



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Mercedes A.,¹
Complainant,

v.

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

Appeal No. 2021001289

Agency No. 4E-890-0019-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 25, 2020, final decision 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the following reasons, the Commission REVERSES IN PART the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Full-Time Mail Processing Clerk, PS-6, at the King Station located in Las Vegas, Nevada. On April 9, 2018 (and subsequently amended), Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), disability (Diabetic Neuropathy, Calcaneal Spurs, Osteoarthritis and Edema), age (62), and reprisal (prior protected EEO activity) when: (1) management delayed responding to her September 28, 2017 reasonable accommodation request (RAR1) and, although they did grant her request in December 2017, she has not consistently received the requested accommodations; (2) since February 22, 2018, her

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.

second reasonable accommodation request (RAR2) concerning break and lunch times has not been granted; and (3) on September 19, 2018, she was given an Investigative Interview.

The Agency dismissed Complainant's amended claim (claim (3)) for failure to state a claim. Following an investigation, the Agency issued a final decision (FAD1) finding that Complainant was not subjected to discrimination or reprisal as alleged.

In Nancey D. v. U.S. Postal Serv., EEOC Appeal No. 2019002573 (July 7, 2020), the Commission vacated and remanded FAD1 and ordered: (1) the EEO investigator to fully investigate Complainant's amended claim concerning the September 19, 2018 Investigative Interview about attendance; (2) the EEO investigator to obtain and the Agency to produce all legible medical documentation and other legible documentary evidence considered by the DRAC or created by the DRAC in evaluating the reasonable accommodation requests at issue in claims (1) and (2), including the pages attached to Affidavit B. If legible copies of pages 17-18, 21-23, and 28 of Affidavit B are unavailable, the EEO Investigator was ordered to provide an explanation in the record; (3) the EEO investigator to obtain and the Agency to produce all relevant affidavits from AM1 and other relevant witnesses concerning Complainant's lunch and break schedule in December 2017, her request for reasonable accommodation related to her lunch and break schedule and her January 31, 2018, request for reasonable accommodation related to her lunch and break schedule and her May 21, 2018 appeal of the Agency's denial of the request for accommodation and proposal of 7:00 a.m. as an alternate time for her lunch break. If AM1 or other relevant witnesses are unavailable, the EEO Investigator was ordered to provide an explanation in the record; and (4) the EEO investigator to obtain and the Agency to produce evidence concerning Complainant's lunch and break schedule in December 2017, her January 31, 2018 request for reasonable accommodation related to her lunch and break schedule, and her May 21, 2018 appeal of the Agency's denial of the request for accommodation and proposal of 7:00 a.m. as an alternate time for her lunch break.

At the conclusion of the supplemental investigation, the Agency provided Complainant with a copy of the supplemental report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge. In accordance with Complainant's request, the Agency issued a final decision (FAD2) pursuant to 29 C.F.R. § 1614.110(b). FAD2 concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

FACTUAL BACKGROUND

Complainant was diagnosed with diabetic neuropathy of feet, plantar fasciitis, calcaneal spurs, osteoarthritis, and localized edema sometime between 2013 and 2017. Her conditions are chronic and permanent. As a processing clerk, Complainant's functional purpose is to separate mail in a postal facility in accordance with established schemes. Job duties of processing clerks include unloading mail from the dock, pitching letters, flats, and parcels, working in the box section, and assisting customers.

The Bargaining Unit Qualification Standards (BUQS) for Complainant's position indicate that Complainant must be physically able to efficiently perform the duties of the position, "which require arduous exertion, involving prolonged standing, walking, bending, and reaching, and may involve the handling of heavy containers of mail and parcels weighing up to 70 pounds." The arduous duties referred to in the BUQS involve pitching parcels.

In 2013, Complainant's supervisor (S1) changed Complainant's daily job duties to pitching parcels all day. While this task is a part of the mail processing clerk's job, Complainant was tasked to spend her entire day working solely on this most arduous duty. Complainant no longer performed the other duties usually assigned to a processing clerk.

On July 3, 2014, Complainant filed a formal EEO complaint (Agency No. 4E-890-0044-13) alleging, among other things, that she was tasked job duties that other processing clerks were not.² The record shows that other processing clerks were tasked with duties that allowed for sitting or the use of a rest bar, while Complainant was not. However, Complainant's co-workers were not considered similarly situated because they were part-time workers and Complainant was the only full-time processing clerk. Complainant's assignment of pitching parcels full-time continued through 2017.

On or about October 17, 2017, Complainant gave her manager (M1) a note from her physician (P1) dated September 28, 2017, which explained that she needed to be off her feet periodically throughout the day to relieve pressure due to her medical condition and requested that management "allow [Complainant] to sit down and perform her duties while sitting for 2 hours/day." Thereafter, on October 23, 2017, the DRAC (District Reasonable Accommodation Committee) Chairperson (DRACC)³ requested that Complainant complete Reasonable Accommodation Request, RAC Form A, and that her doctor complete RAC Form B. Complainant returned RAC Form A on October 31, 2017 and P1 returned RAC Form B on November 6, 2017. P1 noted in the RAC Form B that Complainant could not be on her feet for eight straight hours and needed a rest every other hour. Following the submission of RAC Form B, and failing to hear back from DRACC, Complainant wrote directly to DRACC on November 18, 2017, to move the process along. Thereafter, on November 22, 2017, the DRAC scheduled a meeting for November 29, 2017.

S1, DRACC and a new acting manager (AM1) met with Complainant and her attorney (A1) on November 29, 2017. AM1 testified that she recalls stating during that meeting that management could accommodate Complainant with her requested amount of time with the rest bar by allowing her to sort mail into the hot case. The record is devoid of evidence that management ever indicated that it could or would accommodate Complainant with two straight hours of sitting.

² In Shondra H. v. U.S. Postal Serv., EEOC Appeal No. 0120180094 (Jan. 25, 2018), the Commission affirmed the Agency's final order adopting an EEOC Administrative Judge's summary judgment decision finding no discrimination or reprisal regarding this complaint.

³ DRACC was also one of Complainant's managers.

During the meeting the use of a rest bar was discussed as a compromise. However, management required Complainant's doctor to address this option. Accordingly, Complainant provided management with a letter from P1 dated December 6, 2017 stating:

Complainant indicated that using a "rest bar" or being allowed to sit down for 2 consecutive hours during the course of her normal work day *might* be enough to relieve the pain and pressure in her feet. Subject to further review and consideration, I recommend the patient to be allowed to...use a "rest bar" or be allowed to sit down for at least 2 consecutive hours during her normal work day. [emphasis added].

Thereafter, on or about December 8, 2017, but before hearing back from the DRAC regarding a decision or recommendation, AM1 implemented a schedule and assigned Complainant duties that allowed her to sit and/or use a rest bar periodically throughout her workday.

The record indicates that AM1 also allowed Complainant to spread out her break times to allow her the opportunity to rest her feet throughout the day. AM1's role as acting manager came to an end on or about January 6, 2018. Complainant asserted that after AM1 left, management was not as accommodating. Specifically, Complainant asserted that on the following dates management failed to provide her with two hours of work off her feet and stopped allowing her to spread out her breaks: December 28, 2017; February 6-8, 12-14, 17, 2018. AM1 testified that there may have been times when multiple clerks were assigned into the hot case area to sort mail, which could have reduced the amount of sitting time for Complainant.

In a January 24, 2018 letter, the DRAC recommended that management consider accommodating Complainant by allowing her to utilize a rest bar while performing her duties and allowing her to sit down for at least two hours during her shift. On January 31, 2018, A1 advised DRACC of Complainant's desire to amend her original request to be able to sit down or use a rest bar while working for two hours a day as a reasonable accommodation to include spreading out her break and lunch times to maximize the benefits, consistent with the schedule implemented in December 2017 by AM1.⁴ In response, DRACC scheduled another DRAC meeting for February 21, 2018 and requested additional medical documentation. P1 provided a March 7, 2018 note recommending that the requested break schedule be followed as consistently as possible to provide Complainant relief from the pressure and pain in her feet. On May 15, 2018, DRACC denied RAR2 stating: "[y]our second request, to alter your lunch period and take a break in the last hour of work at the end of the day, are not accommodations that are required for you to be able to perform the duties of your position.

⁴ During the relevant time frame, Complainant reported for work at 2:00 a.m. and left at 10:30 a.m. on Monday and Wednesday through Saturday. On Tuesdays, she reported for work two hours later. Complainant specifically requested that she take her first break around 4:30 a.m., her lunch around 8:00 a.m. and her second break around 9:30 a.m. (two hours later, on Tuesdays, respectively).

They are also operationally difficult.” DRACC also noted that Complainant’s request violated the Las Vegas Installation Agreement (Agreement) between the Agency and the American Postal Workers Union which prohibits a break during the last hour of an employee’s shift.

Complainant requested reconsideration of DRACC’s May 15, 2018 decision and offered to take her lunch at 7:00 a.m. and her breaks as currently scheduled so that she could be available during the “critical time” after 7:30 a.m. and not violate the Agreement with the union. DRACC failed to respond to Complainant’s request for reconsideration in any respect.

On September 13, 2018, S1 completed her initial affidavit in the instant EEO complaint. The next day, on September 14, 2018, S1 contacted a union representative (U1) and requested that U1 participate in the September 19, 2018 Investigative Interview of Complainant as her representative. Complainant was told that an acting manager (AM2) would be conducting the Investigative Interview about her attendance which may lead to discipline, up to and including removal from the Postal Service. During the investigative interview, Complainant was presented with an Employee Key Indicators Report that was generated that day that included her allegedly unscheduled absences for the period of January 3, 2018 to September 18, 2018. Complainant was also provided with eight copies of PS Form 3971 dated between June 27, 2018 and September 6, 2018. Six of the eight PS 3971 Forms contain what appears to be S1’s handwritten annotations apparently written on the alleged day that stated Complainant refused to sign them. However, Complainant asserts that she never saw them before.

According to Complainant’s undisputed testimony, 18 instances of unscheduled leave were taken under the Family Medical Leave Act (FMLA); seven occasions were approved sick leave or annual leave and two instances were identified as Absent without Leave (AWOL) for June 27, 2018 and June 28, 2018. The two instances of AWOL pertain to emergency annual leave Complainant took to care for her husband who had had a stroke and his condition required that she also take the next day off in order to care for him. Complainant was not specifically asked to provide medical documentation to support her leave. Complainant asserted that the PS Forms 3971 presented by management for her absences of June 27 and 28, 2018 were not the handwritten PS Forms 3971 that she completed, signed, and submitted before leaving work on June 27, 2018.

Complainant claimed that the September 19, 2018 investigative interview and the documentation used to support it were hastily assembled merely to harass her in retaliation for her prior EEO activity and current requests for reasonable accommodation. Moreover, Complainant asserted that she was entitled to all the leave taken and previously approved since January 2018 up to the time of the investigative interview. S1 has no recollection of this. AM2 had no recollection of the facts relevant to this claim.

Complainant asserted that S1 deliberately assigned work that violated her medical restrictions on a consistent basis well into 2019. In support, Complainant submitted a Report of Hazard, Unsafe Condition or Practice dated May 2, 2019 which documented S1's continual practice of assigning Complainant to perform tasks outside of her medical restrictions and failure to fully comply with the accommodation agreed to by the Agency in January 2018. On December 1, 2019, Complainant retired.⁵

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”).

Delayed and Denied Reasonable Accommodations

Under EEOC regulations, 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 an impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include, but are not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. 29 C.F.R. § 1630.2(i)(1)(i). The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 29 C.F.R. § 1630.2(j)(1)(i). “Substantially limits” is not meant to be a demanding standard. *Id.* An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. 29 C.F.R. § 1630.2(j)(1)(ii). An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. *Id.* The definition of disability shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. 29 C.F.R. § 1630.1(c)(4).

The undisputed record shows that Complainant cannot be on her feet for more than a few hours without having significant pain and pressure in her feet. We find that the undisputed record establishes that Complainant is substantially limited in standing and therefore is an individual with disability within the meaning of the Rehabilitation Act.

⁵ We note that Complainant did not raise a constructive discharge claim in her complaint.

The record is also undisputed that Complainant is a qualified individual with a disability, within the meaning of the Rehabilitation Act.

Under the Commission's regulations, an Agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9. A reasonable accommodation is an adjustment or change at work for a reason related to a medical condition. EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, No. 915.002, Question 1 (Oct. 17, 2002).

When an individual's disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his or her disability and functional limitations. Id. at Question 6. The employer is entitled to know that the individual has a covered disability for which she needs a reasonable accommodation. Id. Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has a disability within the meaning of the Rehabilitation Act and that the disability necessitates a reasonable accommodation. Id. If an individual's disability or need for accommodation is not obvious, and she refuses to provide the reasonable documentation requested by the employer, then she is not entitled to reasonable accommodation. Id.

After receiving a request for reasonable accommodation, an agency “must make a reasonable effort to determine the appropriate accommodation.” 29 C.F.R. pt. 1614. app. § 1630.9. Thus, “it may be necessary for the [agency] to initiate an informal, interactive process with the individual with a disability . . . [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. § 1630.2(o)(3); see also 29 C.F.R. pt. 1630 app. § 1630.9; Enforcement Guidance on Reasonable Accommodation at Question 5. Reasonable accommodation includes such modifications or adjustments as job restructuring, the acquisition or modification of equipment or devices, and reassignment to a vacant position. 29 C.F.R. § 1630.2(o)(2)(ii); see also, Alan F. v U.S. Postal Ser'v., EEOC Appeal No. 0120162635 (Feb. 22, 2018).

An employer should respond expeditiously to a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 10. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Id. Similarly, the employer should act promptly to provide the reasonable accommodation. Id. Unnecessary delays can result in a violation. Id. In determining whether there has been an unnecessary delay in responding to a request for a reasonable accommodation, relevant factors include: (1) the reason(s) for delay; (2) the length of the delay; (3) how much the individual with a disability and the employer each contributed to the delay; (4) what the employer was doing during the delay; and (5) whether the required accommodation was simple or complex to provide. Enforcement Guidance on Reasonable Accommodation, Question 10, n. 38.

RAR1

The record shows that Complainant received her requested accommodation as of December 8, 2017 (i.e., within a month after submitting all of the requested medical information). Upon receipt of the requested medical information, a DRAC meeting took place on November 29, 2017. Following the meeting, Complainant received a letter dated January 24, 2018, noting that she was able to perform the duties of her position, with physical limitations, and that management should consider allowing her to utilize a rest bar, or to sit down for two hours as per her most recent request by her physician. Since Complainant was already being accommodated in this manner, no further action was required. We find that the record supports the finding that the Agency provided Complainant with an effective reasonable accommodation within a reasonable amount of time. Accordingly, we do not find any violation of the Rehabilitation Act with respect to RAR1.

RAR2

The record supports the finding that Complainant's first requested accommodation, to use a rest bar or sit down for two hours per day, was effective in allowing her to perform her duties, while the second request for particular break times was not required for her to be able to perform the functions of her position and was operationally difficult. The Commission has long held that individuals protected under the Rehabilitation Act are not entitled to the accommodation of their choice, but to an effective accommodation. Quinn B. v. Dep't of Homeland Sec., EEOC Appeal No. 2019004267 (May 25, 2021) citing Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb 17, 1994), U.S. Airways v. Barnett, 535 U.S. 391, 400 (2002). Accordingly, the evidence does not establish a failure by the Agency to provide Complainant with a reasonable accommodation in violation of the Rehabilitation Act with respect to RAR2.

Investigative Interview

Complainant must satisfy a three-part evidentiary scheme to prevail on a claim of disparate treatment discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). First, Complainant must establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 (1978). Second, the burden is on the Agency to articulate a legitimate, nondiscriminatory, reason for its actions. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Third, should the Agency carry its burden, Complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the Agency were not its true reasons, but were a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804; St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

Complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A nexus may be shown by evidence that the adverse treatment followed the protected activity within such a time and in such manner that a retaliatory motive may be inferred. See Clay v. Dep't of the Treasury, EEOC Appeal No. 01A35231 (Jan. 25, 2005); Dominica H. v. Dep't of Health and Human Ser'v., EEOC No. 0120150971 (Nov. 22, 2017).

The Commission has a policy of considering reprisal claims with a broad view of coverage. See Carroll v. Dep't of the Army, EEOC Request No. 05970939 (April 4, 2000). Under Commission policy, adverse actions need not qualify as “ultimate employment actions” or materially affect the terms and conditions of employment to constitute retaliation. EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 § II.B(2) (Aug. 25, 2016). The statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999).

We find that Complainant established a prima facie case of reprisal. Specifically, the record shows that the day after S1 completed her affidavit in Complainant’s EEO complaint she contacted U1 to set up union representation for Complainant’s Investigative Interview which was scheduled a few days later. Complainant was then told to submit to an Investigative Interview regarding her attendance which may lead to discipline, up to and including removal from the Postal Service. These facts clearly establish a prima facie case of reprisal.

We also find that the Agency failed to meet its burden of production. The Agency did not provide a reason for the Investigative Interview or how AM2, a temporary acting manager, got involved in the first place. Most notably, neither AM2 nor any other management official disputed Complainant’s version of her attendance record which if correct would not warrant an investigation. We also note that despite our previous order, the Agency utterly failed to provide much of the documentary and testimonial evidence requested relevant to this claim. Accordingly, we find that the Agency failed to overcome Complainant's prima facie case of reprisal and Complainant prevails without having to prove pretext.⁶

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM IN PART and REVERSE IN PART the Agency's final decision. We REMAND the matter to the Agency to comply with the Order below.

⁶ As the Commission has determined that the Agency violated the Rehabilitation Act and retaliated against Complainant, we need not address the other bases as this would not alter the remedial relief.

ORDER

The Agency is ORDERED to take the following actions:

1. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation concerning Complainant's entitlement to compensatory damages and equitable relief as a result of the retaliatory investigative interview. The Agency shall allow Complainant to present evidence in support of her claimed entitlement. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision on compensatory damages and equitable relief no later than 90 calendar days of the date this decision is issued. The Agency shall pay Complainant the compensatory damages, and provide her with equitable relief, as determined by the Agency within 30 days from the date of the Agency's final decision. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.
2. Within 90 days of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to S1 and AM2 regarding their responsibilities under Title VII and the Rehabilitation Act, with a special emphasis on the Agency's obligation to not restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings under, the Federal equal employment opportunity laws.
3. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1 and AM2. The Agency shall report its decision to the Compliance Officer referenced herein. 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 the identified management officials have left the Agency's employment, the Agency shall furnish documentation of the departure date(s).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at the King Station located in Las Vegas, Nevada 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 CFR § 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

June 6, 2022
Date