



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]

Jona R.,<sup>1</sup>  
Complainant,

v.

Antony Blinken,  
Secretary,  
Department of State,  
Agency.

Appeal No. 2020004549

Agency No. DOS-0068-14

**DECISION**

On August 11, 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 July 7, 2020, decision on the issue of compensatory damages concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a GS-0301-12 Administrative Specialist in the Agency's Bureau of Diplomatic Security, Secretary's Protective Detail in Washington, D.C.

On February 7, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability (physical) when, from October 29, 2013, the Agency failed to provide her with a reasonable accommodation for her disability.

On May 9, 2018, the Agency issued a final decision finding that Complainant did not establish that she was denied a reasonable accommodation for her disability. Complainant appealed.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

In Jona R. v. Dep't of State, EEOC Appeal No. 0120182063 (Jan. 23, 2020), the Commission concluded that the Agency violated the Rehabilitation Act when it failed to provide Complainant with a reasonable accommodation. The Commission found that Complainant demonstrated that she needed flexible, situational telework because she had a medical condition that caused periodic symptoms that negatively impacted her ability to commute or work in the office when experiencing symptoms. We found that the Agency failed to establish that situational telework would have imposed an undue hardship.

Pursuant to the finding of discrimination, the Commission ordered the Agency to conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages. The Commission also ordered the Agency to reasonably accommodate Complainant with a flexible telework schedule and a telework agreement allowing situational telework if she was still employed in the same position. The Commission did not order the Agency to calculate back pay, but the Commission ordered the Agency to "restore any leave or pay lost (if any) by Complainant because of its failure to timely provide her with a reasonable accommodation."

The Agency conducted a supplemental investigation on compensatory damages. The report of supplemental investigation contains Complainant's request for compensatory damages, including an affidavit from Complainant, a declaration from Complainant's sister, medical bills, collection notices, and other attachments. Complainant requested \$88,451.67 in past pecuniary compensatory damages and \$225,000 in nonpecuniary compensatory damages. Complainant also requested back pay and front pay. Compensatory Damages Report of Investigation (CD ROI) at 51-52.

Complainant alleged that being denied a reasonable accommodation caused severe stress, worsening her preexisting Type I diabetes. CD ROI at 55. Complainant stated that her health deteriorated significantly in 2013 and that she was subsequently diagnosed with gastroparesis, which causes nausea, stomach paralysis, frequent vomiting, and loss of appetite, as well as autonomic neuropathy, which affects automatic body functions such as temperature, blood pressure, and digestion. CD ROI at 55. According to Complainant, she has been diagnosed with hypoglycemic unawareness because gastroparesis makes it nearly impossible to regulate her blood sugar, and her esophagus is scarred from vomiting so often. CD ROI at 56. Complainant averred that, in January 2014, she was diagnosed with depression, anxiety, and panic attacks. CD ROI at 56-57. According to Complainant, when her pay from the Agency stopped in May 2014, she was very stressed about how she could afford her home, which caused her health to worsen and alienated her from her older children. CD ROI at 53. Complainant averred that she moved out of her house into the trailer park where her new husband lived and later moved to Florida to live near her sister, resulting in the loss of her support system in Maryland. Id. Complainant stated that, in August 2016, she lost custody of her youngest child because her ex-husband did not think she could afford to take care of the child. CD ROI at 54. Complainant averred that she filed for bankruptcy in 2019 or 2020 because her disability benefits from OPM and Social Security were only 40 percent of her salary. Id.

In Complainant's application for disability retirement, she also stated that the long hours and high stress of her position in the Bureau of Diplomatic Security exacerbated her Type I diabetes. CD ROI at 118. Complainant stated that she developed peripheral neuropathy in 2006 and began experiencing symptoms of automatic neuropathy in 2012, which worsened in 2013. CD ROI at 119-20. Complainant averred that, in January 2014, she started therapy and began taking psychotropic medications. CD ROI at 120. According to the notes from Complainant's January 6, 2014, Initial Psychiatric Assessment, Complainant reported worsening depression and anxiety and indicated that stressors included multiple health problems and problems with her supervisor at work. CD ROI at 169-71. Complainant stated that she had experienced depressive episodes since her 20s. Id. The record contains a March 27, 2014, Department of Veterans Affairs determination assigning Complainant 50 percent disability rating for the following service-connected condition, effective May 15, 2013: "Unspecified depressive disorder, with anxious distress associated with diabetes mellitus to include hypoglycemia unawareness and hypotension (low blood pressure)." CD ROI at 198-201.

Complainant provided a receipt dated October 26, 2016, for \$4,416 in moving expenses. CD ROI at 53, 60. Complainant requested \$19,800 for tax penalties for early withdrawals from her TSP account in 2015 and 2020. CD ROI at 53, 61-63. Complainant stated she incurred various legal fees: for child custody dispute, for her Social Security disability claim, for her Office of Personnel Management (OPM) disability retirement benefits, and for her bankruptcy case. CD ROI at 54, 64-76. Complainant averred that Blue Cross/Blue Shield requested reimbursement of overpayments after her Agency health insurance coverage ended and that she incurred out of pocket for her son's medical care after losing coverage. CD ROI at 54, 77-88.

Complainant stated she was admitted at a hospital in July 2014 because of a very low body temperature and was treated at another hospital two days later. CD ROI at 55-56, 88-92. Complainant stated she was transported to the hospital by ambulance in mid-September 2014 for vomiting. CD ROI at 55-56, 95-97. Complainant stated she was hospitalized in May 2015. CD ROI at 55-56, 93-94, 98. Complainant stated she was taken to the hospital in an ambulance for vomiting in August 2015. CD ROI at 56, 99. Complainant also claimed expenses for an April 20, 2015, electrocardiogram and a November 25, 2015, internal medicine appointment. CD ROI at 56, 100-01. According to Complainant, beginning in January 2014, she was charged \$3,841.76 for mental health services. CD ROI at 57, 227-28. The bill provided showed that Complainant paid 13 \$25 co-pays for a total of \$325, \$295 for missed appointment fees, and \$66.76 for her medical records. CD ROI at 227-28. The remainder was paid by Blue Cross/Blue Shield or was written off. Id.

Complainant's sister stated that Complainant's physical and mental health deteriorated after she was subjected to discrimination and that Complainant struggled with digestive issues, depression, panic attacks, sleep deprivation, acne, and headaches. CD ROI at 229-30. According to her sister, Complainant lived with her for a while because she was homeless, and Complainant sometimes did not have enough money to eat. Id. Her sister averred that Complainant lost her children because of the discrimination. Id.

On July 7, 2020, the Agency issued its final decision on compensatory damages, awarding Complainant \$5,825 in pecuniary compensatory damages and \$20,000 in nonpecuniary compensatory damages. Regarding nonpecuniary compensatory damages, the Agency found that most of Complainant's medical problems existed and were already worsening before October 29, 2013. The Agency stated that Complainant's gastroparesis and vomiting started in early 2013 and that there was no evidence linking the progression of this condition to the discrimination. According to the Agency, Complainant's application for OPM benefits stated that her autonomic neuropathy began in early 2012 and that she unsuccessfully sought testing in April 2013, and there was no evidence establishing why this condition worsened in 2013 and beyond. Although Complainant stated she was not treated for anxiety and depression until January 2014, the Agency noted that, effective March 15, 2013, the Department of Veterans Affairs assigned Complainant a 50 percent disability rating for unspecified depressive disorder and anxiety. Further, the Agency noted that Complainant's mental health provider stated that Complainant was struggling with several issues, including her physical symptoms, multiple failed marriages, and estrangement from one of her children. Further, a January 20, 2014, progress note from her mental health provider stated that Complainant's anxiety and stress had been building for one year. However, the Agency found that it was reasonable to conclude that the Agency's failure to accommodate Complainant exacerbated her anxiety and depression to some extent. The Agency determined that \$20,000 in nonpecuniary compensatory damages was reasonable for exacerbation of Complainant's preexisting conditions.

The Agency denied the claim for moving expenses, noting that she did not submit an itemized receipt and finding Complainant did not establish that the moving expenses were incurred as a result of the discrimination. For the early withdrawal penalties, the Agency approved \$5,800 for withdrawing \$29,000 from her TSP in 2015 as connected to her wage loss, but the Agency denied the \$14,000 penalty for withdrawing \$70,000 on February 13, 2020, noting that Complainant did not explain why she needed to make the 2020 withdrawal because, by that time, she was receiving disability benefits. The Agency denied the legal expenses for Social Security benefits, her OPM disability benefits, the child custody matter, and her bankruptcy. Regarding the insurance overpayments and the bills for Complainant's son's treatment, the Agency found that Complainant did not provide itemized statements regarding the medical services provided or explain how they were related to the Agency denying her a reasonable accommodation. The Agency denied medical expenses related to Complainant's hospitalizations, medical transport, other medical expenses, reasoning that Complainant did not show a nexus between the medical treatment and the discrimination. Finally, regarding mental health treatment, the Agency approved \$25 that it said was outstanding, but the Agency stated that the remainder of the charges were paid by Blue Cross/Blue Shield or were written off.

Regarding back pay, the Agency's final decision on compensatory damages stated that, although back pay and front pay do not constitute compensatory damages, it would briefly address the matter since Complainant raised it in her affidavit. The Agency noted that back pay is a specific remedy codified at 5 U.S.C. § 5596 et seq. and that its implementation for federal employees is outlined in 29 C.F.R. § 1614.501 and 5 C.F.R. § 550.805.

According to the Agency, the Commission did not order back pay, and the reference to “pay lost (if any)” should not be construed as an order for back pay. The Agency concluded that Complainant was not entitled to back pay or front pay and stated that it would address the Commission’s order to restore leave in a separate document.

The instant appeal followed.

Complainant stated that all leave taken after October 29, 2013, was related to the Agency’s failure to accommodate her. Leave Restoration Report of Investigation (LR ROI) at 862-63. The record reflects that from October 29, 2013, through April 18, 2014, Complainant used 70:30 hours of sick leave and 40 hours of annual leave. LR ROI at 886-96.

On May 7, 2021, the Agency issued a decision on leave restoration. The Agency found that the relevant time period was October 29, 2013, to April 1, 2014, because Complainant stopped coming to work and was charged absent without leave (AWOL) beginning April 14, 2014. The Agency noted that Complainant filed a second EEO complaint in 2015, Agency No. DOS-0006-15, and Complainant was issued appeal rights to the Merit Systems Protection Board (MSPB) on her claim that she was subjected to a constructive suspension because of her AWOL status. The Agency further noted that Complainant filed another EEO complaint in 2016 concerning her termination, Agency No. DOS-0399-16, and that Complainant did not appeal its final decision finding no discrimination to the EEOC.

The Agency noted that Complainant used three hours of sick leave on a telework day, which appeared to be for a medical appointment and should not be reimbursed. The Agency determined that, although Complainant’s general statement that all leave was used because of the discrimination, it would assume that the sick leave was related to her disability, it would assume that the remaining 67:30 hours of sick leave was related to her inability to telework. According to the Agency, the 40 hours of annual leave was used in a single block around a weekend. The Agency found that Complainant did not establish that this leave was related to the Agency’s failure to accommodate her. The Agency stated that it would coordinate with OPM to see if the 67:30 hours of sick leave would affect Complainant’s retirement annuity.

The Agency noted that Complainant’s affidavit concerning leave restoration again requested both back pay and front pay. The Agency again stated that the Commission did not order back pay. The Agency found that Complainant was not entitled to any lost pay because, from October 29, 2013, through April 14, 2014, she was compensated for all work hours with regular pay, sick leave, annual leave, or holiday pay. The Agency found that Complainant was not entitled to front pay, noting that Complainant’s disability retirement was approved retroactive to May 3, 2014, that Social Security approved Complainant for disability benefits retroactive to October 2014, and that she stated in her affidavit that she was totally disabled and unable to work.

On June 7, 2021, Complainant filed a notice of appeal from the Agency’s decision on leave restoration.

### CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency erred in finding that the Commission did not order the Agency to provide Complainant back pay, front pay, and/or loss of future earning capacity. Complainant also contends that she provided documentation supporting her request for payment for pecuniary damages. According to Complainant, she is entitled to \$225,000 in nonpecuniary compensatory damages. Complainant contends that all the leave she took from January 12, 2014, through August 4, 2016, was a result of the Agency's failure to accommodate her, so she is entitled to restoration of all paid leave and back pay for unpaid leave during this time period.

The Agency did not submit a statement or brief in response to Complainant's August 11, 2020, appeal from the decision on compensatory damages or to her June 7, 2021, notice of appeal from the Agency's decision on leave restoration.

### 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").

#### Compensatory Damages

When discrimination is found, the agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position she 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 an Agency has failed to provide a reasonable accommodation for an individual with a disability, 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 her 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 decision on compensatory damages or on appeal that it made a good faith effort to reasonably accommodate Complainant. Complainant is therefore entitled to compensatory damages.

To receive an award of compensatory damages, a complainant must demonstrate that he or she 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); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14. Compensatory damages may be awarded for the past pecuniary losses, future pecuniary losses, and nonpecuniary losses which are directly or proximately caused by the agency's discriminatory conduct. EEOC Notice No. 915.002 at 8.

#### *Pecuniary Damages*

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).

We agree with the Agency that Complainant has not shown that the moving expenses, the penalties associated with the 2020 TSP withdrawal, or the legal fees for the child custody matter, Social Security disability claim, OPM disability retirement application, or her bankruptcy. We also agree that, because Complainant has not provided itemized statements or explained the medical services in detail, Complainant has not clearly shown that the insurance overpayments, her son's medical expenses, or her own medical expenses other than the mental health services were caused by the discrimination. The Agency properly determined that Complainant was not entitled pecuniary damages related to these expenses.

Regarding the mental health services, the record reflects that, in January 2014, she started therapy and was prescribed psychotropic medications. We agree with the Agency's determination that Complainant has established that she incurred these costs because of the Agency's discrimination. However, we find that the Agency erred in finding that Complainant was only entitled to \$25.00 for mental health services because the remainder of the costs were covered by Blue Cross/Blue Shield or written off by the provider.

According to the record, Complainant paid 13 copays of \$25 each, for a total of \$325, she paid \$295 for missed appointment fees, and she paid \$66.76 for her medical records. CD ROI at 227-28. We find that Complainant is entitled to reimbursement of the copays and of the cost of obtaining her medical records. Accordingly, Complainant is entitled to \$391.76 for mental health services, not \$25.00 as determined by the Agency. Including the \$5,800 in penalties for her 2015 TSP withdrawal, Complainant is entitled to \$6,191.76 in nonpecuniary compensatory damages.

### *Nonpecuniary Compensatory Damages*

Nonpecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.002 at 10. 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 Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that nonpecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than 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 Interior, EEOC Appeal No. 01961483 (March 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from Complainant concerning his emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id. A complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain the burden for recovering compensatory damages for emotional harm. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. See, e.g., Lawrence, EEOC Appeal No. 01952288.

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 (Nov. 13, 1995) (quoting Williamson v. Handy Button Machine Co., 817 F.2d 1290, 1295 (7th Cir. 1987)). Where a complainant has a preexisting condition, the Agency is only liable for the additional harm or aggravation caused by the discrimination. See Wallis, EEOC Appeal No. 01950510.



Although the record contains sufficient evidence to establish that Complainant is entitled to nonpecuniary compensatory damages, we find that Complainant's requested amount of \$225,000 is not supported by the record. However, we also find that the Agency's award of \$20,000 in nonpecuniary compensatory damages was insufficient.

Complainant averred that the Agency's denial of a reasonable accommodation caused stress, worsening her preexisting Type I diabetes and causing new problems, including gastroparesis, autonomic neuropathy, and hypoglycemic unawareness. Complainant stated that, as a result of the Agency's failure to accommodate her, she experienced intolerable levels of depression and anxiety, started therapy, and was prescribed medication. Complainant also stated that she withdrew socially and became estranged from her adult children as a result. Complainant's sister stated that she observed Complainant become a shell of herself and that her health problems escalated as a result of work issues.

While the record reflects that Complainant had preexisting conditions, we find that the evidence shows that the discrimination exacerbated her conditions. As such, we conclude that an award of \$60,000 in nonpecuniary compensatory damages more appropriately compensates Complainant for the harm caused by the Agency. Our award takes into account the duration and severity of the harm suffered and is neither "monstrously excessive" nor the produce of passion or prejudice.

We also find that this amount is more consistent with the amount awarded in similar cases. See Dayle H. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120140883 (Jan. 17, 2017) (award of \$65,000 where denial of accommodation exacerbated preexisting conditions and caused personality changes, stress, and anxiety); Roxanna B. v. U.S. Postal Serv., EEOC Appeal No. 0120143067 (Nov. 7, 2016) (award of \$60,000 for exacerbation of preexisting Obsessive Compulsive Disorder and anxiety); Selma D. v. Dep't of Education, EEOC Appeal No. 0720150015 (April 22, 2016) (award of \$60,000 where denial of accommodation contributed to exacerbation of preexisting depression and high blood pressure).

Accordingly, Complainant is awarded \$60,000 in nonpecuniary compensatory damages and \$6,191.76 in pecuniary damages.

#### Leave Restoration

Complainant contends on appeal that she is entitled to restoration of all leave taken during the relevant time period. However, we agree with the Agency that Complainant presented insufficient evidence to support restoring the three hours of sick leave taken on a day she was teleworking or the 40 hours of annual leave. The Agency properly determined that Complainant was entitled to reinstatement of 67:30 hours of sick leave, and the Agency provided documentation to the Commission in its September 2, 2021, Updated Compliance Report for Compliance No. 2020002068 that it reported this to OPM in 2021 for recalculation of Complainant's annuity. See Updated Compliance Report at 838-41.

### Back Pay and Front Pay

On appeal, Complainant also contends that she is entitled to back pay and front pay. The Commission's previous decision did not award Complainant back pay or front pay. See EEOC Appeal No. 0120182063 (Jan. 23, 2020). If Complainant believed that the Commission's prior decision improperly limited her ability to recover damages, Complainant could have filed a request for reconsideration with the Commission to address that matter. See 29 C.F.R. § 1614.405(c). Complainant did not do so. Accordingly, she is not entitled to back pay or front pay.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's decision on compensatory damages and REMAND the matter to the Agency for further action in accordance with the ORDER below.

### ORDER

Within 60 calendar days of the date this decision is issued, the Agency shall:

1. Pay Complainant \$6,191.76, less any amount already paid to Complainant as pecuniary damages; and
2. Pay Complainant \$60,000, less any amount already paid to Complainant as nonpecuniary compensatory damages.

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). The report must include evidence that the corrective action has been implemented.

### ATTORNEY'S FEES (H1019)

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

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

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

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

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

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

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.**

A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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

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

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

March 31, 2022

Date