



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Melina K.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2021001468

Hearing No. 430-2016-00467X

Agency No. 2001-0544-2015105383

DECISION

On November 6, 2020, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 30, 2020, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission MODIFIES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Registered Nurse at the Agency's William Jennings Bryan Dorn Medical Center in Columbia, South Carolina.

On November 4, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), sex (female), and in reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

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.

1. Since February 2014, a staff physician, Doctor 1, had “become irate and aggressive” toward Complainant and other female staff while also referring to them as “unintelligent.”
2. On several occasions since February 2014, Doctor 1 had snatched papers out of Complainant’s hands and directed rude remarks toward her.
3. During the summer of 2014, Doctor 1 told Complainant she should have combed her hair when she woke up.
4. On July 27, 2015, after Complainant asked Doctor 1 why she and a coworker did not get invited to his house for his birthday, he replied, “if we wanted to see monkeys, we would have gone to the zoo.”
5. On August 20, 2015, Doctor 1 threw a computer on Complainant’s desk and physically assaulted her and a coworker.
6. On August 21, 2015, Doctor 1 attempted to stop Complainant in the hallway.
7. On August 21, 2015, Doctor 2 made an insensitive and offensive joke when she stated to Complainant, “Anyone getting beat up today?”
8. On September 11, 2015, Co-Worker 1 repeatedly asked Complainant and another Co-Worker where they had been.
9. On September 15, 2015, after Complainant attempted to explain a message she left for him, Doctor 3 raised his voice and turned his back to her.
10. On September 16, 2015, the Chief of Urology, Doctor 4, raised his voice at Complainant when he stated, “[Complainant], you just threw a paper on my desk and walked out.”
11. On October 19, 2015, Complainant was told she needed to report to either Acting Nurse Manager or Co-Worker 1 whenever she left the clinic.
12. On November 2, 2015, the Acting Nurse Manager spoke to Complainant about an email message she received accusing Complainant of “not communicating patient care.”
13. On a date not provided, Doctor 1 told Complainant, “I don’t know why you can’t understand what I told you. I guess that’s just you. I am not going to see the patient.”

14. Even after being moved to another location in the hospital, Doctor 1 continued intimidating Complainant, by repeatedly staring at her while in the hallway in front of her office.
15. On several occasions, Doctor 3 raised his voice at Complainant and snatched papers out of her hands.
16. Since Doctor 3's arrival in the Urology Clinic, he has been "rude and disrespectful" to Complainant and other African-American staff and "ignores them" when they attempt to assist in patient care situations.
17. Co-Worker 1 told the staff that Complainant "has an attitude" and, as a result, they do not speak with her.
18. Management did not respond to Complainant's emails and concerns about incidents that have occurred in the work center.
19. Acting Nurse Manager told Complainant she has received several emails from other staff alleging that she is not doing patient care, not communicating patient care, and is not present in the clinic.
20. On November 5, 2015, Complainant was notified she was not selected for the position of Registered Nurse (Patient Care Coordinator), VN-0610-00, under Vacancy Announcement Number 0E-15-TMH-1466991-BU.
21. On February 8, 2016, Complainant's requests for leave on March 9, 16, and 23, 2016, were denied.
22. On February 24, 2016, Nurse Manager did not respond to Complainant's email message concerning the "aggressive behavior" shown toward her by Co-Worker.
23. On March 7, 2016, Complainant was informed that she would be "detailed to GI," effective March 20, 2016.
24. On March 24, 2016, Complainant was informed that "other nurses" made "racial remarks" directed at her and another coworker in their absence.
25. On April 5, 2016, Nurse Manager denied Complainant's request for training.
26. On April 6, 2016, Nurse Manager informed Complainant and a coworker that after April 15, 2016, they would be "taking over all of" the case management responsibilities for a coworker who was leaving.

27. On April 6, 2016, Co-Worker 2, “attempted to provoke” Complainant by invading her personal space and attempting to log her out of the computer.
28. On May 2, 2016, Nurse Manager informed Complainant that Doctor 4 had indicated, “there was no one available to help him on April 28, 2016, for his post-op clinic.”
29. On May 2, 2016, Nurse Manager sent an email to Complainant in which she erroneously claimed she “never knew” how Doctor 4 was treating her.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing on September 23, 24, and 28, 2020.

The AJ issued a decision on September 30, 2020, finding that Complainant proved that the Agency subjected her to discrimination as due to her race and sex with regard claims 1-7, 13, and 14, to an abusive and hostile work environment, which included physical assault by Doctor 1. The AJ found that there was no discrimination or retaliation with regard to claims 8-12 and 15-29.

Based on review of the Report of Investigation (ROI) and the hearing transcript, the AJ issued the following determinations. The AJ held that Complainant established that Doctor 1’s behavior had created a hostile work environment since February 2014. ROI at 124. Doctor 1 would become aggressive, both verbally and physically. She asserted that Doctor 1 had no respect for her or the other African American nurse. She stated he had no respect for them; that if they told him about a patient he didn’t want to see, he “went ballistic on [them].” ROI at 124. At one point, Doctor 1 threw a vital sign machine. ROI at 124.

The AJ also found that Complainant established that she was the recipient of racially animus remarks. Specifically, Doctor 1 made a comment about Complainant needing to brush her hair when it was in its natural state. ROI at 124. In another situation, when asked about why Complainant and another African-American nurse were not invited to his party, Doctor 1 stated, “If I had wanted to see monkeys, I would have gone to the zoo.” ROI at 125; Hearing Record at 413, 1034, 1050.

In addition to the remarks Doctor 1 made that were derogatory of her race, the AJ determined that Complainant was physically assaulted by Doctor 1 on August 25, 2015, due to her race. ROI at 126. This physical assault included Doctor 1 grabbing Complainant just below her breasts. ROI at 229. Complainant screamed, “Get your hands off me, get your hands off me,” but he would not let her go. ROI at 125. Once Doctor 1 did release Complainant, he came back and threw a computer onto the desk where she worked. ROI at 126.

The AJ determined that Complainant proved that the response of the Agency to the racial slurs and physical assault was inadequate, inasmuch as Doctor 1 was allowed to stay in the same building as Complainant after the assault. In fact, Doctor 1 attempted to stop Complainant in the hall after the assault. ROI at 126-27; Hearing Record at 1134, 1143. Even the relocation of Doctor 1 was inadequate to separate her from her harasser. Doctor 1 was relocated to the basement, which was no more than a two to three-minute walk from his new location to the urology clinic. Hearing Record at 547. Moreover, Doctor 1's proposed 14-day suspension was reduced to three days, not considering his racially motivated comments in its mitigation. Hearing Record at 631, 642.

Multiple witnesses testified that Complainant's work behavior changed after the assault. Prior to the assault, witnesses attested that the work environment was a positive one and that Complainant was a good nurse and friendly with co-workers. Hearing Record at 418, 427, 522. After the assault, these witnesses stated that she became quiet, she did not communicate with staff, or even acknowledge their presence. Hearing Record at 414, 418, 451. This affected communication not only between co-workers, but communication regarding patient care. Hearing Record at 321, 414, 424, 496. This lack of communication lasted "all day, every day" for eight months. Hearing Record at 449. The communication breakdown became so severe that Co-Worker testified that, during a morning huddle, the other staff expressed to Complainant and the other African-American nurse, who was also assaulted by Doctor 1, that their behavior created a hostile work environment. Hearing Record at 414.

Complainant testified that she felt like she had a lot of mental anguish, a "shattered spirit." Hearing Record at 1124-25. She felt as though she had a target and that everyone turned her back on her at work. Hearing Record at 1124. Complainant testified that she sought counseling through the Agency's Employee Assistance Program (EAP). She testified that she received a diagnosis of posttraumatic stress disorder (PTSD) from a counselor. Complainant said that she continued with counseling at EAP until she was forced to stop by management. After she stopped utilizing EAP, she sought counseling from her bishop. Hearing Record at 1124-25.

As remedy for the discrimination and hostile work environment, the AJ awarded \$10,000 in non-pecuniary compensatory damages. The AJ stated that he arrived at this award due to his evaluation of her emotional distress due to the Agency not fully addressing and investigating the physical assault committed by Doctor 1 and the manifestations of these actions/inactions, including psychological distress, disinterest in work, and a shattered spirit. The AJ considered three cases, as outlined in detail below, that he found to be comparable cases in arriving at that amount.

In addition to the awarded non-pecuniary compensatory damages, the AJ ordered the Agency to display a notice to employees in the Dorn VA Medical Center, informing employees of the finding of discrimination for 60 consecutive days, and to provide a minimum of four hours

training and consider corrective action for relevant management officials as specified in the decision.²

The Agency issued its final order implementing the AJ's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant limits her appeal to the issue of compensatory damages only. Complainant contends that the AJ erred in his assigning \$10,000 in compensatory damages. She claims that she established that she had been the subject of discrimination and harassment on the basis of her sex and race. She notes that she was exposed to a hostile work environment and emotional distress for an extended period of time. As such, she claims that the compensatory damages award should be in excess of \$10,000.

The Agency asserts that it fully implemented the AJ's decision. The Agency further claims that, as Complainant did not file her brief in a timely fashion, her brief should not be considered by the Commission.

ANALYSIS AND FINDINGS

Timeliness of Complainant's Brief

Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 calendar days of filing the notice of appeal. 29 C.F.R. §§ 1614.403(d), 604(a). In the case at bar, Complainant filed her appeal on November 6, 2020. To be considered timely filed, Complainant's brief in support of her case should have been filed by December 6, 2020. Her brief, however, was not filed until January 11, 2021. As such, the Commission finds that the brief was not timely filed and will not consider the arguments asserted therein. Though the Commission will not consider the specific arguments or references contained within Complainant's brief, the Commission will consider all relevant evidence in the file and any similar cases found in its own legal research. Any similar cases found relevant by the Commission and referenced in Complainant's brief is merely coincidental.

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. Nat'l Labor Relations Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding.

² The identities of the relevant management officials may be found on page 1277 of the Hearing File. AJ Decision at 32.

See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9, at § VI.B. (Aug. 5, 2015).

Compensatory Damages

To receive an award of compensatory damages, Complainant must demonstrate that 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 recon. den'd, 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 (EEOC Notice No. 915.002) (July 14, 1992), at 11-12, 14. Compensatory damages may be awarded for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) which are directly or proximately caused by the agency's discriminatory conduct. EEOC Notice No. 915.002 at 8. The amount awarded should reflect the extent to which the agency's discriminatory action directly or proximately caused harm to the complainant and the extent to which other factors may have played a part. Id. at 11-12. The amount of non-pecuniary damages should also reflect the nature and severity of the harm to the complainant, and the duration or expected duration of the harm. Id. at 14, see Goetze v. Dep't of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001)

This decision solely concerns the AJ's decision to award Complainant \$10,000.00 for non-pecuniary compensatory damages. Non-pecuniary losses are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing, and reputation. Id.

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 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.

Statements from others including family members, friends, health care providers, and other counselors 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. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id. 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. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

There is no precise formula for determining the amount of damages for non-pecuniary 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). Non-pecuniary 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).

In the instant case, the Commission finds that the AJ's decision to award \$10,000.00 in compensatory damages is not supported by substantial evidence of the record. The AJ relied upon three cases, namely Vena H. v. Dep't of Def., EEOC Appeal No. 0120172589 (Feb. 8, 2019), Zounis v. Dep't of Just., EEOC Appeal No. 0120092940 (Mar. 25, 2011), and Complainant v. Dep't of Veterans Affs., EEOC Appeal No. 0120112818 (May 14, 2014), as comparable cases to determine the award of non-pecuniary damages. However, we find that the cases cited by the AJ do not reflect the same nature or severity comparable to the case at hand.

In Vena H., supra, the complainant stated that she did not like to come to work anymore, her stomach hurt when she came to work, and she saw a doctor for anxiety and depression. She also felt as though she was forced to voluntarily retire due to the hostile work environment. The complainant was awarded \$6,000 in compensatory damages. We find that this case is not comparable to the case at bar as Complainant was subject to a hostile work environment that involved physical assault and intimidation.

In Zounis, supra, the complainant suffered emotional distress and psychological harm suffered from a sex based hostile work environment. However, we note that the exact nature and extent of the psychological harm suffered is not clear in the decision. Furthermore, we find that the AJ has not shown that the factors surrounding this case are in any way comparable to the matter at hand. As such, we find that the award in Zounis does not support the amount award by the AJ in this matter.

In EEOC Appeal No. 0120112818, the complainant was found to suffer harm caused by a hostile work environment due to the complainant's sex. In this case, the complainant was the initial aggressor, but after the initial altercation, due to the supervisor's height and weight, he became the aggressor. Again, we find that the facts of this case are not similar to the events at hand and do not support the AJ's decision.

In this case, Complainant experienced a hostile work environment beginning in 2014. For 18 months, Doctor 1 was verbally and physically aggressive with Complainant, yelling at Complainant and throwing a vital sign machine. She was the subject of racially derogatory comments directed at her, personally, in the form of comments about her hair and calling her a "monkey." This hostile work environment went unabated, culminating in Doctor 1 physically assaulting Complainant, to include grabbing near her breasts, refusing to let her go even when Complainant repeatedly screamed for him to do so. After he released her, Doctor 1 returned to throw a computer on her desk. Even after the assault, the Agency continued to place her in a position to be within close proximity of Doctor 1 by leaving him on the floor with her for several days. Though Doctor 1 was removed from the floor, he was moved no more than a two to three-minute walk from Complainant and he continued to come to her work area until he was removed by Agency police. We also note that Doctor 1 was allowed to act with impunity for over a year. Even after Doctor 1 physically assaulted Complainant, the Agency did not take immediate action to remove Complainant from the sphere of influence of her harasser. As such, we find that following the assault, the Agency continued to expose Complainant to Doctor 1.³

Furthermore, as to her mental state, the record includes multiple sources which state that, after the assault, Complainant immediately went from being friendly and a good worker to being quiet and non-communicative, to the point that it affected patient care. She felt like a target at work, like people turned their back on her. She had a lot of mental anguish and she was diagnosed with PTSD due to her experience. She sought therapy for her mental health condition through the Agency's EAP until the Agency required that she stop, at which point she continued counseling services through her bishop.

Therefore, based on the record and the Commission precedent, we find the AJ's award of \$10,000 to be woefully insufficient. Instead, we conclude that an award of \$175,000.00 would better compensate Complainant based on the egregiousness of the Doctor 1's actions (physical assault, racial comments, continued presence after the assault) from February 2014 to August 2015 and for the emotional and mental harm she suffered as a result of the actions.

We find that this award is consistent with similar awards provided by the Commission. See Lemons v. Dep't of Just., EEOC Appeal No. 0120102416 (Nov. 16, 2011) (awarding \$175,000 in non-pecuniary compensatory damages where management failed to respond over a four to five-month period to complainant's four separate allegations that she was being sexually harassed by an inmate which culminated in a violent sexual assault resulting in her diagnosis of PTSD and Major Depression, suffering physical and emotional harm from the assault including

³ The record indicates that Doctor 1 retired from the agency.

insomnia, vomiting, difficulty concentrating, mood swings, an inability to trust people, and feelings of hopelessness and paranoia); Stanton S., v. Dep't of Veteran Affs., EEOC Appeal No. 2019005938 (Sept. 14, 2020) (modifying the Agency's award of \$110,000 to \$175,000, noting the harmful effects Complainant experienced following two physical workplace assaults one month apart); Celinda L. v. Dep't of Veteran Affs., EEOC Appeal No. 2020002892 (Sept. 2, 2021) (increasing the award to \$175,000 where Complainant was subjected to sexual harassment and a hostile work involvement, when, over the course of two months, she was shown graphic pictures, received threats of violence, and was choked by an Agency Employee); Jackson v. Dep't of the Air Force, EEOC Appeal No. 0720110036 (Mar. 13, 2012) (the Commission affirmed an AJ's award of \$125,000 for a complainant who was subjected to sex-based harassment by a supervisor that occurred over approximately 19 months, for emotional harm, mental anguish, loss of enjoyment of life, loss of self-esteem, injury to character and professional standing, marital strain, loss of health, sleep problems, anxiety, stress, depression, and humiliation).

Therefore, upon review of the record as a whole, we find that Complainant is entitled to \$175,000.00 in non-pecuniary compensatory damages. The Commission finds that this amount takes into account the severity and the duration of the harm suffered and is consistent with prior Commission precedent. We note that this award is not "monstrously excessive" standing alone, is not the product of passion or prejudice, and is consistent with the amount awarded in similar cases. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01972555 (Apr. 15, 1999) (citing Cygnar v. City of Chicago, 865 F. 2d 827, 848 (7th Cir. 1989)).

Furthermore, to ensure compliance with the AJ's remedial orders, we shall restate the orders herein.

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 and REMAND the matter to the Agency in order to comply with the ORDER below.

ORDER (D0617)

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

1. The Agency shall, within 45 days from the date this decision is issued, pay Complainant \$175,000.00 in non-pecuniary compensatory damages.
2. The Agency shall display a notice to employees in the Dorn VA Medical Center, informing employees of this finding of discrimination based on hostile work environment based on sex and race. The notice shall remain posted for sixty (60) consecutive days; and

3. The Agency shall take corrective, curative, and preventive action to ensure sexual harassment discrimination does not recur. See 29 C.F.R. §1614.501(a)(2). This includes, but is not limited to, four (4) hours of training for the relevant management officials involved in this matter. The training will focus on actions the Agency should take in the event a hostile work environment based on sex, race, or reprisal is reported in the workplace. In this case, the relevant management officials are specifically identified on page 32 of the AJ's decision.
4. Consider disciplining the relevant management officials as outlined on page 32 of the AJ's decision. The Commission does not consider training to be discipline

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its William Jennings Bryan Dorn Medical Center facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a).

The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

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

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

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

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

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

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

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

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (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 8, 2022

Date