



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

[REDACTED]  
Brittney B.,<sup>1</sup>  
Complainant,

v.

Lloyd J. Austin III,  
Secretary,  
Department of Defense  
(Defense Commissary Agency),  
Agency.

Request No. 2021005096

Appeal No. 2021002613

Agency No. DECA-00253-2015

**DECISION ON REQUEST FOR RECONSIDERATION**

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2021002613 (September 2, 2021). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates 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. See 29 C.F.R. § 1614.405(c).

The previous decision reversed the Agency's final decision and found that Complainant established that she was denied a reasonable accommodation for her disability. We observed that the Agency, in its final decision, found that Complainant established a prima facie case of entitlement to an accommodation and that, "Complainant's accommodation request was inexplicably delayed for approximately [ten] months, between November 2014 and September 2015." The previous decision noted that the Agency found that, "Complainant did not provide any corroborative evidence that the delay was based on her disability."

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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.

We, however, found that the Agency failed to promptly provide Complainant a reasonable accommodation, and it also failed to provide a reasonable justification for the ten-month delay. In so finding, we noted that Complainant was proactive in pursuing her reasonable accommodation request by following up with various managers and completing the reasonable accommodation form numerous times. The previous decision found that the Agency's delays were unnecessary and violated the Agency's responsibility to expeditiously respond to a request for reasonable accommodation. We determined, moreover, that the Agency's significant delays demonstrated a lack of good faith with regard to the Agency's responsibilities under the Rehabilitation Act.

In its Request for Reconsideration, the Agency asserts it never received a copy of Complainant's notice of appeal, and it did not receive any notice that Complainant had in fact appealed. The Agency also contends that neither the Agency nor its counsel received Complainant's brief or the attachments to the brief as well. The Agency maintains that it had no opportunity to reply to Complainant's brief on appeal, and therefore it was not afforded with an opportunity to be heard. The Agency further maintains that we failed to adhere to a de novo standard of review, failing to specifically address whether Complainant established that she was a qualified individual with a disability. The Agency argues also that we improperly ordered training and disciplinary referrals for the responsible management officials, while rewarding Complainant with compensatory damages, attorney fees, back pay.

We however find the Agency's arguments regarding the notification of Complainant's appeal to be unavailing. In so finding, we note that the Agency was sent a request for documentation regarding the appeal and the Agency responded. In addition, Complainant's attorney provided the Agency with a copy of Complainant's brief on appeal along with the certificate of service, reflecting that the brief was provided to the Agency's address of record. Moreover, the Agency sent the Commission a "Designation of Agency Representative" notification, further evidencing that the Agency was provided with notice of Complainant's appeal. We find that the Agency simply did not avail itself of the opportunity to respond to Complainant's appeal.

The Agency argues that the previous decision failed to adhere to a de novo standard of review, failing to specifically address whether Complainant established that she was a qualified individual with a disability. However, we note that the Agency found in its FAD that Complainant was a qualified individual with a disability and Complainant did not challenge on appeal. As such, we find that the previous decision properly found that it need not address the matter further.

Furthermore, pursuant to 29 C.F.R. § 1614.501(a)(2), to remedy a finding of discrimination, the Commission may order the Agency to provide full relief, to include corrective, curative or preventive actions to ensure that violations of the law similar to those found will not recur. Based on this regulatory authority, it is well-established that the Commission may properly order an Agency to provide relevant EEO training to employees as a measure to prevent future occurrences of discrimination. See Wild v. Dep't of Def., EEOC Request No. 05A10058 (Mar. 16, 2002).

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to DENY the request. The decision in EEOC Appeal No. 2021002613 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

### ORDER

The Agency shall take the following remedial actions:

1. Within 60 calendar days from the date this decision is issued, the Agency shall restore any leave used by Complainant due to the Agency's delay in providing her with a reasonable accommodation.
2. The Agency shall pay reasonable attorney's fees and costs incurred for the processing of the initial appeal as well as the instant request for reconsideration in accordance with the paragraph entitled "Attorney's Fees."
3. Within 90 calendar days from the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages within 30 days after the completion of the investigation.
4. Within 90 calendar days from the date this decision is issued, the Agency shall provide 8 hours of in-person or interactive training for the responsible officials (S1, M1, and D1) on the Rehabilitation Act.<sup>2</sup> The training shall emphasize the Rehabilitation Act's requirement with respect to an Agency's duties to timely respond to employees' requests for a reasonable accommodation to ensure that similar violations do not occur.
5. Within 60 calendar days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary actions against the responsible management officials (S1, M1 and D1). If the Agency decides not to take disciplinary action, it shall set forth the reasons for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

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<sup>2</sup> The record reflects that some of the involved management officials have since retired from the Agency.

6. The Agency shall post the attached notice in accordance with the paragraph below entitled "Posting Order."

The Agency is 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 that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Fort Benning Commissary 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 (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.

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

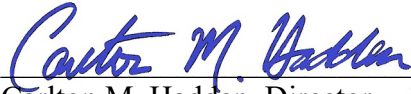
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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.

#### 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 7, 2022

Date