



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Maxima R.,¹
Complainant,

v.

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

Appeal No. 2020005074

Agency No. 4K-300-0004-20

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 August 13, 2020, final decision 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 REVERSES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Letter Carrier at the Agency's Roswell Crosstown Carrier Annex in Roswell, Georgia.

On August 26, 2019, the Postmaster placed Complainant on Emergency Placement, which was an off-duty status without pay, based on allegations that Complainant may cause injury to herself or others. The Postmaster noted that Complainant would remain on Emergency Placement pending a full investigation. Report of Investigation (ROI) at 165. Complainant filed a grievance through the Union for the Emergency Placement. ROI at 72.

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.

On September 5, 2019, the Agency conducted a threat assessment and determined that the next appropriate steps were: (1) conduct an active shooter training; and (2) send Complainant to a fitness for duty (FFD) examination. ROI at 197. The Agency scheduled the FFD for October 8, 2019, but Complainant did not attend due to a prior engagement. The Agency rescheduled the FFD, and Complainant chose not to attend because the Union informed her that an FFD was “a form of punishment.” ROI at 72.

On October 10, 2019, the parties resolved Complainant’s grievance. The Dispute Resolution Team found that the Emergency Placement should be rescinded because the Agency did not provide written notice to Complainant, which negatively impacted her due process rights. Management was instructed to make Complainant whole from August 26, 2019, until Complainant was returned to work or placed back into a pay status. ROI at 74.

On November 14, 2019, Complainant filed a request for a reasonable accommodation for three to four days off per month for counseling and doctor’s visits. ROI at 200-1. In support of her request, Complainant provided a medical note stating that she would be able to return to work on December 9, 2019. ROI at 199. On March 3, 2020, the District Reasonable Accommodation Committee (DRAC) informed Complainant that it was closing her request. The DRAC noted that it met with Complainant on February 5, 2020, when it requested updated medical documentation to support her reasonable accommodation. However, Complainant did not provide the requested information. ROI at 202.

Complainant averred that on March 20, 2020, she did not receive pay for pay period 06-20, for February 29, 2020, to March 13, 2020. ROI at 80. Complainant used sick leave for pay period 07-20, and we note that the record does not contain information beyond pay period 07-20. ROI at 144.

EEO Complaint

On January 9, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her based on her disability (Major Depression with possible schizophrenic episodes/perceived mental disability) when:

1. on August 26, 2019, Complainant was placed on Emergency Placement and not permitted to return to work;² and
2. on March 20, 2020, Complainant did not receive her pay for pay period 06-20.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge.

² Complainant stated in her affidavit dated April 16, 2020, that she had not been returned to work. ROI at 80.

When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

The Agency found that Complainant was an individual with a disability, but that she was not qualified because she was unable to perform her duties or communicate with coworkers and customers in a professional manner. Regardless, the Agency found that it took reasonable steps to return Complainant to work and accommodate her disability, but she refused to participate in the FFDs or provide the requested medical documentation. Further, the Agency determined that Complainant posed a direct threat, and it was not obligated to return her to work. As such, the Agency concluded that it did not fail to accommodate Complainant.³

The Agency then assumed that Complainant established a prima facie case of disability discrimination and found that management officials articulated legitimate, nondiscriminatory reasons for their actions. Specifically, Complainant was placed on Emergency Placement to preserve the safety of other employees and she was not paid for pay period 06-20 because her administrative leave ended on February 22, 2020, due to her failure to provide appropriate medical documentation to return her to work.

The Agency then found that Complainant did not establish that the reasons were pretexts for discrimination. For example, while Complainant argued that the grievance found that her placement on Emergency Placement was improper, the Agency noted that it was due to a failure to follow proper notification procedures, and that there was no determination that the action was discriminatory or that the management's reasons were not the true reasons. The Agency concluded that the evidence did not establish that Complainant was subjected to disability discrimination.

Complainant filed the instant appeal and submitted a brief in support of her appeal. The Agency did not respond to Complainant's appeal.

CONTENTIONS ON APPEAL

Through her attorney, Complainant argues that she is a qualified individual with a disability with mental health issues which, at times, impairs her thought process and ability to interact with others. Complainant also asserts that management officials regarded her as an individual with a disability. Complainant avers that in cases of enforced leave, the Agency has the burden to show that an employee poses a direct threat and that the Agency must prove by a preponderance of the evidence that Complainant's disability presented a reasonable probability of substantial harm to her own safety or to the safety of others.

Complainant asserts that the facts do not support the action of placing her in a leave without pay (LWOP) status five months after she failed to attend the October 8, 2019, FFD.

³ While the Agency included a failure to accommodate analysis, we note that Complainant did not allege that the Agency failed to provide a reasonable accommodation.

Further, Complainant claims that she was improperly told she could not return to work because she did not provide medical documentation to support her requested reasonable accommodation, but only Complainant's requested time off should have been denied. Complainant argues that the Agency failed to articulate any legitimate business reason for putting her in an LWOP status and continuing to bar her from working. Complainant contends that, at no time has the Agency articulated any risk, let alone a substantial risk, of imminent harm to herself or others that Complainant would pose, as required by the law. While individuals may have been scared, the threat assessment committee did not find or articulate any imminent threat.

Complainant also asserts that the Agency dragged its feet in scheduling the FFD after she was placed on Emergency Placement, and since the Agency was punishing Complainant by putting her in an unpaid status, it was incumbent on the Agency to move quickly if it wanted to invoke the direct threat defense. In addition, the Agency choose not to issue any discipline for Complainant's alleged misconduct leading to the Emergency Placement, and it did not take any action for her failure to attend the FFD until over five months later.

For claim 2, Complainant notes that the Postmaster responded that he was instructed to not provide administrative leave since Complainant missed the first FFD appointment. However, the Postmaster did not identify any supporting guideline or regulation for this action. Complainant requests that the Commission find in her favor and award appropriate damages.

STANDARD OF REVIEW

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 Chap. 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").

ANALYSIS AND FINDINGS

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas, 411 U.S. at 802 n.13.

Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Service v. Aikens, 460 U.S. 711, 715-716 (1983).

We find that Complainant established a prima facie case of disability discrimination. Complainant may establish a prima facie case of discrimination by providing evidence that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; and (3) either that similarly situated individuals outside her protected class were treated differently, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802 n.13; Reeves v. Sanderson Plumbing, 530 U.S. 133, 142 (2000); Bodett v. CoxCom, Inc., 366 F.3d 736, 743-44 (9th Cir.2004) (internal quotation marks omitted).

An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Here, Complainant averred that she has Major Depression with possible schizophrenic episodes. ROI at 70. While Complainant did not describe how her medical conditions substantially limited a major life activity, we find that Complainant was regarded as having an impairment. Specifically, the Postmaster stated that he had a perception that Complainant had a medical condition based on her "emotional behavior" and "demonstrated actions"; and a supervisor (S1) stated that Complainant has "mental challenges," and S1 perceived that Complainant had a medical condition due to her "having an episode" when she talked loudly and antagonized employees. ROI at 161, 154-5. We also find that the record supports that Complainant was qualified for her position. Another supervisor (S2) responded that she was not aware of Complainant having any work limitations. ROI at 177. As such, we find that Complainant is an individual with a disability.

Complainant suffered an adverse employment action when she was placed on an unpaid status for an indefinite period, starting on August 26, 2019. We also find that the circumstances surrounding the Emergency Placement give rise to an inference of disability discrimination because the Postmaster stated that Complainant's medical condition affected her ability to perform her duties due to her erratic and aggressive behavior, and he placed Complainant on Emergency Placement because she was being aggressive and threatening towards others. ROI at 161. Accordingly, we find that Complainant established a prima facie case of disability discrimination.

It is undisputed that S2 made the initial decision to place Complainant on Emergency Placement and the Postmaster, who concurred with the decision, issued the notice to Complainant.

ROI at 161, 165, 177. Regarding the Agency's legitimate, nondiscriminatory reasons for placing Complainant on Emergency Placement, the Postmaster explained that it was due to her "aggressive and threatening" behavior and failure to follow instructions; and S2 averred that she informed Complainant that the action was due to her unacceptable behavior. ROI at 161, 177.

However, we find that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008). Here, S2 averred that two supervisors informed her that, on August 26, 2019, Complainant was telling other employees that they smelled and called them "bitches." S2 stated that when she found Complainant in the break room talking to herself, Complainant instructed S2 to stay away from her because S2 smelled. Complainant then left to deliver her route, and when she returned, Complainant cussed and screamed at other employees. ROI at 177.

S2 claimed that she "was fearful" for her safety, but she did not explain how Complainant's actions caused her to be afraid for her safety. ROI at 178. While we do not find Complainant's yelling or cussing to be appropriate behavior, S2 did not provide any testimony that Complainant threatened the safety of any employee. S1 averred that Complainant told another employee that she was tired of the employee "messing" with Complainant and that she would "mess them up"; and Complainant also stated, "let's roll" to another employee, which S1 interpreted as "an invitation to fight." ROI at 155. However, there is no indication that either S2 or the Postmaster were aware of, or considered, these incidents when issuing the Emergency Placement. In addition, the Postmaster asserted that Complainant failed to follow instructions, but he did not provide any details or supporting evidence. Rather, S2 stated that she told Complainant that she needed to leave, and Complainant left and "sped out of the parking lot." ROI at 177.

While we acknowledge that Complainant's behavior was cause for concern, we find that the record is inconsistent with the Agency's proffered reasons that Complainant failed to follow instructions or that she exhibited behavior that she "may be injurious to herself or others," as documented in the Postmaster's notice of the Emergency Placement. ROI at 165.

Regarding the second part of claim 1, the Postmaster explained that Complainant was not allowed to return to work because she missed two FFDs and did not follow the guidelines set in the DRAC meeting. ROI at 161-2. However, we find that the Agency did not substantiate the need for an FFD, and Complainant's failure to follow the DRAC's instructions are not relevant to Complainant's claim.

Under the Rehabilitation Act, employers may make disability-related inquiries or require medical examinations of employees only if they are job related and consistent with business necessity. 29 C.F.R. §§ 1630.13(b), 1630.14(c).

Generally, a disability-related inquiry or medical examination of an employee may be job related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition.⁴ Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA (July 27, 2000) at Q. 5. Objective evidence is reliable information, either directly observed or provided by a credible third party, that an employee may have or has a medical condition that will interfere with her ability to perform essential functions or will result in a direct threat. Id.

To prove a direct threat, the Agency must show more than that a person stands some elevated risk of future injury. Rather, a person is a "direct threat" if she poses a "significant risk of substantial harm" to the health and safety of herself or others, which cannot be eliminated or reduced to an acceptable level by reasonable accommodation. See Alonzo N. v. Dep't of Homeland Sec., EEOC Appeal No. 0120180739 (June 21, 2019); Candi R. v. Dep't of Def., EEOC Appeal No. 0120172238 (Feb. 28, 2019). In determining whether an individual would pose a direct threat, the factors to be considered include: 1) the duration of the risk; 2) the nature and severity of the potential harm; 3) the likelihood that the potential harm will occur; and 4) the imminence of the potential harm. 29 C.F.R. § 1630.2(r). Here, we find that the Agency did not meet its burden to show that Complainant posed a direct threat. Specifically, there is no evidence that the Agency considered the relevant factors when it instructed Complainant to attend an FFD, such as the likelihood that any potential harm will occur or the imminence of any potential harm.

On September 5, 2019, the threat assessment committee discussed Complainant's situation, but it did not determine that Complainant posed a direct threat. In addition to the incident when Complainant yelled that employees were "stank and funky" and cussed at them, the threat assessment committee noted that two weeks earlier, Complainant lifted her shirt to show others that she had been "shot," when Complainant actually showed her EKG tags, and asked employees if they knew who shot her. Complainant also looked at one employee and softly stated, "bang bang." However, Complainant was described as "normal" the next day and "fine" the following week. The threat assessment committee concluded their meeting without deciding a priority rate.⁵ ROI at 197. The record does not contain any evidence showing that the threat assessment committee ultimately gave a priority rating to Complainant's situation.

A Labor Relations Manager (LRM) stated that Complainant's behavior was an ongoing problem and Complainant previously tried to run over a police officer in the parking lot. ROI at 184.

⁴ We note that the Agency considered the FFD due to Complainant's "threatening manner," and not to evaluate if Complainant's ability to perform her essential job functions would be impaired by a medical condition. ROI at 197.

⁵ The Agency's Priority Risk scale ranges from Priority 1 for a clear and immediate threat of violence to an identifiable target to Priority 4, which is no threat of violence indicated. ROI at 373.

However, this incident was not considered by the threat assessment committee as support for the FFD. In reviewing the record, we find that the Agency did not present evidence to show that it determined that Complainant presented a “significant risk of substantial harm” to the health and safety of herself or others. As such, we find that the Agency’s explanation that Complainant was not allowed to return to work based on her failure to attend the FFDs is not in accordance with the law.

We also find troubling that the Agency failed to return Complainant to work, despite the grievance decision to rescind the Emergency Placement. Further, the record shows that Complainant provided medical documentation noting that she would be able to return to work on December 9, 2019. ROI at 199. Even if Complainant failed to provide the DRAC-requested medical documentation, such documentation was only relevant to Complainant’s request for leave as a reasonable accommodation, which was a separate matter from her continued Emergency Placement status. Accordingly, we find that the Agency subjected Complainant to disability discrimination when it placed her on Emergency Placement and would not allow her to return to work, and we REVERSE the Agency’s decision for claim 1.

Regarding claim 2, the Postmaster averred that he was informed by LRM and another Human Resources Manager that Complainant should not have been paid administrative leave once she missed the first FFD appointment. ROI at 171. However, we note that the failure to pay Complainant for pay period 06-20 was a direct result of the Agency’s improper actions of placing Complainant on Emergency Placement and failing to return her to work. In addition, LRM did not corroborate the Postmaster’s assertion that she advised him that Complainant should not have been given administrative leave after she missed an FFD. Rather, LRM stated that Complainant was given administrative leave once the grievance decision was rendered, and she offered no testimony that the administrative leave was improper. ROI at 181. We find that the inconsistency between the statements by the Postmaster and LRM shows that the Agency’s proffered reason for claim 2 was a pretext for discrimination. As such, we find that the Agency subjected Complainant to disability discrimination when it failed to pay her for pay period 06-20, and we REVERSE the Agency’s finding for claim 2.

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this “make whole” relief. 42 U.S.C. § 1981a(b)(3). As such, the Agency is ORDERED to conduct a supplemental investigation regarding any compensatory damages, attorney’s fees, and costs.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision and REMAND the complaint to the Agency for further action, in accordance with our Order below.

ORDER

The Agency is ordered to take the following remedial action:

1. To the extent that it has not already done so, return Complainant to work; restore any sick or annual leave that Complainant used due to the Emergency Placement issued on August 26, 2019; and provide Complainant backpay for pay period 06-20, no later than 60 calendar days after the date this decision was issued. The Agency shall determine the appropriate amount of backpay, with interest, and other benefits due the Complainant, pursuant to 29 C.F.R. § 1614.501. The Complainant shall cooperate in the Agency's efforts to compute the amount of backpay and benefits due, and she shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of backpay and/or benefits, the Agency shall issue a check to the Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. The Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
2. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages, attorney's fees, and costs. 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, attorney's fees, and costs, no later than 30 days after the completion of the investigation.
3. Within 90 days of the date this decision is issued, the Agency shall provide 8 hours of interactive EEO training to the Postmaster, S1, S2, and the employees who attended the September 5, 2019 threat assessment meeting, with an emphasis on the Agency's obligation to not discriminate against employees with perceived disabilities and to evaluate the appropriate factors to determine whether an employee poses a direct threat, prior to directing the employee to a fitness for duty evaluation.
4. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against Postmaster, S1, S2, and the employees who attended the September 5, 2019, threat assessment meeting. 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 responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).

5. Within 30 days of the date this decision is issued, the Agency shall post notices in accordance with the paragraph below.

POSTING ORDER (G0617)

The Agency is ordered to post at its Roswell Crosstown Carrier Annex 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.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

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

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

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

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

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

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

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests.

Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

May 3, 2022
Date