



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

[REDACTED]
Tessa G.,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services
(Centers for Disease Control and Prevention),
Agency.

Appeal No. 2020004613

Hearing No. 410-2015-00312X

Agency No. HHS-CDC-0100-2015

DECISION

On August 17, 2020, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from an Equal Employment Opportunity Commission Administrative Judge's (AJ) June 8, 2020, final order concerning damages on 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 MODIFIES in part the AJ's final order and REMANDS the case to the Agency for further proceedings consistent with this decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Legal Analyst, Oak Ridge Institute for Science and Education (ORISE) at the Agency's Office of State Tribal Local and Territorial Support in Atlanta, Georgia.

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 February 10, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (epilepsy) and reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when, on November 6, 2014, she was terminated from her position of Legal Analyst, Oak Ridge Institute for Science and Education (ORISE) Fellow.

Complainant requested a hearing. The Agency did not provide Complainant with a copy of the report of investigation until March 10, 2016, more than six months after the deadline established by one Equal Employment Opportunity Commission Administrative Judge in an Order Directing Agency to Produce an Electronic Copy of Complaint File. The matter was then assigned to another Equal Employment Opportunity Commission Administrative Judge (AJ). Over the Agency's objections, on February 6, 2020, the AJ granted Complainant's March 21, 2016, motion for sanction of default judgment for the Agency's violation of 29 C.F.R. § 1614.108(f) which requires an Agency to provide a Complainant with the investigative file within 30 days of receiving the investigative file.²

The AJ found that the extreme length of the Agency's delay, the harm the delay caused the Complainant, and the Agency's disregard for the EEO process warranted sanctions in the form of a default judgment. See Order Granting Complainant's Motion for Sanction of Default Judgment (Default Judgment Order). The AJ also found that Complainant established a prima facie case of discrimination due to her disability when, shortly after she informed her supervisor, the Director of the Public Health Law Program (Director), of her epilepsy, he hired someone to replace Complainant while she was on medical leave, then demoted Complainant, taking away her role as a project manager, and ultimately terminated her, even though he had not previously indicated there was anything wrong with her performance. See Default Judgment Order. The AJ therefore granted Complainant's motion for default judgment against the Agency and found the Agency liable for damages, giving the parties thirty (30) days to engage in discovery concerning Complainant's damages. See Default Judgment Order.

Complainant filed a motion seeking damages including reinstatement into a substantially similar position, back pay, non-pecuniary compensatory damages in the amount of \$300,000, pecuniary compensatory damages, as well as discipline and training for Director. The Agency objected to Complainant's request for damages. On June 8, 2020, the AJ issued a Damages Decision, awarding Complainant non-pecuniary compensatory damages of \$42,500, backpay for the months remaining on her employment contract with ORISE at the time of her termination, and attorney's fees in the amount of \$41,834 to Complainant's current counsel and \$1,193.50 to Complainant's prior counsel. The AJ did not address Complainant's request seeking to have the Agency be required to provide training and/or discipline to Director or to post a notice on the finding. The AJ also did not address Complainant's request for pecuniary, compensatory damages.

² Complainant also filed a motion to reinstate her retaliation claim, which the AJ granted. See Feb. 6, 2020 Default Judgment Order.

When the Agency failed to issue a final order within forty days of receipt of the AJ's decision, the AJ's decision on damages became the Agency's final action pursuant to 29 C.F.R. § 1614.109(i).

CONTENTIONS ON APPEAL

On appeal, Complainant argues the AJ erred by failing to order reinstatement and other equitable relief, including requiring the Agency to post a notice and ordering training and/or discipline for Director. Complainant also challenges the amount of non-pecuniary compensatory damages the AJ ordered and contends the AJ erred by failing to address Complainant's request for pecuniary compensatory damages at all. Complainant further argues the AJ abused her discretion by limiting the time frame for discovery of damages because it did not give Complainant sufficient time to collect medical records from her providers in [REDACTED], especially in light of the Covid-19 pandemic.

The Agency filed a response, contending the AJ correctly found Complainant was not entitled to reinstatement and also that the AJ's award of non-pecuniary, compensatory damages was sufficient.

ANALYSIS AND FINDINGS

We note at the outset that the parties do not contest the AJ's issuance of the default judgment. The only issues before us on appeal concern the AJ's award of remedies.

When discrimination is found, an agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore the complainant as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Lazaro G. v. Dep't of Com., EEOC Appeal No. 0120170802 (May 17, 2019), req. for recon. den'd EEOC Request No. 2019004115 (Sept. 17, 2019); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). It must therefore provide a remedy unless it can show, by clear and convincing evidence, that Complainant would not have been entitled to that remedy even absent discrimination. Brown v. Dep't of the Navy, EEOC Petition No. 0420120012 (June 5, 2013) (citing Davis v. Dep't of Justice, EEOC Request No. 05931205 (Sept. 1, 1994)); Day v. Matthews, 530 F.2d 1083, 1085 (D.C. Cir. 1976)); see also 29 C.F.R. § 1614.501(c)(2).

Reinstatement

We note that as a general rule, reinstatement to Complainant's previous position or a substantially similar one is the preferred remedy in a case involving discriminatory discharge, unless the Agency can meet its burden of showing that reinstatement is inappropriate. See Struppler v. U.S. Postal Serv., EEOC Appeal No. 0120111119 (June 28, 2013); Romero v. Dep't of the Air Force, EEOC Appeal No. 01921636 (July 13, 1992).

In this case, we find that the AJ correctly found that the Agency met its burden of showing that reinstatement is an inappropriate remedy in this case. The AJ emphasized that Complainant was not an Agency employee, but rather was employed in a fellowship position with a term employment contract that contained a date certain on which her employment with ORISE would end. The AJ also found that Complainant was no longer eligible to participate in the ORISE fellowship program as the program she worked within has concluded. The evidence in the record indicates that the ORISE program was a training and succession planning mechanism and participation in the program is limited to those who are “enrolled in an accredited college or university, received a college degree within five years of the initial ORISE appointment date or serve as a full time faculty member at an accredited college or university.” See Report of Investigation (ROI) at 293, 299. The ORISE program description also stated that the initial term appointment was for no more than one year with subsequent extensions in one-year intervals and that participation in the program was limited to no more than four years. See ROI at 299.

Further, contrary to Complainant’s contention, we do not find that the evidence in the record supports her contention that absent the Agency’s discriminatory termination, she would have been converted to a full-time Agency employee. Rather, the evidence Complainant submitted of some of the other members of the ORISE fellowship indicate that while some were indeed later employed by the Agency, there is nothing in the record to indicate that this was an automatic conversion upon the end of the ORISE fellowship term as opposed to the result of the normal job search process. The Agency submitted an affidavit from a former ORISE fellow, who affirmed that all fellows were told that there was no right to future employment or a federal position and that he only became an Agency employee after approximately three years of working in different contractor positions immediately following the end of his ORISE fellowship term. See Agency Brief on Damages Ex. 8. We therefore affirm the AJ’s finding that Complainant is not entitled to reinstatement.

Backpay

The purpose of a backpay award is to restore to Complainant the income she would have otherwise earned but for the discrimination. See Albemarle Paper Co.; Davis v. U.S. Postal Serv., EEOC Petition No. 04900010 (Nov. 29, 1990). The Commission recognizes that precise measurement cannot always be used to remedy the wrong inflicted and that the computation of back pay awards inherently involves some speculation. Hanns v. U.S. Postal Serv., EEOC Petition No. 04960030 (Sept. 18, 1997). Nonetheless, uncertainties involved in a backpay determination should be resolved against the Agency, which has already been found to have committed the acts of discrimination. Id.; see also Kloock v. U.S. Postal Serv., EEOC Petition No. 04A40012 (June 16, 2004).

In this case, the AJ awarded Complainant back pay for the months remaining on her employment contract with ORISE at the time of her termination for a total of \$37,947 in back pay plus interest. Because we find that Complainant is not entitled to reinstatement, we affirm the AJ’s award of back pay limited to the monthly stipend Complainant would have received absent the Agency’s discrimination for the months remaining on her employment contract.

Non-pecuniary, Compensatory Damages

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII or the Rehabilitation Act 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). In West v. Gibson, 119 S.Ct. 1906 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500 employees, such as the agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

Non-pecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.302, at 10 (July 14, 1992). 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). The Commission notes that 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).

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 his 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, other counselors (including clergy) 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.

An award of non-pecuniary, compensatory damages should reflect the extent to which the Agency's discriminatory action directly or proximately caused the harm, as well as the extent to which other factors also caused the harm. See Johnson v. Dep't of the Interior, EEOC Appeal No. 01961812 (June 18, 1998). It is the complainant's burden to provide objective evidence in support of her claim and proof linking the damages to the alleged discrimination. Papas v. U.S. Postal Serv., EEOC Appeal No. 01930547 (Mar. 17, 1994); Mims v. Dep't of the Navy, EEOC Appeal No. 01933956 (Nov. 23, 1993).

On appeal, Complainant contends that the AJ's award of \$42,500 in non-pecuniary, compensatory damages is insufficient to account for the scope and duration of the harm the Agency's actions caused her, including the exacerbation of her physical medical conditions due to stress, substantial weight gain, harm to her professional and social standing, depression, a chronic sleeping disorder, and loss of social life and friendships. We find that the AJ appropriately determined that Complainant is entitled to some amount of non-pecuniary, compensatory damages due to the depression and other emotional harms she suffered, panic attacks, severe stress resulting in physical pain, as well as her loss of enjoyment of life and social withdrawal.

However, upon review of the record and similar Commission decisions, we find that a non-pecuniary, compensatory damages award of \$75,000.00 is more appropriate. The record included an email exchange between Complainant and one of her law school professors and mentors about her job search following her termination, in which her former professor retracted his earlier offer to speak with her about her job search stating he had spoken with Director and "[h]e actually brought up the topic of you. He mentioned that you were in litigation, so I don't want to interpose [sic] myself any further in this." See ROI at 239. At the hearing on damages, Complainant testified that since then, her former professor has not been willing to help her with her job search. See Damages Hr'g Tr. at 75. Complainant also stated that after the termination, she started having panic attacks, cried a lot, experienced physical pain which her doctors told her was the result of severe stress, as well as depression. See Damages Hr'g Tr. at 123-28. She further testified that she used to be very active socially but since the termination, stopped going to social events entirely due to feelings of embarrassment and humiliation stemming from the loss of her job, and that as a result of her withdrawal, she lost friends. See id. at 139-42. One of Complainant's friends also testified and confirmed that Complainant withdrew socially, stopped accepting invitations, and that her outlook on life became more hopeless. See Damages Hr'g Tr. at 227-30. Complainant also submitted a neuropsychological evaluation from a neuropsychologist diagnosing her with mild anxiety and moderate depression which he attributed to her unemployment situation.

We find that an award of non-pecuniary damages of \$75,000 is more appropriate in this case, taking into account the severity of the harm that Complainant suffered, and is consistent with prior Commission precedent. We also find that an award of \$75,000 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 Rebecca L. v. Dep’t of the Treasury, EEOC Appeal No. 2021001759 (Nov. 4, 2021) (affirming an AJ’s award of \$75,000 where the agency’s denial of reasonable accommodation and harassment led Complainant to experience sleeplessness, loss of appetite, isolation, and fear of sharing her medical condition with others); Hayden R. v. U.S. Postal Serv., EEOC Appeal No. 2019003428 (Dec. 10, 2019) (finding an award of \$75,000 was appropriate where the complainant suffered anxiety, exhaustion, fear, insomnia, post-traumatic stress disorder, depression, elevated blood pressure, marital stress, and humiliation); Kathleen P. v. Dep’t of Homeland Sec., EEOC Appeal No. 0720150036 (Sept. 26, 2016) (\$75,000 awarded where complainant experienced emotional distress, stress, and emotional disturbance over losing her livelihood). We therefore modify the AJ’s award of non-pecuniary, compensatory damages to award Complainant \$75,000.

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. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 11, § VII.B.2.

Where, as here, the complainant, has a pre-existing condition that deteriorated as a result of the agency's discriminatory conduct, the agency is liable to the extent of the additional harm caused by the discrimination. EEOC Notice No. 915.002 at 11. Objective evidence of compensatory damages may include medical bills and statements from the complainant or others attesting to complainant's emotional suffering.

In this case, Complainant sought pecuniary, compensatory damages consisting of (1) \$21,000 in student loan interest which she incurred as a result of losing her job; (2) \$30,000 for Medicaid coverage in [REDACTED] state where Complainant moved after the loss of her job, and \$500 for medical expenses incurred while she was unemployed; (3) \$700 for moving expenses; and (4) \$2,500 for job search expenses.³ She also sought future, pecuniary damages in the amount of \$13,000 for psychological counseling which she has not been able to afford.

³ We note that a prevailing complainant is generally entitled to compensatory damages for loss of health insurance coverage by either: (1) reimbursing her for health insurance premiums paid to continue in an agency-sponsored insurance plan or to secure alternative coverage; or (2) paying

We find, however, that we will not address Complainant's entitlement to pecuniary damages because the AJ failed to address Complainant's request for pecuniary damages in any way in her Damages Decision. We therefore remand the case back to the Agency to return the case to the AJ for them to address Complainant's entitlement to pecuniary, compensatory damages in the first instance.

Other Relief

We further note that the AJ also did not address Complainant's request that the Agency be required to order training and/or discipline to Director and any other responsible management officials, as well as failing to order the Agency to post a notice about the finding of discrimination. As such, we modify the AJ's decision and provide additional orders for the Agency below.

We are troubled by the failure to require training and a notice of the finding in light of the AJ's finding in her Default Judgment Order that the Agency showed a "flagrant disregard for the EEO process," and a lack of good faith not only in failing to send Complainant the investigative file in a timely manner under 29 C.F.R. § 1614.108(f) but also in not providing any reason for its failure to comply with the previous AJ's order to deliver the investigative file. As such, we order the Agency to take steps to address to correct this situation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the AJ's Damages Decision with respect to reinstatement and back pay, MODIFY the AJ's award of non-pecuniary, compensatory damages to award a total of \$75,000, and REMAND the case to the Agency to forward the matter to the AJ in accordance with the ORDER below.

ORDER (D0617)

The Agency is ordered to take the following remedial actions:

1. To the extent the Agency has not already done so, within 60 days of the date this Decision is issued, the Agency is ordered to pay Complainant back pay in the amount of \$37,947, plus interest. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue payment to Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute regardless of whether she accepts the Agency's payment. The petition for clarification or

her for uninsured medical expenses incurred during the relevant period up to the amount the agency would have contributed to her health insurance premiums. See Wrigley v. U.S. Postal Serv., EEOC Petition No. 04950005 (Feb. 15, 1996).

enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

2. The issue of Complainant's increased tax burden from the Agency's lump sum payment of back wages is remanded to the Agency. On remand, the Agency shall conduct a supplemental investigation, including providing Complainant an opportunity to submit evidence of her increased tax burden. The Agency shall complete the investigation and issue a final agency decision appealable to the EEOC determining the appropriate amount of damages.
3. To the extent the Agency has not already done so, within 60 days of the date this Decision is issued, the Agency is ordered to pay Complainant the amount of \$41,834 and \$1,193.50 in attorneys' fees and costs.
4. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$75,000 in nonpecuniary, compensatory damages.
5. Within 120 days of the date this decision is issued, the Agency shall consider taking disciplinary action(s) against the management official(s) identified as being responsible for the unlawful discrimination perpetrated in this case. The Agency shall report its decision to the Commission. 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.
6. To the extent it has not already done so, within 90 days of the date this decision is issued, the Agency shall provide four (4) hours of live training with a focus on the Rehabilitation Act and reprisal to Director and other managers and supervisors of the Office of State Tribal Local and Territorial Support in Atlanta, Georgia.
7. Within sixty (60) calendar days after the date this decision becomes final, the Agency shall provide training to the responsible EEO management officials who processed this complaint on their responsibilities concerning case processing, sending the investigative file to Complainant in a timely manner, and their duty to comply with orders from the Commission.
8. The Agency shall, within 30 calendar days of the date this decision is issued, forward the matter to the EEOC's Atlanta District Office's Hearings Unit, so that the issues of Complainant's entitlement to pecuniary damages can be addressed by the AJ.
9. The Agency shall immediately post a notice in accordance with the paragraph 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).

Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its facility at the Office of State Tribal Local and Territorial Support in Atlanta, Georgia, 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 (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

August 29, 2022

Date