



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

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]

Jame T.,<sup>1</sup>  
Complainant,

v.

Carlos Del Toro,  
Secretary,  
Department of the Navy,  
Agency.

Appeal No. 2021001460

Agency No. 19-40080-04411

**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 October 9, 2020, final decision concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Boiler Operator, WG-5405-10, at the Naval Facilities Engineering Command Washington (NAVFAC), Public Works Department (PWD) at the Washington Naval Yard in Washington, DC. During the relevant time, Complainant's first level supervisor was the Utility Supervisor (Person A). Person B was a Work Leader, WL-11, and Person C was a Work Leader, WL-10. Person D was Complainant's second level supervisor at the time.

On August 19, 2019, Complainant initiated contact with an EEO Counselor. When the matter was not resolved, Complainant filed a formal EEO complaint on November 29, 2019, which was subsequently amended, alleging the following:

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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.

1. The Agency subjected him to disparate treatment based on race (African American), sex (male), color (caramel brown), and in reprisal for prior protected EEO activity when Person A (Complainant's first line supervisor; Utility Systems Supervisor) allegedly allowed unfair practices and disparate treatment by covering up for Caucasian employees, being racist, sleeping on duty, and only disciplining African American employees when:
  - a. On August 31, 2019, Person A sent Complainant home for a half day for an unspecified misunderstanding;
  - b. On January 18, 2020, Complainant was directed to be reassigned from Navy Surface Warfare Center (NSWC) Carderock to Washington Navy Yard by Person A; and
  - c. On February 14, 2020, Complainant was denied eight hours of "other paid absence" for February 19, 2020, to work on his EEO complaint by Person A.
2. Complainant further alleged Person A subjected him to a hostile work environment (ongoing and continuous harassment) based on race, color, sex and in reprisal for protected EEO activity when, in addition to the incidents set forth in Claim 1:
  - a. From 2016 to present, offensive terms such as the "N-word"<sup>2</sup> and "Hook Nose" were used in the work environment on multiple occasions;
  - b. From January 23, 2016 to present, Complainant's coworker (Coworker 1) (Caucasian), has been allowed to be drunk on duty and, in January 2016, Complainant received threats from Coworker 1 while Coworker 1 was under the influence of alcohol and Person A never reported it or took action against Coworker 1;
  - c. On July 11, 2019, Complainant was forced to work overtime because Person A allowed Coworker 1 to walk out;
  - d. From November 14, 2019 to present, Person A did not intervene and allowed another of Complainant's coworkers, Coworker 2 (Caucasian), to harass Complainant, make racially disparaging comments concerning African Americans, and sleep on duty on more than one occasion;
  - e. On November 25, 2019, Person A would not allow Complainant official time during the workday to fill out his formal EEO paperwork for the instant complaint;
  - f. On November 25, 2019, Person A emailed Complainant and stated, "You are not following your chain of command again. This is disrespectful behavior towards your command. Please refrain from this bad behavior. My office is always open to disgruntled employees;" and
  - g. On February 14, 2020, Complainant was informed by Person A that he was not following his Chain of Command (COC) again, threatened that he would be

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<sup>2</sup> References to the "N-word" and other slurs or bad language in this decision use the exact language as used by Complainant (and other persons) in their statements. Thus, the quotations reflect the words exactly as stated by Complainant (and other persons).

subjected to disciplinary action, and instructed to stop harassing contractor, Coworker 3.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b) and concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.<sup>3</sup>

### 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”).

At the outset, we find the record in the present case was fully developed. Additionally, we note that on appeal, Complainant does not challenge the framing of the claims identified.

#### *Timely Discrete Incidents*

Upon review, we find the Agency presented legitimate, nondiscriminatory reasons for the discrete incidents which Complainant failed to show were a pretext for discrimination. Regarding claim 1a, Person A explained he sent Complainant home after the Work Leader reported to Person A that Complainant had brought his kids to work. Person A and Person B noted that children were not allowed to be at the utility plant during working hours. Complainant did not show by a preponderance of evidence that the Agency's actions were based on discriminatory animus.

Regarding claim 1b, Person A stated that he was not the deciding official for transferring Complainant's duty station from NSWC Carderock to the Washington Navy Yard. Person B stated that Complainant was reassigned to the Washington Navy Yard because Carderock was shutting down boilers and other areas needed workers. Complainant has not shown that the Agency's actions were based on any of his protected bases.

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<sup>3</sup> We note that Complainant filed a previous complaint under Agency No. 16-40080-03448, on December 15, 2016, which is currently pending a hearing at the EEOC's Washington Field Office in Hearing Number 570-2019-00024X. We do not address the claims identified in the previous complaint in our decision.

### *Denial of Official Time*

EEOC Regulation 29 C.F.R. § 1614.605(b) provides the Agency shall give Complainant a reasonable amount of official time, if otherwise on duty, to prepare an EEO claim. The Commission has stated that an allegation pertaining to denial of official time states a separately-processable claim alleging violation of the Commission regulations and does not require determination of a discriminatory motive. See Edwards v. U.S. Postal Serv., EEOC Request No. 05960179 (Dec. 23, 1996). This means EEOC has authority to remedy a 29 C.F.R. § 1614.605 violation without a finding of discrimination. Id. However, allegations of denial of official time on EEO matters should not be processed in accordance with 29 C.F.R. 1614.108, since inquiry is not motivation, but rather Agency justification of why it denied Complainant any amount of official time. Id. EEO-MD-110, Chap. 6 § VII(C)(5) (Aug. 15, 2015) requires that agencies inform complainants or their representatives of how to claim or request official time. Id. Ideally, Complainant and the Agency should have attempted to reach a mutual understanding as to reasonable amount of official time Complainant could use to prosecute his EEO matter. EEO-MD-110, Chap. 6 § VII(C)(1).

Regarding claim 1c, Complainant alleged that on February 14, 2020, Person A denied his request of eight hours of “other paid absence” for February 19, 2020, to work on his EEO complaint. Person A stated he had no recollection of denying Complainant time to complete EEO activity. He stated that his record indicated that Complainant took sick leave for the entire day. The record contains an email from February 14, 2020, at 12:42 p.m. in which Complainant stated that Person A just denied him leave for February 19, 2020, to process documents for his EEO case. Complainant noted that Person A said he was planning a meeting on that day and Complainant said as a result he needed to reschedule. The record contains a second email from February 14, 2020, at 3:20 p.m. in which Complainant noted that he had an appointment for his child on February 19, 2020, and as a result would have had to change his request for leave to sick leave, “which I am going to do because this appoint[ment] is vital to my child’s ongoing treatment.” Thus, we find nothing in the record reflecting that the Agency actually denied Complainant any amount of official time on February 14, 2020.

Regarding claim 2e, Complainant stated that on November 25, 2019, Person A would not allow him official time during the workday to work on his EEO complaint. In his declaration, Complainant stated that Person A told him he could take official time when Person A said he could. Person A stated that Complainant was always permitted to complete his paperwork. Person A noted he did require Complainant to use his own vehicle and not a government vehicle for travel and required him to notify his chain of command of his whereabouts. Upon review, we find Complainant has not shown that he was actually denied official time on November 25, 2019.

### *Hostile Work Environment*

Next, we address Complainant’s claim of a hostile work environment. Regarding claim 2a, Complainant alleged that from 2016 to the present, offensive terms such as the “N-word” and “Hook Nose” were used in the work environment on multiple occasions.

In his declaration, Complainant stated that Person A, Person B, and Person C used the “N-word” and “Hook Nose.” Complainant did not specifically identify any instances of Person A, Person B, or Person C using the “N-word.” However, Complainant did detail extensive use of the term “Hook nose” by Person B, which Complainant described as a racial and derogatory term for a Jewish person.<sup>4</sup> Person B admitted that he used the term “Hook Nose” as a nickname for himself and started calling employees that name. Person B stated that he never heard others call Complainant the “N-word.” However, Person B did acknowledge that Coworker 1 “might have been drunk and called [Complainant] that. [Complainant] came to me mad about that.” Person B stated this one-time incident occurred during a snowstorm and he was instructed to keep Complainant and Coworker 1 apart and he did so. Person B stated that he never used the “N-word.” Person A provided a previous declaration in which he addressed the use of the term “Hook Nose.” Person A stated that Person B referred to himself as “Hook Nose” and Person B wrote “Hook Nose” on his own personal items. Person A stated that everybody called Person B “Hook Nose” at Person B’s request. Further, when asked about the time period from July/August 2017 through July/August 2019, Person A stated he has not overheard anyone else call Complainant “Hook Nose” or refer to him by that name. Person C stated that he never heard the “N-Word” used. Person C stated that Person B calls himself “Hook Nose” and labels his tools with that name on a regular basis.

Regarding claim 2b, Complainant alleged from January 23, 2016 to present, Coworker 1 has been allowed to be drunk on duty and in January 2016, Complainant received threats from Coworker 1 while Coworker 1 was under the influence of alcohol and Person A has never reported it or took action against Coworker 1. Complainant stated that Person A was on the phone when the incident occurred in January 2016, and that Person B took Coworker 1 to the backroom to “sleep it off.” Complainant noted this was a one-time incident with Coworker 1. Person A stated that he was aware that there were issues with Coworker 1’s performance and action was taken, but it is subject to “privilege.” Person B stated that he was working during the incident and that Person A called him and told him to keep Coworker 1 and Complainant apart and that Coworker 1 was drunk that night. Person B stated that Complainant and Coworker 1 were arguing about who was going to set the boiler and Person B seemed to confirm that Coworker 1 threatened Complainant. Person B stated that he “gave [Coworker 1] hell for using the N word.” This is the same incident as discussed in claim 2a. In his rebuttal statement, Complainant stated that it was Person B’s statement to everyone that Coworker 1 was drunk and out-of-order and calling me the “N-Word” over-and-over in the back room. The record contains a November 5, 2019 email from Complainant in which Complainant stated that there were rumors floating around that Coworker 1 told people he called me the “N-word.” In that email Complainant stated that Coworker 1 never called him the “N-word” to his face.

Regarding claim 2c, Complainant alleged that on July 11, 2019, he was forced to work overtime because Person A allowed Coworker 1 to walk out of the office. Specifically, Complainant stated that Coworker 1 reported he had something that he had to handle on that date.

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<sup>4</sup> We note that Complainant did not allege that he was Jewish.

Complainant claimed that if he said no to working overtime, he would have been deemed insubordinate. Complainant acknowledged being paid overtime for the date at issue. Person A had no recollection of this incident. Upon review, we find Complainant failed to show Person A's assignment of overtime was a pretext for prohibited discrimination. Moreover, we note Complainant agreed to work overtime on the date alleged and was paid for doing so.

Regarding claim 2d, Complainant claimed that from November 14, 2019, to the present, Person A did not intervene and allowed Coworker 2 to harass him, make racially disparaging comments concerning African Americans, and sleep on duty on more than one occasion. In his declaration, Complainant stated that Coworker 2 told Complainant and Person E (Work Leader), in front of Person A, that "the yuzu's people, 'blacks,' are inferior to 'White Men like me'" and then told Person E that he was a "Fck'n, Liar" right in front of Person A. In his declaration, Person A stated that Complainant's characterization is inaccurate and that Coworker 2 and Complainant were "arguing and trading insults between themselves." Person A noted that he and Person E separated the two. Person A said that actions were taken against Coworker 2, but the specifics are "privileged." We note that Person A did not specifically deny that Coworker 2 made the racial statements. In a supplemental rebuttal, Complainant stated that on November 14, 2019, Coworker 2 said that Complainant stated that, "Theirs [sic] such a thing as Educated Black Men" which Complainant alleged was said because Coworker 2 always said something negative about people of color. According to Complainant, that is when Coworker 2 made his racial statements and cursed at Person E. We note the record contains a November 16, 2019 email from Complainant to Person A, among others, in which Complainant described an incident regarding the 2200-0600 turnover. Specifically, Complainant stated that Coworker 2 was hostile towards Complainant and Person E and stated that Person E was full of "Zh!t" right in front of Person A, which is when Complainant stated that Person A took Coworker 2 to the front to speak with Coworker 2 privately. However, Complainant noted that right before Person A took Coworker 2 to the front, Coworker 2 stated that, "'White Men' like him get fired for speaking their minds and that being an Educated Black Men[sic] is racist! Or even to identify one's self as an educated African American is racist." Further, in a December 21, 2019 email Complainant noted that Coworker 2 made a statement to Complainant and Person E that, "Black guys like us were always intimidated by White men like him." Complainant stated that Person A was present but said or did nothing.

Regarding claim 2f, Complainant stated that on November 25, 2019, Person A emailed him and stated, "You are not following your chain of command again. This is disrespectful behavior towards your command. Please refrain from this bad behavior. My office is always open to disgruntled employees." Person A stated that Complainant was sending too many emails to personnel outside the chain of command with complaints regarding performance of other utility plant personnel. Person A asserted that by doing so, Complainant was purposely trying to undermine Person A's ability to take appropriate action. Person A stated he sent the email at issue to remind Complainant that if he had a problem with anyone under his supervision, Complainant should tell him first so that he could address it.

Regarding claim 2g, Complainant alleged that on February 14, 2020, he was threatened by Person A that he was not following his chain of command again and would be subjected to disciplinary action and to stop harassing contractor, Coworker 3. Person A said that Complainant would habitually email the entire PWD management and his union. Person A asserted that Complainant had complained to nearly every level in the chain of command, as well as to his Senator and Congressman, with respect to complaints of mismanagement and other utility plant employees. Person A advised Complainant that going outside the chain of command was insubordination. Person A stated that Complainant would give Coworker 3 inaccurate information and question Coworker 3's qualifications. The record contained a February 3, 2020 email from Coworker 3 to his employer stating Complainant was harassing him, including calling him dumb and stupid.

Upon review, we find the Agency's actions in scheduling overtime and notifying Complainant that he should follow the chain of command in reporting his concerns to be legitimate management actions which Complainant has not shown were motivated by his race, color, sex, or in reprisal for his protected EEO activity.

Next, we address the identified discriminatory comments made in this case. The Commission has previously noted that the use of the N-word is a "highly charged epithet" which "dredge[s] up the entire history of racial discrimination in this country." See Brooks v. Dep't of the Navy, EEOC Request No. 05950484 (June 25, 1996); Yakubi v. Dep't of the Army, EEOC Request No. 05920778 (Jan. 4, 1993) (verbal abuse and negative comments regarding the Japanese people). Moreover, the fact that a remark may not have been specifically directed toward a Complainant is not dispositive. See Barber, et al. v. Dep't of the Navy, EEOC Request Nos. 05A50657, 05A50771, 05A50972, 05A50973 (Mar. 16, 2006).

The record reveals that Coworker 1 used the "N-word" directed at Complainant in January 2016. Complainant acknowledged that the term was not said to his face. It appears from the record, that Coworker 1 used that term when speaking to Person B after Person B took Coworker 1 to the back room to cool off after a work disagreement. Complainant also alleges that there were rumors going around that Coworker 1 told people he called Complainant the "N-word." Complainant has also established that he was called "Hook nose" by Person B, a term which Person B used with frequency in the office. Further, Complainant has established by a preponderance of evidence that Coworker 2 made racially disparaging comments concerning African Americans (that Blacks are "inferior" to Whites, that use of the phrase Black Educated Men is racist, and that Black men were intimidated by White men) on multiple occasions. We note in his declaration, Person A addressed the Blacks are inferior to White comment by stating that Complainant's characterization is inaccurate and that Coworker 2 and Complainant were "arguing and trading insults between themselves." However, Person A did not specifically deny that the racial statements were made by Coworker 2. Further, we note that Complainant alleged that Coworker 2 made the statement that Black men were intimidated by White men and used the phrase that "Black Educated Men is racist" both in Person A's presence. We note in his declaration, Person A did not deny that either statement was made.

Finally, we note that in its final decision, the Agency stated that Complainant “contended he asked [Person A] to stop [Coworker 3 (a Contractor)] from calling him “baby boy” and using the “N-word” around him, which [Coworker 3] did on numerous occasions.” Upon review, we find the comments in the present case were sufficiently severe and pervasive to alter the terms and conditions of Complainant’s employment and to create an abusive work environment.

Next, we address whether there was a basis for imputing liability to the Agency. In a case of coworker harassment, an agency is responsible for acts of harassment in the workplace where the Agency (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. See EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, No. 915.002 (June 18, 1999); 29 C.F.R. § 1604.11(d).

The record reveals that Person A (Complainant’s first line supervisor) was aware of the harassment. In his declaration, when asked whether Complainant told him he felt harassed/discriminated against based on his race, color, sex, and reprisal and asked what his response/action was, Person A responded yes and said Complainant “was instructed to engage with EEO.” The record reveals Person A knew of Person B’s frequent use of the phrase “hooknose” throughout the office. Further, Complainant’s statement that he was on the phone with Person A when the January 2016 altercation with Coworker 1 occurred is undisputed. Person B noted that after the January 2016 incident, Person A instructed him to keep Complainant and Coworker 1 separated, which Person B stated he did. In addition, Person A stated that he was aware that there were issues with Coworker 1’s performance and action was taken, but it is “subject to privilege.” Person A also stated that action was taken against Coworker 2, “but the specifics are privileged” and noted that Coworker 2 no longer works for NAVFAC Washington. The Agency claims the record shows that Coworker 1 and Coworker 2 “were disciplined promptly for their behavior related to at least some of the allegations at issue and no longer work at NSA Carderock.” We note Person A does not indicate when the purported discipline against Coworker 1 or Coworker occurred. Further, the record contains no documentation showing discipline was actually issued to either Coworker 1 or Coworker 2 for the alleged behavior at issue in this case. Additionally, we note that in his rebuttal statement, Complainant claimed that Coworker 1 is still employed with the Agency and that he and Coworker 1 were working on a temporary assignment together at the Washington Navy Yard. Upon review, we find the Agency is liable for the racial/color harassment at issue because it failed to show that it took immediate and appropriate corrective action. Because of our finding, we do not address the other bases alleged to be motivating the hostile work environment, since any finding of discrimination or retaliation on such bases would not alter the remedy.

### CONCLUSION

The Agency’s decision finding no discrimination is AFFIRMED in part and REVERSED in part. The matter is REMANDED to the Agency for further processing in accordance with this decision and the Order herein.



### ORDER

To the extent it has not already done so, the Agency shall take the following remedial actions:

1. Within 90 days from the date that this decision is issued, the Agency shall complete a supplemental investigation in order to determine Complainant's entitlement to compensatory damages. The Agency shall afford Complainant the opportunity to submit evidence in support of his claim for damages within the 90-day time frame, and Complainant shall cooperate with any additional evidentiary requests made by the Agency. Within 30 days of the date that the Agency determines the amount of compensatory damages owed Complainant, the Agency shall pay that amount;
2. Within 90 days from the date this decision is issued, the Agency shall provide a minimum of eight hours of in-person or interactive training to Person A, Person B, Coworker 1, and Coworker 2 regarding harassment under Title VII. If the designated employees are no longer employees of the Agency, then the Agency shall furnish documentation of their departure date(s).
3. Within 60 days from the date this decision is issued, the Agency shall consider taking disciplinary action against Person A, Person B, Coworker 1, and Coworker 2. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the designated employees have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).

### POSTING ORDER (G0617)

The Agency is ordered to post at its Washington Naval Yard, Washington, D.C. facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1016)

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

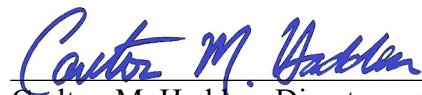
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

February 22, 2022

Date