



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

[REDACTED]
Eve E.,¹
Complainant,

v.

Deb A. Haaland,
Secretary,
Department of the Interior
(Bureau of Land Management),
Agency.

Appeal No. 2021003164

Agency No. DOI-BLM-19-0672

DECISION

On May 6, 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 April 14, 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. 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 Chief, Division of Training and Employee Development at the Agency's National Training Center in Phoenix, Arizona.

On October 7, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. On May 28, 2019, she was forced to resign (constructive discharge) from the position of National Training Center (NTC) Division Chief.

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.

Complainant was appointed to her position as the Division Chief on September 19, 2016. In November 2017, she filed an EEO complaint alleging that the Deputy Assistant Director of Human Capital (DAD) and the Assistant Director (AD) subjected her to harassment when, among other things, they interfered with her authority by creating an alternative chain of command through her male deputy, excluded her from discussions of matters that came within her area of responsibility, removed her from her position and assigned her to a 60-day detail assignment with no supervisory responsibilities, and then demoted her two grade levels. At the pre-hearing conference before an Equal Employment Opportunity Commission Administrative Judge (AJ) in her prior complaint, she sought to amend her complaint to include a claim of constructive discharge, which the AJ denied. Complainant was permitted to file the instant complaint on her constructive discharge claim.

At the conclusion of the investigation, Complainant requested a final decision and the Agency issued its decision on December 22, 2020.² The Agency found that management did not provide any testimony as to its reasons and therefore it had not articulated a legitimate, nondiscriminatory reason for its actions. See First Agency Decision (FAD1) at 10-11. The Agency concluded that the evidence in the record showed that the Agency forced Complainant to choose between resignation or remaining indefinitely in a non-supervisory, non-managerial position with no meaningful work to perform and therefore established Complainant's constructive discharge claim. See FAD1 at 12-13. The Agency therefore stated that Complainant was entitled to compensatory relief and costs associated with the claim as well as "other corrective action" to make Complainant whole, although the Agency did not specify what corrective action Complainant was entitled to. See FAD1 at 13-14. The decision further stated that Complainant could file an appeal of the decision with the Merit Systems Protection Board (MSPB). See FAD 1 at 14.

Thereafter, in accordance with the FAD, Complainant submitted a claim for compensatory damages, requesting reinstatement or in the alternative, lost earnings and back pay, lost retirement benefits, other costs, and non-pecuniary compensatory damages in the amount of \$200,000, as well as a total attorney's fee of \$62,046. The Agency declined to award Complainant backpay, noting that Complainant was not entitled to backpay or benefits associated with backpay because "the Agency awarded equitable relief in the Statement of Relief section of the December 22, 2020, FAD" and Complainant was not awarded reinstatement at that time. See Agency Decision on Damages (FAD2) at 4-5. The Agency also denied Complainant's request for lost future wages and retirement benefits and other pecuniary damages in the form of moving expenses and closing costs on selling her home. See FAD2 at 5-6.

² Due to the decision on the instant complaint, the parties filed a Joint Motion to Dismiss Complainant's initial pending harassment complaint without prejudice, which an AJ granted on January 28, 2021. See [Complainant] v. Dep't of the Interior, EEOC No. 570-2018-0103130X, Order of Dismissal Without Prejudice (Jan. 28, 2021).

The Agency awarded Complainant non-pecuniary compensatory damages in the amount of \$25,000 based on written affidavits from Complainant and her family members about Complainant's suffering from anger, anxiety, depression, and loss of enjoyment of life due to the Agency's discriminatory actions. See FAD 2 at 6-7. The Agency also awarded Complainant an attorney's fee of \$31,170.00. See FAD2 at 7-8.

CONTENTIONS ON APPEAL

On appeal, Complainant challenges the Agency's failure to award reinstatement and any lost wages or back pay to Complainant, arguing that the Agency has failed to make Complainant whole from the discrimination she suffered. Complainant also contends the Agency should pay other pecuniary losses that would not have been necessary but for the Agency's discriminatory actions, including the loan she took out to pay her attorney's fees, the cost of selling her house, and the moving expenses. Complainant also argues that the Agency's award of \$25,000 in non-pecuniary damages is insufficient considering the circumstances of this case and the emotional harm Complainant suffered and contends the award should be increased to \$200,000.

In response, the Agency argues that Complainant is not entitled to either back pay or future lost wages. The Agency also contends that its award of \$25,000 was reasonable under the circumstances of this case.

ANALYSIS AND FINDINGS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at 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").

Reinstatement

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 Commerce, 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).

We agree with Complainant that the Agency failed to make Complainant whole for the discrimination she suffered. Due to the Agency's finding on Complainant's constructive discharge claim, the Agency should have offered Complainant reinstatement to her former position as part of her full, make-whole relief. See Jacquetta C. v. Dep't of Health and Human Svcs., EEOC Appeal No. 2019002196 (June 18, 2020). We note that Complainant did not file an appeal of the Agency's initial decision addressing the Agency's failure to award reinstatement and other equitable relief at that time. However, the Agency's initial decision did not afford Complainant appeal rights to the Commission but rather to the MSPB as a mixed claim. See FAD1 at 14. Because Complainant was not previously afforded the opportunity to appeal the Agency's error on equitable remedies to the Commission, we will take action now to correct the Agency's initial error. We find that this claim is firmly enmeshed in the EEO process as it arises out of a discriminatory constructive discharge claim and as such, we have jurisdiction to correct the Agency's error on remedies. We therefore modify the Agency's initial decision and order the Agency to make an offer of reinstatement to Complainant's former position of the NTC Division Chief or a substantially equivalent GS-15 position in her current geographic location, retroactive to the date her involuntary resignation became effective.

Back Pay

The purpose of a back-pay award is to restore to a complainant the income she would have otherwise earned but for the discrimination. Albemarle Paper Co. v. Moody, 442 U.S. 405, 418-19 (1975); Davis v. U.S. Postal Serv., EEOC Petition No. 04900010 (Nov. 29, 1990). Gross back pay should include all forms of compensation and must reflect fluctuations in working time, overtime rates, penalty overtime, Sunday premium and night work, changing rate of pay, transfers, promotions, and privileges of employment to which the petitioner would have been entitled but for the discrimination. Ulloa v. U.S. Postal Serv., EEOC Petition No. 04A30025 (Aug. 3, 2004) (citing Allen v. Dep't of the Air Force, EEOC Petition No. 04940006 (May 31, 1996)). In computing the net amount of back pay payable, an agency is required to offset any outside earnings received by an employee for other employment undertaken to replace the employment from which the employee was separated. See 5 C.F.R. § 550.805(e)(1). Specifically, § 706(g) of Title VII, 42 U.S.C. § 2000e-5(g), provides that "interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable."

In this case, Complainant was constructively discharged on May 28, 2019. We also note that the record indicates that among the incidents of harassment which culminated in Complainant's involuntary resignation is Complainant's demotion from a GS-15 grade level to a GS-13 grade level in September 2017.³ Complainant is therefore entitled to back pay for the income she lost as a result of the discrimination, retroactive to the date her involuntary resignation became effective. We order the Agency to engage with Complainant and determine the amount of back pay due to Complainant.

³ Complainant appealed the demotion to the MSPB and the MSPB overturned the demotion.

We further note that Complainant is entitled to reimbursement for the higher tax consequences of the lump sum back payment. The Commission has held that an award to cover additional tax liability from a lump sum payment of back pay is available to complainants. Goetze v. Dep't of the Navy, EEOC Appeal No. 01991530 (Aug. 22, 2001); Holler v. Dep't of the Navy, EEOC Appeal Nos. 01982627 and 01990407 (Aug. 22, 2001); Van Hoose v. Dep't of the Navy, EEOC Appeal Nos. 01982628 and 01990455 (Aug. 22, 2001). In the case of a lump sum back pay award, individuals are compensated for the extra tax that they are required to pay as a result of receiving a lump sum pay award, as opposed to the actual amount of taxes that they would have paid if they had received the funds over a period of time, usually several years. It is the receipt of the funds in one lump sum that causes the extra tax liability, not the back pay award itself.

Once the back pay award is calculated, the Agency shall give Complainant the opportunity to provide evidence concerning her entitlement to compensation for any increased tax liability for the back pay award. Complainant, who bears the burden of proof, must submit evidence showing the difference between the taxes that she paid on the lump sum payment and the taxes that she would have paid had the salary been earned over time. See Dellinger v. U.S. Postal Serv., EEOC Appeal No. 07A40040 (Sept. 29, 2005) (burden of proof to establish amount of additional tax liability is on complainant); Darlene F. v. Soc. Sec. Admin., EEOC Petition No. 0420140010 (Apr. 8, 2016). Complainant must show more than the total tax liability arising from receipt of the lump-sum award; she must show the differential between this tax burden and the taxes that she would have paid if she had received the back pay as part of her salary. Johnson v. Envtl. Prot. Agency, EEOC Petition No. 0420060035 (Nov. 5, 2007). Complainant must "provide exact and detailed calculations showing the amount she is claiming." Emerson, supra.

Other Pecuniary Compensatory Damages

Pecuniary losses are out-of-pocket expenses that are incurred because of the employer's unlawful action, including moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. See Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act, EEOC NO. 915.002 (July 14, 1992) at 14. For claims seeking pecuniary damages, objective evidence should include documentation of out-of-pocket expenses for all actual costs and an explanation of the expense, e.g., medical billings, other costs associated with the injury caused by the agency's actions, and an explanation for the expenditure. Id. at 9.

In this case, in addition to reinstatement and back pay, Complainant argues that the Agency erred by denying Complainant additional pecuniary compensatory damages in the amount of \$70,312, for closing costs on the sale of her home, moving costs, and an origination fee for a loan she took out on her house in order to pay for her attorney's fees. We reject Complainant's contention. The Commission has generally held that loss incurred from the sale of a home is too speculative to be compensable. See Rajterowski v. U.S. Postal Service, EEOC Appeal No. 01984767 (June 20, 2000); Quinn v. Social Secy. Admin., EEOC Appeal Nos. 01976921, 01972185 (May 18, 2000); Kerschner v. Dep't of Labor, EEOC Appeal No. 01933023 (March 15, 1994).

We find that in the instant case, Complainant has not shown an adequate nexus between the Agency's discriminatory actions and Complainant's decision to relocate her family to Oregon, rather than remaining in Phoenix, Arizona and finding other employment there. Contrary to Complainant's argument on appeal, the fact that Complainant asserted that she moved to Oregon after her involuntary resignation because she wanted to regain some normalcy in her life is not sufficient to establish that the Agency's discriminatory actions were the sole cause of Complainant's decision to move. We emphasize that this is not a case where the Agency's discriminatory conduct involved a transfer or reassignment by the Agency that necessitated Complainant's relocation. While we do not condone the Agency's actions in this case, we also cannot find that Complainant's decision to relocate was solely due to the Agency's actions rather than Complainant's own voluntary decision. We therefore affirm the Agency's denial of additional pecuniary damages to Complainant.

Non-pecuniary Compensatory Damages

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 EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, 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 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, 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.

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).

Complainant contends that the Agency's award of \$25,000 in non-pecuniary damages was insufficient to compensate Complainant for the emotional distress she suffered as a result of the Agency's actions. Complainant and several members of her family submitted statements attesting to the fact that Complainant who had once been a confident, active person became completely despondent and withdrawn as a result of the Agency's actions. She stated that she suffered humiliation, panic attacks, arrhythmia, weight gain, loss of confidence, and bouts of crying for the two years of ongoing harassment which culminated in her involuntary resignation. Complainant's husband and daughter both stated that the Agency's actions placed a strain on Complainant's relationships with her husband, daughter, and other family members. In addition, Complainant submitted notes from Complainant's psychotherapist sessions from January 2018 through May 2019. Complainant's psychotherapist diagnosed her with Generalized Anxiety Disorder and Major Depressive Disorder, noting that Complainant struggled with a loss of self-worth, social isolation, and a lack of enjoyment in typically enjoyed activities. See Attachment 21 of Complainant's Compensatory Damages Submission.

After considering the awards in similar cases and the relevant factors discussed above, we find the Agency's award of \$25,000 was insufficient to remedy the harm that its actions caused Complainant. In so finding, we reject the Agency's argument that the notes from Complainant's psychotherapy sessions should not be considered as they took place prior to the dates relevant to the instant complaint. The Agency's argument is contradicted by the evidence in the record and minimizes the duration and extent of the harassment Complainant suffered, which included the incident in July 2017 when Complainant was first removed from her position and publicly walked off the NTC premises while her office was cordoned off with hazard tape as if to imply it was a "crime scene." See FAD1 at 3. The Agency's argument also ignores its own finding of discrimination, which specifically noted that the harassment Complainant suffered began in 2017 and was ongoing up until Complainant was forced to resign in May 2019. See FAD1 at 10-12.

We find \$100,000 to be a reasonable award of non-pecuniary, compensatory damages for the proven emotional and psychological distress Complainant suffered. We find that this amount is not "monstrously excessive" standing alone and is consistent with the amounts awarded in other cases.

See Elsa S. v. Nat'l Aeronautics and Space Admin., EEOC Appeal No. 0120180021 (Feb. 14, 2020) (affirming an AJ's award of \$100,000 in non-pecuniary, compensatory damages where Complainant experienced depression, loss of confidence, feelings of social isolation, strain on her marriage, and psychological stress until her retirement); Nia G. v. Dep't of Homeland Sec'y, EEOC Appeal No. 0120160716 (Feb. 6, 2018) (awarding \$110,000 where the Agency's actions caused Complainant severe emotional distress, insomnia, loss of self-worth, and ruined her reputation in the community by removing her from Agency property "as if she were a criminal"); Mohar v. U.S. Postal Service, EEOC Appeal No. 0720100019 (August 29, 2011) (Commission awarded \$100,000 in non-pecuniary, compensatory damages where Agency retaliated against Complainant, which contributed to severe emotional distress, a complete transformation from an outgoing happy person, and caused anxiety, depression, and self-loathing).

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 final decision and remand the matter in accordance with the ORDER below.

ORDER (D0617)

The Agency is ordered to take the following remedial actions:

1. Reinstatement. Within 30 days of the date this decision is issued, the Agency shall offer to reinstate Complainant to the position of Chief, Division of Training and Employee Development, GS-0301-15, or a substantially equivalent GS-15 position in her current geographic location retroactive to the date she was terminated. Complainant may decline the offered position, and her entitlement to back pay shall cease as of the date she declines the position.
2. Back Pay. Complainant is entitled to a back pay award, beginning from the effective date of her resignation and continuing until she is reinstated to a position or declines an offer of one. Within 60 calendar days after the date of this Decision, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501, was issued. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the Agency. 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 enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
 - a. To the extent it has not already done so, we order the Agency to award Complainant back-pay for the time period during which she was demoted from a

GS-15 position to a GS-13 position beginning in September 2017 and continuing until she was restored to her GS-15 position.

- b. We note that the award of back pay shall also include Complainant's share of the Agency's matching contributions to her TSP account. The matching contributions are equitable relief because they are job benefits that Complainant would have received if she had not been forced to resign. See Padilla v. U.S. Postal Service, EEOC Request No. 04970010 (October 2, 1997) (noting that "benefits" is construed broadly to include everything that Complainant would have been entitled to in the absence of discrimination).
3. Tax consequences. 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. For guidance on what evidence is necessary to prove pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov). The Agency shall complete the investigation and issue a FAD appealable to the EEOC determining the appropriate amount of damages.
4. Non-pecuniary, Compensatory Damages. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$100,000 in nonpecuniary, compensatory damages.
5. Discipline. To the extent the Agency has not already done so, within 120 days of the date this decision is issued, the Agency shall consider taking disciplinary action(s) against the management officials 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. Training. To the extent it has not already done so, within 90 days of the date this decision is issued, the Agency shall provide eight (8) hours of live training with a focus on Title VII and reprisal to the managers and supervisors of the BLM's National Training Center in Phoenix, Arizona.
7. Posting Notice. To the extent it has not already done so, within 30 days of the date this decision is issued, the Agency is ordered to post a notice in accordance with the paragraph below 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 the BLM's National Training Center in Phoenix, Arizona 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 17, 2022
Date