



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

[REDACTED]  
Thersa E.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2021005121

Agency No. 4J-530-0028-17

**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 18, 2021, and October 7, 2021, final decisions concerning her entitlement to compensatory damages and attorney's fees following a finding of 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 MODIFIES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Postage Due Technician at the Agency's Northbrook Post Office in Palatine, Illinois.

On February 2, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of race (African-American), color (Black), and disability when:

1. On or around February 9, 2017, her request for a reasonable accommodation, her service dog to attend work with her, was denied;
2. On January 31, 2017, she was placed in an off-duty status; and

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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.

3. On February 13, 2017, she was issued a 14-day suspension.

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).

In accordance with Complainant's voluntary withdrawal of her request for a hearing, on July 28, 2018, the Agency issued a final decision (FAD1). Thereafter, Complainant appealed that decision. In Thersa E. v. U.S. Postal Serv., EEOC Appeal No. 0120182764 (June 23, 2021), we issued a decision affirming in part and reversing in part the FAD1. The decision in EEOC Appeal No. 0120182764 found that Complainant had established that she was a qualified individual with a disability (heart condition) and that the Agency had improperly denied her request to have a service dog accompany her to work. As such, the prior decision ordered the Agency to conduct a supplemental investigation concerning Complainant's entitlement to compensatory damages and as a result of the discriminatory denial of reasonable accommodations.

On August 18, 2021, the Agency issued a final decision (FAD2) awarding Complainant \$450.00 in pecuniary damages, and \$7,000.00 in non-pecuniary damages, for a total of \$7,450.00 in compensatory damages. On October 7, 2021, the Agency issued another final decision (FAD3) determining that Complainant was not entitled to attorney's fees.

In FAD2, the Agency determined that while Complainant reported that she was forced to hire a dog walker as a result of the Agency refusing to allow her service dog at work, employing a dog walker was not an inherent part of being a dog owner. The Agency also noted that there was no evidence that Complainant paid a dog walker. As such, the Agency found that Complainant should not receive payment for a dog walker. However, the Agency did determine that Complainant submitted a request for \$450.00 in psychiatric care which was supported by evidence. Therefore \$450.00 in pecuniary damages was awarded.

As to non-pecuniary damages, the Agency found that Complainant's request for \$100,000.00 in non-pecuniary compensatory damages was well beyond even the most generous interpretation of the statute at issue. Instead, the Agency determined that recent similar cases indicated that awarded amount were between \$5,000.00 to \$7,500.00. Therefore, in consideration of Complainant's case, the Agency awarded Complainant \$7,000.00 in non-pecuniary damages for a total of \$7,450.00 in compensatory damages.

In FAD3, the Agency found that Complainant did not have attorney representation during her appeal of the FAD1 and as such was not entitled to attorney's fees. Therefore, the Agency did not award Complainant attorney's fees.

On September 14, 2021, Complainant appealed the compensatory damages. On November 10, 2021, Complainant filed a Notice of Appeal of Attorney's Fee Denial. These appeals have been combined herein.

### CONTENTIONS ON APPEAL

On appeal, Complainant continues to argue that she is entitled to \$100,000.00 in compensatory damages. To support this argument, Complainant points to attached evidence which she states shows that she suffered serious emotional distress as a result of the Agency's discrimination. She further states that she suffered feelings of depression, anxiety, paranoia, and self-doubt as a result of being discriminated against. Complainant contends that an award of \$100,000.00 in non-pecuniary compensatory damages is supported by substantial evidence, as there is sufficient causation between the Agency's actions and Complainant's resulting depression, anxiety, feelings of worthlessness, and social isolation. She argues that this amount takes into account the severity of the harm suffered. She also notes the length of time in the present case: she requested to take her dog to work in April 2016, but the Agency did not allow her to bring her service dog to work until October 2021.

In her attorney's fees appeal, Complainant argues that while she did not request attorney's fees prior to FAD1, the Agency should have notified her of her right to request attorney's fees. Moreover, she argues that although she filed an initial appeal requesting an increase in compensatory damages, the Agency's award of \$7,000.00 in compensatory damages rendered her the "prevailing party" and triggered her right to request attorney's fees thereafter. As such, she requests attorney's fees for her successful award of damages.

To this extent, she submits that she incurred attorney's fees for the damages portion of her case from June 2021 to the present. She also requests an additional award of \$2,487.45 for attorney's fees and costs associated with the appeal of the FAD3.

In response to Complainant's appeal of FAD2, the Agency argues that the award of compensatory damages is supported by the evidence and the law. In response to Complainant's appeal of FAD3, the Agency argues that Complainant was not the prevailing party on the damages portion of her case, the only portion of her case for which she had attorney representation. The Agency also argues that Complainant has not submitted an attorney's fee petition to the Agency in the first instance, and rather has attempted to submit a revised attorney's fee petition through her December 2021 appeal brief.

### 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 (EEO MD-110), 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").

### *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 at 11-12, 14 (July 14, 1992). 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)

The Agency awarded Complainant \$450.00 in pecuniary damages and \$7,000.00 in nonpecuniary damages.

### *Pecuniary Damages*

In a claim for pecuniary damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the agency's discriminatory conduct. To recover damages, a complainant must prove that the employer's discriminatory actions were the cause of the pecuniary loss. EEO MD-110 at Chap. 11, § VII.B.2.

Pecuniary losses are out-of-pocket expenses incurred because of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement. EEO MD-110 at Chap. 11, § VII.B.2 (internal citations omitted).

We find that the cost of a dog walker for the period of time Complainant's service dog was not able to accompany her to work is an out-of-pocket expense caused by the Agency's discriminatory actions. While the Agency argues that employing a dog walker is not an inherent part of being a dog owner, this is not a relevant observation. In the present case, Complainant would not have had to employ a dog walker but for the Agency's refusal to allow her service dog to accompany her to work.

Moreover, the Agency's insistence that employing a service to walk a dog during the day is not a part of dog ownership is both subjective and irrelevant to the current case. The ownership of a service dog is wholly separate from owning a family pet which may in theory stay home throughout the day without being walked while an individual attends work. In contrast, a service dog by nature is expected to go everywhere with its owner throughout the day, including work, and would not be expected to remain home unattended, immobile. Furthermore, Complainant required the use of her service dog and sought a reasonable accommodation to allow the service dog to accompany her to work. Therefore, if not for the Agency's denial of reasonable accommodation, she would have had her service dog with her at work. In light of the Agency's denial of reasonable accommodation, we find that Complainant was forced to leave her service dog at home for the duration of the workday.

As such, based on the Agency's violation of the Rehabilitation Act, Complainant was required to employ a dog walker to ensure her service dog was receiving proper attention and care. We note that this dog is more than a mere pet in the present case and serves a valuable function to Complainant. In this light, it is also understandable that Complainant would be inclined to provide care for her service dog while she was at work wherein the dog was not allowed until 2021.

The Agency has also argued that there is no record evidence of the amount paid to walk Complainant's dog. However, while the arrangement to walk her dog was provided by an acquaintance rather than an official service, Complainant has submitted a document which indicates that she paid a dog walker a \$5.00 fee per day, five days a week, since June 2016, totaling in \$4,200.00. As such, we find that the Agency should incur the \$4,200.00 paid by Complainant in order to care for her service dog while she was not able to bring him to work with her.

As there is no dispute regarding the Agency's award of \$450.00 in damages awarded for psychiatric care, we find that Complainant is entitled to \$4,650.00 in pecuniary damages.

#### *Non-Pecuniary Damages*

The Agency has awarded Complainant \$7,000.00 for non-pecuniary compensatory damages. The Agency argues that recent similar cases indicate that awarded amounts were between \$5,000.00 to \$7,500.00, therefore in consideration of Complainant's case, the Agency awarded Complainant \$7,000.00 in nonpecuniary damages.

Complainant argues that she is entitled to \$100,000.00 due to the emotional harm suffered throughout the discrimination period. She argues that this amount is warranted because there is sufficient causation between the Agency's actions and the Complainant's resulting depression, anxiety, feelings of worthlessness, and social isolation. Complainant also argues that the length of time the discrimination occurred should be considered, from April 2016 to October 2021, the date she was finally able to bring her dog to work.

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 Agency's decision to award \$7,000.00 in compensatory damages is not supported by substantial evidence in the record. The Agency relied upon four cases, namely Phyllis W. v. Dep't of Veterans Aff., EEOC Appeal No. 0120180863 (June 5, 2019), Melani F. v. Dep't of Homeland Sec., EEOC Appeal No. 0720150027 (Mar. 15, 2016), Pleasant v. Dep't of Housing and Urban Dev., EEOC Appeal No. 01A52841 (May 2, 2006), and Darla W. v. Dep't of Veterans Aff., Appeal EEOC No. 0120160042 (Dec. 12, 2017), as comparable cases to determine the award of non-pecuniary damages.

In Phyllis W., *supra*, the Commission found that although the Agency's delay of more than one year caused the Complainant some emotional harm, there were multiple factors that caused her emotional harm during the relevant period and awarded \$5,000.00 in non-pecuniary damages. We find that this case is not comparable to the case at bar as Complainant was not able to have her service dog at work for far more than one year, and rather was unable to bring her service dog to work from April 2016 until October 2021, a period of more than five years.

Moreover, the bulk of Complainant's emotional distress in this case is notable job related, as described by Complainant. As such, we find that the award in Phyllis W. does not support the amount awarded by the Agency in this matter.

In Melani F., *supra*, we affirmed the AJ finding disability discrimination when Complainant, who suffered from dyslexia, was denied a request for a reader for a screener certification test and awarding Complainant \$5,000.00 in non-pecuniary damages, noting that Complainant was depressed, stressed, anxious, had her sleep affected, and worried about losing her job. However, in Melani F., complainant was compensated for the single instance of her discriminatory termination and was not being forced to attend work without access to an accommodation. In contrast, in this case, Complainant is requesting non-pecuniary compensation for the entire period of five years for which she was unable to bring her service dog to work yet continued to be employed at the Agency. In essence, Complainant was forced to work without her accommodation, while the complainant in Melani F. was not forced to attend work and suffer the ridicule and additional stress of not having her accommodation. We find that Melani F. is not instructive as to damages.

In Pleasant, *supra*, we affirmed the AJ's decision finding discrimination after complainant's request for an ergonomic chair as an accommodation for her disability was denied. In awarding \$5,000.00, the AJ noted that complainant experience 18 months of humiliation and physical pain caused by the Agency's failure to provide a suitable chair. However, in the present case, the presence of a service dog trained to detect arterial fibrillation through scent is different from a chair. Namely, and most notably the complainant in Pleasant was provided a way to remain stationary during her work, i.e., another kind of chair. In contrast, here, Complainant was not provided a different method for detecting arterial fibrillation, nor could she have been. Rather, her ability to detect her medical disability was taken away entirely. As such, we note that the facts of Pleasant are not similar to the events at issue here, and do not support the Agency's decision.

Finally, in Darla W., *supra*, we awarded the complainant \$7,500.00 for her mental anguish and physical and emotional distress in the form of depression, insomnia, exacerbation of her cardiac condition, and loss of self-esteem tied to the Agency's failure to provide an accessible parking space. In Darla, we determined that the complainant was unable to park close to the entrance of her building from December 2011 to January 2013, essentially a one-year period. In the present case, Complainant was unable to have her service dog which assists in the detection of atrial fibrillation, and as such prevent the risk of stroke, from April 2016 to October 2021, a period spanning a period of over five years. This difference alone is striking. In addition, we must once again point out the complete lack of alternate provision provided by the Agency in the case at hand. Complainant was not afforded some other stroke detecting device, and as such, for a period of five years throughout her workday sat with the knowledge that she may have a sudden stroke. We find that the severity and duration of the present case outweighs that in Darla.

Based on the record and Commission precedent, we find that the Agency's award of \$7,000.00 is insufficient.

Instead, we conclude that the award of \$60,000.00 would better compensate Complainant based on the extended period of time Complainant was without her service dog, the additional risk which this imposed on her, as well as the undoubted additional stress and mental symptoms which were incurred as a result of knowing she was at a higher risk of stroke due to the absence of her trained service dog. Regarding Complainant's symptoms of mental anguish, we note that in a letter dated May 22, 2018 from a medical professional, a doctor described how Complainant became a "shell of her former self." Moreover, as documented in FAD2, Complainant notably reported an onset of work stress and depression, struggling with job stress due to the uncertainty of her job future, worry, fear, restlessness, tension, and difficulty sleeping and concentrating.

We find that this award is consistent with similar awards provided by the Commission. See Henery v. Dept. of the Navy, EEOC Appeal No. 07A50034 (Sept. 22, 2005) (complainant awarded \$65,000 in compensatory damages due to agency's failure to accommodate complainant's disability for a four year period where complainant suffered from frustration, negativity, and loss of sleep and physical pain associated with resulting excessive walking, and caused significant increase in complainant's need for medical treatment, as well as increase in physical and emotional harm); Court v. U.S. Postal Serv., EEOC Appeal No. 07A10114 (May 15, 2003) (complainant awarded \$60,000 in compensatory damages due to agency's failure to accommodate complainant's disability which resulted depression and physical suffering for more than two years).

Even considering the fact that Complainant did not provide medical documentation beyond 2017, at the time of FAD1, it remains true that Complainant was unable to bring her service dog to work from 2016 to 2021. This in itself indicates that Complainant was being placed at higher risk for atrial fibrillation, and as a result stroke. This risk is directly correlated to the Agency's refusal to allow the service dog to be placed with Complainant during her working hours which caused Complainant mental anguish. As noted, in EEOC Appeal No. 0120182764, Complainant stated:

I requested an accommodation to bring my medical alert dog to work as he alerts me to when I am in a-fib. I cannot tell when I go into a-fib and if I stay in a-fib for a prolonged amount of time I run the risk of either having a stroke, heart attack or even possible death. I have had 4 strokes in the past because I was not able to determine that I was in a-fib and that caused me to have the strokes as I was not able to take any medication or seek emergency treatment because I did not know I was in a-fib.

It is clear that due to the Agency's refusal to allow Complainant's service dog at work, she was placed at a greater risk of harm which caused emotional distress. In Complainant's affidavit of record, she stated that she underwent psychological counseling as a result of the discriminatory acts that took place at work. Moreover, she reported that she became severely depressed, could not sleep, worried constantly about getting hurt and fired, did not want to go out anymore, and did not see people. She stated that she had nightmares because of the discrimination and became paranoid about people doubting her; she felt humiliated and judged at work and developed

headaches. She explained that work and the handling of her dog were huge bases for her self-confidence. During the first year of the denial of her accommodation, she reported frequently hiding in the bathroom to cry.

Therefore, upon review of the record as a whole, we find that Complainant is entitled to \$65,000.00 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. By failing to accommodate Complainant and provide her with her service dog at work for over five years, the Agency's actions had an accrual effect. 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)).

#### *Attorney's Fees*

The Commission's regulations authorize the award of reasonable attorney's fees and costs to a prevailing complainant. 29 C.F.R. § 1614.501(e); see also EEO MD-110 at Chap. 11, § I. Fee awards are typically calculated by multiplying the number of hours reasonably expended times a reasonable hourly rate, an amount also known as a lodestar. See 29 C.F.R. §1614.501(e)(ii)(B); Blum v. Stenson, 465 U.S. 886, 899 (1984); Hensley v. Eckerhart, 461 U.S. 424, 435 (1983).

All hours reasonably spent in processing the complaint are compensable, but the number of hours should not include excessive, redundant or otherwise unnecessary hours. EEO MD-110 at EEO MD-110, Chap. 11, § VI. F. A reasonable hourly rate is based on prevailing market rates in the relevant community for attorneys of similar experience in similar cases. Id. An application for attorney's fees must include a verified statement of attorney's fees accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Id.

There is a strong presumption that the number of hours reasonably expended multiplied by a reasonable hourly rate, the lodestar, represents a reasonable fee, but this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency. 29 C.F.R. § 1614.501(e)(2)(ii)(B). The circumstances under which the lodestar may be adjusted are extremely limited and are set forth in EEO MD-110 at Chap. 11, §VI. F. 1. The party seeking to adjust the lodestar, either up or down, has the burden of justifying the deviation. Id. at Chap. 11, § VI. F. 2.

To be considered a "prevailing party," a complainant must obtain at least some relief on his claim resulting in a material alteration of the relationship between the parties. Id. Here, Complainant was able to obtain \$450.00 in pecuniary damages, \$7,000.00 in non-pecuniary damages in FAD1. Accordingly, Complainant has obtained a measure of relief entitling her to be considered a "prevailing party" for the purposes of an award of attorney's fees and costs. Id.

Complainant argues that the Agency should pay attorney's fees specifically for the damages portion of her case, including her appellate briefs. To this end, Complainant requests \$3,601.80, of attorney's fees resultant from 5.8 hours of work by Attorney 1, at \$621.00 per hours. In addition, Complainant requests reimbursement of \$2,900.00 in fees paid to Attorney 2 filing the appeal for this case.

We note that the Agency has not provided arguments indicating that these fees are unreasonable or unsupported, but rather has argued that Complainant was not prevailing party and as such is not entitled to attorney's fees. However, as noted above, Complainant has in fact prevailed, specifically herein.

As such, it is appropriate to provide remedies that are available to the Commission, namely the number of hours reasonably expended multiplied by a reasonable hourly rate. Leatherman v. Dep't of the Navy, EEOC App. No. 01A22716 (June 12, 2003) (citing Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)); 29 C.F.R. § 1614.501(e)(2)(ii)(B). As the Agency has not argued, and has submitted no evidence in support of, finding that \$ 621.00 per hour is not a reasonable rate, and has not debated the number of hours worked by Complainant's attorney, the Commission finds there is sufficient evidence to support attorneys' fees in the amount of \$3,601.80 for the legal fees incurred regarding FAD2.

As for the fees incurred in the processing of the instant appeal, we find that Complainant is the prevailing party as we have modified FAD2 and FAD3 as to her entitlement to compensatory damages and attorney's fees. However, we find it more appropriate for the Agency to process Complainant's fee petition in conjunction with the order listed below.

### 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

To the extent it has not already done so, the Agency is ordered to take the following remedial action:

1. Within sixty (30) calendar days from the date this decision is issued, the Agency shall pay Complainant \$4,650.00 in pecuniary damages and \$60,000 in non-pecuniary damages.
2. Within sixty (30) calendar days from the date this decision is issued, the Agency shall pay Complainant \$3,601.80 for attorney's fees and costs.

3. Within sixty (30) calendar days from the date this decision is issued, the Agency shall consider Complainant's entitlement to additional attorney's fees and costs associated with the processing of the appeals of FAD2 and FAD3 as noted below.

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).

#### 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).

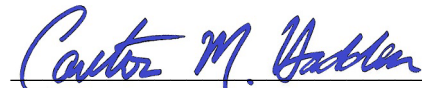
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

June 29, 2022  
Date