



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Natalie F.,<sup>1</sup>  
Complainant,

v.

Gina M. Raimondo,  
Secretary,  
Department of Commerce  
(Bureau of the Census),  
Agency.

Appeal No. 2021002517

Agency No. 63-2020-00466D

**DECISION**

On March 22, 2021, 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 February 18, 2021, 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. 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 **AFFIRMS** in part and **REVERSES** in part the Agency's final decision and **REMANDS** the complaint for further processing.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Lead Census Field Manager at the Agency's Area Census Office in Roanoke, Virginia.

On May 28, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (African-American), national origin (Hispanic), sex (female), age (born 1973), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

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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.

1. In September 2019, Complainant worked as a Recruiting Manager, but received Clerk pay;
2. In October and November 2019, Complainant was overlooked for the Census Field Manager Battlefield, Administrative Office Operations Supervisor (AOOS) and Administrative Manager positions;
3. On an unspecified date, two male colleagues, C1 and a Census Field Manager (CFM1) made remarks about her receiving the Lead Census Field Manager promotion by “being on her back” with a male manager;
4. On an unspecified date, Complainant reported the inappropriate remarks to management and her supervisor, the Area Manager (AM), stated, “you are not the first woman that is being said about and you won’t be the last;”
5. On unspecified dates, her supervisor, the AM, became increasingly hostile toward Complainant after she reported the inappropriate remarks by C1 and the CFM;
6. On January 31, 2020, Complainant was verbally assaulted and threatened by C1 which she reported, but management did not respond;<sup>2</sup>
7. On an unspecified date, after not hearing from her supervisor, Complainant submitted a written complaint about the verbal assault and threat, but management did not respond;
8. On an unspecified date, following her written complaint, Complainant was issued a written reprimand;
9. On an unspecified date, C1 yelled at Complainant at a training in Knoxville, Kentucky;
10. On unspecified dates, the Assistant Regional Census Manager (ARCM) made “constant threats” that he was going to Roanoke, Virginia to address “unfinished business” with Complainant;
11. In March 2020, Complainant was threatened with termination after she reported C1’s behavior to law enforcement;
12. On unspecified dates, the ARCM terminated Complainant’s employment twice, both of which were later rescinded;
13. On an unspecified date, the ARCM issued a reprimand to Complainant’s personnel file, after rescinding her termination.<sup>3</sup>

Complainant testified that when she was in Nashville in December 2019, she introduced herself as the Lead Census Field Manager. See Report of Investigation (ROI) at 110. Two coworkers told her that they had overheard two male colleagues, C1 and the CFM1, make remarks about

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<sup>2</sup> The C1 was later terminated for unprofessional conduct, including yelling at Complainant. See Report of Investigation (ROI) at 151; 157-58.

<sup>3</sup> The record does not contain any written reprimand of Complainant. The ARCM stated that Complainant does not have any “writeups.” See ROI at 159. Complainant acknowledged that she did not actually receive a written reprimand but alleged that she was subjected to adverse treatment including receiving a verbal counseling and threatened with a written reprimand. See ROI at 115.

Complainant receiving the Lead Census Field Manager promotion by “being on her back” with a Management Analyst (MA). See ROI at 111. She said she reported the comment to her supervisor, the AM, who laughed and said, “You are not the first woman that is being said about, and you won’t be the last.” See ROI at 111. Complainant asked the AM if she could file a manager’s performance review or Form 282 (an incident report against a subordinate) and the MA indicated he would like to file a report as well. See ROI at 111. Complainant stated that the AM replied “What the hell is wrong [with] you people and doing these 282s?” and informed them that they were not to file a report ever and if they brought it up again, she was “going to lose her shit.” See ROI at 111. The MA explained that the AM was his first point of contact for any sexual harassment complaint and upon hearing of the comment, he and Complainant had a conference call with the AM. See ROI at 165. He said that the AM initially discouraged them from filing an incident report and suggested a mediation but it was never scheduled. See ROI at 165. At a later meeting, the MA corroborated Complainant’s statement that the AM said “You are not the first woman that is being said about, and you won’t be the last.” See ROI at 165. He further stated that the AM told them not to file an incident report, using the word “shit” and other profanity. See ROI at 165. He stated that the AM did not offer any alternative resolution for the incident. See ROI at 165.

Complainant further stated that after she reported the comment made by C1 and the CFM1 to the AM, the AM became hostile towards her. See ROI at 112. She recalled that, for example, at a training in Knoxville, she asked the moderator a question and the AM berated her for asking a question. See ROI at 112. She also recalled that at another training, she and another coworker were in the back row to share a laptop and the AM told them in a hostile manner that she did not want Complainant and the coworker to sit in the back row, while not telling other employees who were also sitting in the back row that they should move. See ROI at 112. The MA agreed with Complainant that after Complainant reported the comment, the AM became hostile towards Complainant, noting that prior to that, the AM and Complainant appeared to have a nice camaraderie but that afterwards, the AM interrupted Complainant, became condescending, rolled her eyes when Complainant was speaking, and responded to Complainant’s suggestions in group settings by saying “we already tried that.” See ROI at 166.

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 request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision found that Complainant did not establish a prima facie case with respect to claims 8, 12, and 13 because the record did not indicate that Complainant received a written reprimand. The decision further found that, assuming arguendo Complainant established a prima facie case with respect to the discrete acts in claims 1 and 2, the Agency articulated legitimate, nondiscriminatory reasons for its actions and Complainant did not establish that the Agency’s reasons were pretextual. With respect to the hostile work environment claim, the decision found that while the record indicated that Complainant and C1 had a contentious interpersonal relationship, C1 was ultimately terminated due to his conduct and measures were put in place to prevent him from causing further issues. The decision concluded that the record did not establish that any of the issues between

Complainant and C1 were due to a protected basis and therefore Complainant had not established that she was subjected to harassment. The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that the Agency's decision misconstrued the facts and ignored the evidence indicating that Complainant was subjected to retaliatory harassment after reporting the issues she suffered from C1.

The Agency argued as an initial matter that Complainant's appeal was untimely. The Agency did not file a response on the merits.

### 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").

#### *Timeliness*

To begin with, we reject the Agency's contention that Complainant's appeal is untimely. Appeals to the Commission must be filed within 30 calendar days after Complainant receives notice of the Agency's final action, pursuant to 29 C.F.R. § 1614.402(a). EEOC regulations provide that if Complainant is represented by an attorney of record, the 30-day time period shall be calculated from the receipt of the required document by the attorney. In this case, Complainant's attorney stated that she received the Agency's decision at the end of the day on February 18, 2021. Complainant's attorney stated that she faxed the notice of appeal to the Commission on March 20, 2021, the 30th calendar day following her receipt of the decision, but was informed that the fax had not been successful and therefore resubmitted the fax on March 22, 2021, the next business day. Moreover, she noted that the 30th calendar day following February 18, 2021 fell on a Saturday, and therefore, the deadline for filing Complainant's appeal fell on March 22, 2021, which was the date Complainant successfully filed her notice of appeal. We therefore find Complainant's appeal to be timely.

*Disparate Treatment*

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802; Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. See Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). Once the agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether complainant has shown by a preponderance of the evidence that the agency's actions were motivated by discrimination. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep't of Transportation, EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep't of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep't of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

With respect to claims 8, 12, and 13, the threatened written reprimands and threats of termination, we find that Complainant did not establish a prima facie case. There is no evidence in the record that Complainant was actually reprimanded nor that she suffered any adverse employment action as a result of these threats.<sup>4</sup> Therefore, Complainant did not establish a prima facie case. See Cheney v. Dep't of the Air Force, EEOC Appeal No. 0120060647 (Sep. 7, 2007).

With respect to claims 1 and 2, we find that the Agency articulated legitimate, nondiscriminatory reasons for each incident. The AM explained that the reports Complainant performed could be done by anyone on the recruiting team and the Recruiting Manager could ask anyone on the team to help with those reports. See ROI at 145. The other Census Field Manager (CFM2) who asked Complainant to complete the reports, stated that she assigned Complainant, who was working as a recruiting clerk at the time, to run the weekly reports because Complainant was more computer-literate and she felt it was easier to designate one person to complete the task rather than delegating multiple people to work on the same task. See ROI at 174-75. She added that when she was a Recruiting Officer in the Beckley Office, the Administrative Clerk there

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<sup>4</sup> These claims will, however, be considered as part of Complainant's hostile work environment claim.

completed the same reports. See ROI at 175. With respect to claim 2, the AM explained that only those occupying an Office Operations Supervisor, which did not include Complainant, were eligible for the Census Field Manager Battlefield position. See ROI at 145. The AM further stated that, to her knowledge, Complainant did not apply for the Census Field Manager Battlefield position. See ROI at 145. With respect to the AOOS position, the ARCM stated that HR determined who was eligible for the position based on the resumes submitted on USA Jobs. See ROI at 156. Complainant acknowledged that she was notified by USA Jobs that based on her resume, she was not qualified for the AOOS position, but asserted that she had been performing the duties of the AOOS for a couple of months. See ROI at 110. The MA explained that Complainant acted as the AOOS for three months when they were severely understaffed. See ROI at 163. He stated that at the time, due to the understaffing, they all performed different roles. See ROI at 163.

We find that Complainant did not establish that the Agency's reasons were a pretext for discrimination.<sup>5</sup> Complainant stated that she overheard two male clerks saying that they had heard that management was looking to hire men for the Census Field Manager Battlefield position. See ROI at 110. There is no other evidence in the record to support Complainant's assertions of discriminatory animus due to any of Complainant's protected classes. Mere disagreement with an Agency's actions is not sufficient to establish pretext. See Ambrose M. v. Dep't of the Air Force, EEOC Appeal No. 0120180225 (June 11, 2019). Moreover, the Commission will not second-guess the business judgment of Agency officials regarding personnel decisions without a demonstrably discriminatory motive. See Camden v. Dep't of Justice, EEOC Appeal No. 0120093506 (Jul. 27, 2012) reconsideration denied, EEOC Request No. 0520120603 (Jan. 31, 2013). Mere assertions or conjecture that an agency's explanation is a pretext for intentional discrimination is insufficient because subjective belief, however genuine, does not constitute evidence of pretext. Juliet B. v. U.S. Postal Serv., EEOC Appeal No. 0120182519 (Oct. 8, 2019); Richardson v. Dep't of Agriculture, EEOC Petition No. 03A40016 (Dec. 11, 2003). We therefore find that Complainant did not establish that she was subjected to disparate treatment due to either her race, national origin, sex, or age.

### *Hostile Work Environment*

To establish a claim of hostile environment harassment, Complainant must show that: (1) she is a member of a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); see also Flowers v. Southern Reg'l Physician Serv. Inc., 247 F.3d

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<sup>5</sup> We note that Complainant did not allege that claims 1 and 2 were based on reprisal but only on race and national origin for claim 1 and race, national origin, sex, and age for claim 2. See ROI at 109, 109-110.

229 (5th Cir. 2001); Fox v. General Motors Corp., 247 F.3d 169 (4th Cir. 2001); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998).

With respect to Complainant's allegations that the Agency subjected her to a hostile work environment due to her race, national origin, and age, we conclude that a case of harassment is precluded based on our finding that Complainant did not establish that any of the actions taken by the Agency were motivated by any of those protected bases. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). We further note that to the extent the alleged harassment is due to the unprofessional conduct of C1, C1 has already been terminated for his unprofessional conduct. Moreover, the evidence in the record does not indicate that the interpersonal conflict between Complainant and C1 was due to any of Complainant's protected bases.<sup>6</sup> With respect to claim 3, as troubling and offensive as the comment about Complainant receiving a promotion because she was "on her back," we note that the comment was not made to Complainant directly and there is no direct evidence in the record confirming the incident. As a general rule, "offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment'." See Tien E. v. Dep't of Veterans Affairs, EEOC Appeal No. 20200002825 (July 22, 2020) (quoting Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998)); see also Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120132846 (Jan. 7, 2015). We therefore conclude that the record also does not establish that Complainant was subjected to a hostile work environment based on sex.

### *Reprisal*

With respect to claims 4 and 5 and Complainant's allegation of retaliatory harassment, however, we find that the Agency subjected Complainant to discrimination on the basis of reprisal when the AM told her not to file an incident report about the comment of receiving her promotion by "being on her back" and then afterwards, treated Complainant with hostility.

As a general matter, the statutory anti-retaliation provisions prohibit any adverse treatment that is sufficient to dissuade a "reasonable person" from making or supporting a charge of discrimination. See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 57 (2006); EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice No. 915.004, § II(B)(3) & n. 137 (Aug. 25, 2016). Although petty slights and trivial annoyances are not actionable, adverse actions or threats to take adverse actions such as reprimands, negative evaluations, and harassment are actionable. Id. Moreover, the threshold for establishing retaliatory harassment is different than for a discriminatory hostile work environment. Retaliatory harassing conduct can be challenged under the Burlington Northern standard even if

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<sup>6</sup> We note, however, that we are troubled by the evidence in the record that management officials including the AM and the ARCM did not take prompt action to mitigate C1's unprofessional conduct towards Complainant but permitted C1's conduct to escalate prior to C1's ultimate termination. See ROI at 167, 169-70. We are also troubled by the management officials' threats to discipline Complainant based on incomplete information concerning Complainant's actions. See Agency's Decision at 38; ROI at 115-17; 151-52; 158-59; 167-70.

it is not severe or pervasive enough to alter the terms and conditions of employment. “If the conduct would be sufficiently material to deter protected activity in the given context, even if it were insufficiently severe or pervasive to create a hostile work environment, there would be actionable retaliation.” EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004, Sect. II.B, e.g. 17.

Given the importance of maintaining “unfettered access to [the] statutory remedial mechanisms” in the anti-retaliation provisions, we have found a broad range of actions to be retaliatory. For example, we have held that a supervisor threatening an employee by saying, “What goes around, comes around” when discussing an EEO complaint constitutes reprisal. Vincent v. U.S. Postal Serv., EEOC Appeal No. 0120072908 (Aug. 3, 2009), req. for recons. den., EEOC Request No. 0520090654 (Dec. 16, 2010). Actions, such as warning a complainant not to make false accusations or risk disciplinary action may also amount to retaliation on its face. See Manuel R. v. Dep’t of Agric., EEOC Appeal No. 0120142958 (Dec. 2, 2016) (declining to find retaliation where, after a hearing, the record failed to show that the named responsible management official warned complainant not to make false allegations or risk losing his job).

Here, Complainant alleges that, in reprisal for her reporting the offensive comment about earning her promotion by “being on her back” with a male manager, the AM not only told her not to file a report but treated her with hostility afterwards. Complainant stated that she believed it was because the AM “thought [Complainant] was being difficult,” by complaining about the offensive comment. See ROI at 112. Complainant recalled that at a training in Knoxville, she asked the moderator a question and the AM jumped up and berated her for asking a question. See ROI at 112. She also recalled that at another training, she and another coworker were in the back row to share a laptop and the AM told them in a hostile manner that she did not want Complainant and the coworker to sit in the back row. See ROI at 112. The MA corroborated Complainant’s statement that the AM treated Complainant with hostility after Complainant reported the comment. See ROI at 166. He noted that the AM frequently interrupted Complainant, behaved in a condescending manner, rolled her eyes when Complainant was speaking, and dismissed Complainant’s suggestions in group settings by saying “we already tried that,” which he said “gave the impression that [Complainant] was not viewed as a peer in [their] Management group.” See ROI at 166. He also agreed with Complainant’s recollection of the incidents at the trainings, noting that at the second training, the AM’s manner was rude and she did not provide any valid instruction related to work or give a reason for why she wanted Complainant to move out of the back row. See ROI at 166.

We find the evidence in the record establishes a claim of retaliatory harassment based on these events. The AM’s hostile treatment towards Complainant, which is also corroborated by the MA, could dissuade a reasonable person from engaging in protected activity.<sup>7</sup> We further note

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<sup>7</sup> We note that Complainant may be entitled to compensatory damages to the extent that she is able to show a compensable harm as a result of the retaliatory incidents. Vincent v. U.S. Postal Serv., EEOC Appeal No. 0120072908 (Aug. 3, 2009) citing Binseel v. Dep’t of the Army,



that, as the MA stated, the AM's hostility towards Complainant "gave the impression that [Complainant] was not viewed as a peer in [their] Management group" and could have encouraged C1 to escalate his own unprofessional conduct towards Complainant which culminated in C1's termination. See ROI at 166. Complainant has also established a nexus between the adverse treatment and her protected activity in complaining about the sex-based offensive comment. See *Clay v. Dep't of the Treasury*, EEOC Appeal No. 01A35231 (Jan. 25, 2005) (stating that 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).

We reject the Agency's argument that the AM's behavior towards Complainant was insufficiently severe or pervasive to constitute a claim of harassment. We emphasize that the standard for establishing retaliatory harassment is lower than that for showing a discriminatory hostile work environment. 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) (August 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. See *Lindsey v. U.S. Postal Serv.*, EEOC Request No. 05980410 (Nov. 4, 1999). Because the evidence indicates that the AM subjected Complainant to hostile treatment which could dissuade a reasonable person from engaging in protected activity, we conclude that the Agency subjected Complainant to unlawful retaliation as alleged.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we **AFFIRM** the Agency's final decision with respect to claims 1-3 and 6-13. However, with respect to claims 4 and 5, we **REVERSE** the Agency's finding of no discrimination and **REMAND** the claims to the Agency for further processing in accordance with the Order below.

### ORDER (C0618)

The Agency is ordered to take the following remedial actions:

1. Within sixty (60) calendar days of the date this decision is issued, the Agency shall complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due Complainant in a final decision with appeal rights to the Commission. The Agency shall pay this amount to Complainant within thirty (30) calendar days of the date of the

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EEOC Request No. 05970584 (Oct. 8, 1998) (a finding of retaliation on its face does not automatically entitle a complainant to a damages award).

determination of the amount of compensatory damages. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled “Implementation of the Commission’s Decision.”

2. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide six hours of interactive EEO training to management officials in the Agency’s Area Census Office in Roanoke, Virginia, including the Area Manager and the Assistant Regional Census Manager. The required training shall address management’s responsibilities with regard to eliminating discrimination and reprisal in the workplace. The Agency may contact the Commission’s Training and Outreach Division via email at [FederalTrainingandOutreach@eeoc.gov](mailto:FederalTrainingandOutreach@eeoc.gov) for assistance in obtaining the necessary training.
3. Within one hundred and twenty (120) calendar days of the date this decision is issued, the Agency shall consider taking disciplinary action against the Area Manager. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.
4. The Agency shall post a notice in accordance with the paragraph entitled, “Posting Order.”

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 Area Census Office in Roanoke, Virginia 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

August 02, 2022  
Date