



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Clifford L.,¹
Complainant,

v.

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

Appeal No. 2021001926

Agency No. 1K281002515

DECISION

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 June 23, 2020, final decision on the issue of compensatory damages, concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Information Clerk, PS-6, at the Agency's Charlotte Processing & Distribution Center in Charlotte, North Carolina.

On July 8, 2015, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him based on disability (blindness) and in reprisal for prior protected EEO activity when, as defined by the Agency:

1. Since October 2010 and continuing, Complainant has not been provided a productive work assignment;

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. In February 2015, his request for arrangements for his guide dog has still not been granted; and
3. On August 31, 2015, he was made aware that he would be charged Leave Without Pay (LWOP) for the time he takes off to get his medical forms completed for leave.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing, but the AJ dismissed the hearing request and remanded the complaint to the Agency. The Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

Complainant filed an appeal from the Agency's March 6, 2018, final decision. In Clifford L. v. U.S. Postal Serv., EEOC Appeal No. 0120181528 (Feb. 19, 2020), the Commission found the Agency violated the Rehabilitation Act as to Claims 1 and 2 when it failed to provide Complainant with a reasonable accommodation. The Commission affirmed the Agency's conclusion that Complainant failed to show that he was discriminated against with regard to Claim 3.

The Commission's findings of discrimination for Claims 1 and 2 were based on the following facts. The essential function of an Information Clerk consists of providing "oral information to patrons at a public window or over the telephone, regarding the [Agency] in general [and] regarding the services provided by the local post office in particular." Complainant affirms he is totally blind as well as hearing impaired, for which he wears hearing aids in both ears. Complainant claims he can perform all the duties of an Information Clerk if given the proper equipment and training. Due to his blindness, Complainant periodically utilizes the assistance of a guide dog.

Complainant began working for the Agency in 1995 under the Agency's Severely Handicapped Program, which has since been discontinued. Complainant went on administrative leave from 2001 until approximately 2010. In 2010, the Agency assessed the viability and safety of possible work assignments for Complainant, and upon his return he was assigned the duties of an Information Clerk. However, Complainant claims that he did not have any work to perform and that he sat at a desk all day. The Agency had installed software called Job Access with Speech (JAWS) on Complainant's computer, but he was unable to use it because the Agency never provided training to Complainant on how to use JAWS. Therefore, Complainant was not able to perform his duties of answering the telephone despite the installation of the software. In addition to the lack of training on JAWS, Complainant did not receive training on the Windows 7 system installed on his computer; nor was he given the training on Agency operations necessary to answer customer questions, so the Agency did not have Complainant answering calls.

In May 2015, Complainant was referred to the Agency's District Reasonable Accommodation Committee (DRAC), which held a meeting with Complainant on May 29, 2015, in order to identify reasonable accommodations for him. At the meeting, Complainant identified three concerns: (1) that he be given the proper tools and training in order to complete meaningful work; (2) that he be given meaningful work; and (3) that he be given a safe area for his guide dog to relieve himself without requiring Complainant to walk across a parking lot. After the DRAC meeting, management and Complainant agreed on seven recommendations for reasonable accommodations. Complainant also agreed to provide his manager with a list of his skills and abilities to assist management in finding him appropriate work tasks and assignments. Management in turn agreed to explore further assistive technologies to assist Complainant in performing those tasks and getting Complainant's computer up and running.

Complainant provided management with his resume documenting his skills, and management got his workstation operational. However, despite Complainant's repeated requests for training on JAWS, Windows, and Agency operations, management did not provide Complainant any such training. The Agency did contact the Department of Health and Human Services (HHS) in order to obtain an assessment of Complainant's needs for the software and hardware at his computer station, but the Agency never instituted any of HHS' recommended accommodations.

As to his guide dog, Complainant had to take his dog across a parking lot and up a hill for the dog to relieve himself. Because Complainant was concerned that he could be hit by a car in the parking lot, he requested that the Agency provide him with a safe place for the dog to relieve himself. Notwithstanding Complainant's request, the Agency failed to offer an alternate arrangement. Management was aware of the issue with the guide dog when maintenance employees began complaining about cleaning up after the dog, so the Agency identified a location for Complainant that did not require him to cross the parking lot. At the time of the investigation, the Agency was still awaiting the installation of this location, but in the interim the Agency installed speed bumps in the parking lot where Complainant crossed the street in order to make it safer. On August 28, 2015, Complainant fell in the parking lot while taking his guide dog out to relieve himself. Complainant stated that he landed face down and on his right shoulder and was taken to the emergency room by paramedics.

The Commission found that management was specifically informed of Complainant's need for reasonable accommodations during the DRAC meeting in May 2015, and that the Agency had agreed to seek ways to provide those accommodations. The Agency may have provided assistive software, the Commission reasoned, but it provided him no assistance in utilizing it. Further, the Agency had sought other recommendations from HHS regarding hardware and software Complainant could use but did not implement any of those recommendations. Nor had the Agency proffered any evidence to show that a safer accommodation for Complainant's guide dog had been implemented. The Commission concluded that the Agency had not offered any evidence that any of these accommodations would have caused an undue hardship and found that Complainant met his burden to establish that the Agency failed to provide him with a reasonable accommodation.

The Agency was directed to conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages associated with his reasonable accommodation claims. Complainant was directed to cooperate in the Agency's efforts to compute the amount of damages.

The Agency conducted a supplemental investigation on compensatory damages. The supplemental investigation contains Complainant's June 6, 2020, submission for compensatory damages including an affidavit from Complainant, letters from his physician, and progress notes and medical records. These medical records document the physical therapy Complainant received after his fall in the parking lot on August 28, 2015; his diagnoses of major depression, diabetes, hypertension, and kidney disease; and his emergency room visits for the 2015 fall and for episodes of persistent muscle twitching.

In his affidavit, Complainant stated that as a result of the Agency's failure to reasonably accommodate him, he endured pain and suffering. He injured both of his shoulders and his back when he fell on August 28, 2015, as a direct result of not having a safe place to relieve his guide dog. This resulted in him being taken to the hospital by paramedics and receiving workers' compensation when he was unable to work until October 1, 2015. Because of his shoulder injury, he was unable to use his guide dog because it hurt to use the dog's necessary harness, and this limited Complainant's independence. The injury also caused Complainant to attend several physical therapy sessions, and he claims he continues to suffer from weakness in his shoulders and having "difficulty pushing off with [his] arms." Complainant claims he was diagnosed with "Major Depression" on September 30, 2016, and his doctor indicated in a letter that his job with the Agency is a "major factor" in his depression. Complainant stated that "[i]t is extremely difficult to show up for work each day for a job for which I have no actual duties or responsibilities" and that doing so "left me feeling useless, lethargic and as if I was less than a man." He also claimed it caused him to struggle with insomnia and overeating, which resulted in weight gain of about 50 pounds, which in turn has affected his health. Complainant indicated that he has been diagnosed with anxiety and has had to be hospitalized four times over the "past few years" for panic attacks, which are characterized by him "sweating profusely, shaking uncontrollably, and . . . stuttering and stammering." He claims to have also developed a nervous tick. Complainant also suffers from diabetes and hypertension, which he believes stem from the stress, depression, and anxiety he has from "being forced to show up each day to work in a job with nothing to do." The exacerbated diabetes and hypertension have, in turn, lead him to develop end-stage renal failure (kidney disease), that requires him to undergo dialysis three times a week.

For his pain and suffering related to these conditions, Complainant requested \$300,000² in nonpecuniary, compensatory damages. Complainant also requested that the Agency award him \$2,480.40 in pecuniary, compensatory damages for the mileage he used to travel to his dialysis treatments three days a week.

² Complainant indicated in his affidavit that he was aware of the \$300,000 limit on nonpecuniary damages and that, if the limit were not in place, he "would be entitled to far more."

Thereafter, the Agency issued a final decision on June 23, 2020. The Agency denied Complainant's claim for pecuniary damages related to the mileage for his trips to the dialysis treatment center because Complainant had not provided "evidence of when and where those visits occurred."

As to Complainant's request for nonpecuniary, compensatory damages, the Agency awarded Complainant \$25,000 in damages. Regarding Complainant's shoulder injury, the Agency found that Complainant "had a history of issues involving shoulder pain," including "surgery from a torn rotator cuff to [his] left shoulder, and . . . bone spurs in [his] right shoulder." Despite Complainant's contentions that he had "largely recovered" from his injuries when he fell taking his guide dog outside, the Agency found that Complainant's shoulder issues lingered prior to his fall, and that the medical documentation he had submitted indicated that he had had a "linked episode[]" eight months prior to the fall. As to Complainant's mental conditions, the Agency faulted Complainant for submitting only about 50 pages of his medical records out of the 991 pages of progress notes generated from his provider, concluding that "[i]t is impossible to make an honest examination of the documents in the absence of such context." The Agency did, however, credit Complainant's statements in his affidavit that he suffered anxiety due to not being given meaningful work. The Agency also gave credit to Complainant's doctor's contention that Complainant's "job situation is a contributing factor to his depression." The Agency did not similarly credit the same doctor's statement that Complainant's depression, anxiety, and work stress contributed to his inability to control his preexisting medical issues, including diabetes and hypertension, leading to renal failure.

The Agency found Complainant's request for \$300,000 in nonpecuniary damages "clearly excessive given the evidence in the record that shows that most if not all of [Complainant's] conditions pre-existed the discrimination, and are punitive in nature." Based on its assessment of the nature of discrimination involved, the quality of Complainant's evidence, and its analysis of prior cases, the Agency concluded "a more modest award [of \$25,000] . . . is warranted."

On appeal, Complainant argues that he is entitled to \$2,480.40 in mileage to his dialysis treatments and that the Agency erred in finding that there was no evidence of when or where the visits occurred. Complainant reasons that no evidence in the record disputes Complainant's statement that he receives dialysis three days a week, and his doctor confirmed he receives dialysis. As to the nonpecuniary damages, Complainant reduces his request from \$300,000 to \$150,000 on appeal, and claims that the Agency's award of \$25,000 is inadequate to compensate him, arguing that he has "been waiting on a reasonable accommodation in the form of a meaningful job for nearly 10 years." Complainant argues that, "[w]hen looking at all of the health issues that have resulted from [Complainant's] work situation, one can see that they are far more long-lasting and impactful than those in the cases cited by the Agency." Complainant then cites to two prior cases where the Commission awarded \$150,000 and \$100,000, respectively, in nonpecuniary, compensatory damages.

In response to Complainant's appeal, the Agency reiterates its arguments regarding its decision not to award pecuniary damages and notes that the time period of discrimination is only five years, not ten years as Complainant argues. The Agency also argues that Complainant's depression and anxiety were preexisting conditions and that some of the medical notes he submitted do not indicate he suffered from anxiety or depression at all. Because the Agency concedes the discrimination exacerbated Complainant's anxiety and depression but was not the sole cause, the Agency argues that \$25,000 in nonpecuniary damages is appropriate. The Agency argues on appeal that Complainant's shoulder injury and diabetes should not be considered as part of the damages award because they were both preexisting conditions prior to Complainant's EEO claim, and because the medical records indicate that Complainant's diabetes was made worse by his own failure to take his medications on a regular basis.

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 (EEO MD-110), 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").

When discrimination is found, an 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 the Rehabilitation Act 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). Compensatory damages do not include back pay, interest on back pay, or any other type of equitable relief. 42 U.S.C. § 1981a(b)(2). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process.

Where a discriminatory practice involves the provision of a reasonable accommodation, compensatory damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for his disability. 42 U.S.C. § 1981a(a)(3); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007).

Here, the Agency makes no argument in its final decision or on appeal that it made a good faith effort to provide Complainant with a reasonable accommodation. Complainant is therefore entitled to compensatory damages.

To receive an award of compensatory damages, a complainant must demonstrate that she or he has been harmed as a result of the agency's discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995).

In a claim for pecuniary, compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the agency's discriminatory conduct. To recover damages, a complainant must prove that the employer's discriminatory actions were the cause of the pecuniary loss. EEO MD-110, at Chap. 11, VII.B.2 (citations omitted).

In Complainant's case, we find that he did not persuasively establish that the Agency's discriminatory actions were the cause of the claimed mileage to and from his dialysis treatments. Thus, because we find that Complainant has not shown that the Agency's discrimination caused any pecuniary loss, we shall not award any pecuniary damages. Furthermore, Complainant has failed to provide evidence that he had or went to such appointments such as dates of appointments or explanation of benefits providing such information.

Nonpecuniary, compensatory damages 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. 915.002 at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for nonpecuniary 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). Nonpecuniary, compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to 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).

Complainant has the burden of proving the existence, nature and severity of the alleged emotional harm. Man H. v. Dep't of Homeland Sec., EEOC Appeal No. 0120161218 (May 2, 2017).

Complainant must also establish a causal relationship between the alleged harm and the discrimination. Id. Absent such proof of harm and causation, a complainant is not entitled to compensatory damages, even if there were a finding of unlawful discrimination. Id.; Wilda M. v. U.S. Postal Serv., EEOC Appeal No. 0120141087 (Jan. 12, 2017) (awards for emotional harm are warranted only if complainant establishes a sufficient causal connection between the agency's illegal actions and her injury)

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 her or 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 nonpecuniary losses that are incurred as a result of the discriminatory conduct. Id. Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id.

Moreover, the Commission has long held that a complainant's own testimony, along with the circumstances of a case, can suffice to sustain the burden in recovering compensatory damages for emotional harm. The more inherently degrading or humiliating the agency's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Therefore, somewhat more conclusory evidence of emotional distress will be acceptable to support an award for emotional damages. See, e.g., Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996).

An award of nonpecuniary, compensatory damages should reflect the extent to which the Agency's discriminatory action directly or proximately caused the harm, as well as the extent to which other factors also caused the harm. See Johnson v. Dep't of the Interior, EEOC Appeal No. 01961812 (June 18, 1998). It is Complainant's burden to provide objective evidence in support of her claim and proof linking the damages to the alleged discrimination. Papas v. U.S. Postal Serv., EEOC Appeal No. 01930547 (Mar. 17, 1994); Mims v. Dep't of the Navy, EEOC Appeal No. 01933956 (Nov. 23, 1993).

We find that the Agency's award of \$25,000 for nonpecuniary, compensatory damages was insufficient. We note that much of the Agency's failure to accommodate Complainant for which there was a finding of discrimination was for approximately a five-year period. The Agency acknowledged that Complainant suffered from depression and anxiety related to the Agency's failure to provide him with a reasonable accommodation. The fact that Complainant was forced to sit at a desk all day with nothing to do over the course of about five years and was denied a proper place to relieve his guide dog, might naturally cause anxiety, and stress.

While the Agency claims Complainant had been diagnosed with depression before the discrimination at issue, the medical records Complainant submitted support his contention that he began suffering from depression after the Agency's discriminatory acts in 2015. Complainant provided medical evidence to show he suffered from suicidal thoughts, depressed mood, fatigue, muscle twitching (which was treated with a medication prescribed for anxiety), and weight gain/overeating and that he complained to his doctors over several years about his treatment at work. Complainant also affirmed that he suffered from panic attacks severe enough to warrant multiple emergency room visits, a nervous tick, and difficulty sleeping.

As to Complainant's shoulder injury, the medical evidence shows that Complainant suffered injuries on August 28, 2015, resulting from the fall at work and that he was taken to the emergency room. There was also pain present in his head, right knee, and back, as well as headaches. Complainant's medical records also show that he attended physical therapy for his shoulder injury almost every week beginning on October 5, 2015 through January 19, 2016. Complainant's prior shoulder injuries do not absolve the Agency from damages related to his fall. In determining damages, the Commission applies the principle that "a tortfeasor takes its victims as it finds them." Wallis v. U.S. Postal Serv., EEOC Appeal No. 01950510 (November 13, 1995) (quoting Williamson v. Handy Button Machine Co., 817 F.2d 1290, 1295 (7th Cir. 1987)). But, where a complainant has a preexisting condition, the Agency is only liable for the additional harm or aggravation caused by the discrimination. See Wallis, *supra*. Complainant's contention that his shoulder injuries were largely resolved prior to his fall is not contradicted in the medical evidence. That he may have an episode of shoulder pain eight months prior to the fall is of no moment. His emergency room visit and subsequent months of physical therapy stemmed directly from the fall, a proximate cause of which was the Agency's failure to accommodate Complainant's use of his guide dog.

We next address Complainant's claim that the Agency's discrimination caused him stress and anxiety, which, in turn, exacerbated his preexisting diabetes and caused his hypertension, which then resulted in end-stage renal failure. We find that Complainant has not provided sufficient evidence to support his theory that the Agency's actions were the proximate cause of his kidney disease.

After a thorough review of the record, and given the severity, nature, and duration of the distress experienced by Complainant as a direct result of the discrimination, we find that an award of \$100,000 in nonpecuniary, compensatory damages is warranted in this case. We find that this amount is not motivated by passion or prejudice, is not "monstrously excessive" standing alone, and is consistent with prior Commission precedent. See Scott K. v. U.S. Postal Serv., EEOC Appeal No. 0120182127 (Feb. 20, 2020) (Commission awarded \$85,000 in nonpecuniary, compensatory damages after the agency denied complainant's reasonable accommodation request for about three years, which resulted in complainant suffering from major depressive disorder and other medical problems, including insomnia, anxiety, headaches, and mood changes); Elsa S. v. NASA, EEOC Appeal No. 0720180021 (Feb. 14, 2020) (Commission affirmed an award of \$100,000 in nonpecuniary, compensatory damages for the agency's delay in reasonably accommodating complainant after multiple requests, where complainant's

underlying medical conditions were exacerbated and she suffered from stress, embarrassment at work, depression, and loss of confidence).

CONCLUSION

We MODIFY the Agency's final decision on compensatory damages and REMAND the matter to the Agency for further action in accordance with the Order herein.

ORDER

To the extent it has not already done so, the Agency shall, within 60 days of the date this decision is issued, pay Complainant \$100,000.00 in nonpecuniary, compensatory damages. If the Agency has paid some amount of these damages already, then it may subtract that amount from the \$100,000.00 award.

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. §1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408.

A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

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

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

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (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 2, 2022
Date