The Agency insisted that Complainant's medical documentation failed to show that a special allowance to work exclusively at window 21, or any specific station, was necessary to enable to perform her essential functions of her position. We find that the Agency was incorrect. A review of the medical documents clearly shows that Complainant's condition would be improved if she did not have to move throughout the day and be exposed to allergens. Complainant has provided photos which corroborate her claims of debris build up at individual workstations, which exacerbate her health issues. Complainant also provided photos of rashes and hives on her skin resulting from contact with the debris.

Once the Agency determined that it could not approve Complainant's request to remain at a single window per day, the Agency had an obligation to make a reasonable effort to determine an appropriate and effective accommodation. As an alternate reasonable accommodation, the Agency sought to supply Complainant with additional cleaning supplies to clean her workstations throughout the day and attempted to ensure Complainant that the workspace as a whole was regularly cleaned. We find that this is not an effective accommodation. This alternate accommodation does not prevent Complainant from being afflicted by dust and debris multiple times a day when she has to clean multiple stations, rather than a single station each day. In addition to the ill effects on Complainant's health, this accommodation would reduce her effectiveness at work, as she has provided that it takes her approximately 20 to 25 minutes to perform her cleanings.

Despite the previous ability to accommodate Complainant and her medical documentation, the Agency denied Complainant's request because the Agency determined the medical documentation did not show that allowance to work at a specific station was necessary to enable essential functions.

In an attempt to accommodate Complainant, the Agency sought to supply Complainant with cleaning supplies. However, this accommodation would not prevent Complainant from coming into contact with excess dust and debris and negatively impacting her health condition. As such, we find that allowing Complainant to remain at one station per day is an effective accommodation which the Agency should have provided Complainant.

The Agency was obligated to provide Complainant with the effective reasonable accommodation unless the Agency can show that to provide the accommodation would have been an undue hardship. The Agency has argued that allowing Complainant to remain at a single workstation per day would be an undue hardship. We find the Agency failed to provide case-specific evidence proving that reasonable accommodation would cause an undue hardship in the particular circumstances. See U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002). While agencies are obligated to provide reasonable accommodation to a qualified individual with disability, the Rehabilitation Act allows agencies to raise an affirmative defense that the accommodation would impose an undue hardship. See Preston v. U.S. Postal Serv., EEOC Appeal No. 0120054230 (Aug. 9, 2007); Enforcement Guidance on Reasonable Accommodation. Generalized conclusions will not suffice to support a claim of undue hardship.

Rather, a showing of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense. See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120151295 (June 16, 2017); Enforcement Guidance on Reasonable Accommodation. The Agency should have considered and addressed with specificity how allowing Complainant to be assigned to a window each day and remaining in that space would have affected the Agency. They did not do so here. Moreover, as noted above, Complainant was previously provided a similar reasonable accommodation since 2011, wherein she was enabled to remain at a single station; the Agency did not consider this accommodation or explain why continuing such an accommodation would be an undue hardship.

The Agency asserted that it would be an undue hardship to allow Complainant to work at a specific station. However, aside from speculation and noting that there were only 37 available workstations in total, the Agency did not provide any analysis or report that allowing Complainant to work in one space would pose undue hardship or pose a significant risk of substantial harm, either to Complainant or her peers. Rather, each management official quoted in the FAD simply stated that to allow Complainant to remain at a single station per day would be an undue hardship. None of the management officials in their affidavits provided detailed reasoning or explanations regarding how her requesting accommodation would create an undue hardship. Therefore, we find that the Agency has failed to establish its affirmative defense of undue hardship.

Based on the record, we find that the Agency's reasons for denying Complainant's request to work at a single station per day insufficient and demonstrate that the Agency violated the Rehabilitation Act by failing to reasonably accommodate Complainant.³

CONCLUSION

Therefore, based on a thorough review of the record, it is the decision of the Commission to REVERSE with the final decision of the Agency finding no discrimination based on her disability and REMAND the matter in accordance with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

- I. Within forty-five (45) calendar days of the date this decision is issued, to restore any leave used by Complainant based on the Agency's failure to provide a reasonable accommodation.
- II. Within thirty (30) calendar days of the date the decision is issued, to provide Complainant with the reasonable accommodation in the form of a single workstation assignment for the day.
- III. To conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages with respect to the finding of unlawfully denying Complainant's reasonable accommodation request and determine the amount of compensatory damages to which Complainant is entitled. Complainant will cooperate in the Agency's efforts to compute the amount of compensatory damages, if any, and provide all relevant information requested by the Agency. The Agency shall issue a final decision on the issue of compensatory damages with appeal rights to the Commission. A copy of the final decision must be submitted to the Compliance Officer referenced below. Within thirty (30) days of its determination of the amount of compensatory damages owed to Complainant, the Agency shall pay Complainant that amount.
- IV. Within ninety (90) days from the date this decision is issued the Agency is ordered to provide eight hours of in-person or interactive training to AD Manager and all employees at the Agency's field office in Pasadena, Texas, specifically with regard to employees' protections for disabilities and related reasonable accommodations.

³ As the Commission has determined that the Agency is in violation of the Rehabilitation Act, we need not address the other bases as this would not alter her remedies.

- V. Within sixty (60) days from the date this decision is issued, the Agency shall consider taking disciplinary action against AD Manager. If the Agency decides not to take disciplinary action, it shall set forth its reason for its decision not to impose discipline. If the identified employees are no longer employed by the Agency, the Agency shall furnish proof of the date of separation. The Commission does not consider training to be disciplinary action.
- VI. The Agency shall post a notice in accordance with the paragraph entitled "Posting Order."

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). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Field Office in Pasadena, Texas 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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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

February 3, 2022
Date