



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

[REDACTED]
Doyle T.,¹
Complainant,

v.

Frank Kendall,
Secretary,
Department of the Air Force,
Agency.

Appeal No. 2022004281

Hearing No. 451-2016-00028X

Agency No. 5E0J14005

DECISION

Following its August 5, 2022, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) order of the relief ordered by the AJ following an AJ's finding of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Specifically, the Agency requests that the Commission affirm its rejection of the AJ's award of compensatory damages and attorney's fees. For the following reasons, the Commission MODIFIES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant was an applicant for employment as a Historian, GS 11 at the Agency's Laughlin Air Force Base in Laughlin, Texas.

On August 17, 2014, Complainant filed two complaints alleging that the Agency discriminated against him on the basis of disability (cardio-vascular disease) when the Agency failed to provide him with a reasonable accommodation and withdrew his tentative offer of employment.²

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.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. After both parties submitted motions for a decision without a hearing, the AJ assigned to the case issued a decision without a hearing on December 29, 2021. The AJ found that the undisputed evidence in the record established that the Agency failed to engage in the interactive process, denied Complainant's request for a reasonable accommodation in violation of the Rehabilitation Act and ultimately withdrew its offer of employment. Thereafter, on June 29, 2022, another AJ issued an Order on Damages and Petition for Attorney's Fees and Costs.³ The AJ initially rejected the Agency's argument that Complainant was not fully successful because he only prevailed on three of the nine issues raised in his complaints. The AJ found that "despite the tortured framing of the accepted issues, this case is simply about whether the Agency violated the Rehabilitation Act" when it withdrew Complainant's job offer and did not attempt to provide him with a reasonable accommodation for his disability. See Order on Damages at 1-2. The AJ then went on to find that Complainant was entitled to equitable make-whole relief in the form of reinstatement, backpay, accrued employment benefits, and a posting of the finding of discrimination at the facility where the discrimination occurred. The AJ declined to order training for the responsible management officials because of the significant passage of time in the case. The AJ also found Complainant entitled to compensatory pecuniary damages in the amount of \$77,811.59, compensatory non-pecuniary damages in the amount of \$275,000, attorney's fees and costs in the total amount of \$623,727.91. The Agency subsequently issued a final order accepting the AJ's finding of discrimination but partially rejecting the ordered remedies. Specifically, the Agency rejected the AJ's award of compensatory damages and attorney's fees.

CONTENTIONS ON APPEAL

On appeal, the AJ asks the Commission to affirm its partial rejection of the AJ's order on damages, contending that the award of compensatory damages and attorney's fees should be reduced proportionally to reflect Complainant's relative lack of success on the merits, reiterating its argument that Complainant was only successful on three of the nine issues.

In response, Complainant first filed a motion to dismiss the Agency's appeal as a sanction for failing to comply with the portion of the AJ's order which it purportedly accepted. In a brief addressing the merits, Complainant disputes the Agency's argument, contending that he was fully successful on the merits and the Agency did not provide any valid reason to reduce the amount of damages or attorney's fees.

² The complaints were processed together but not consolidated. The other complaint (EEOC No. 451-2016-00038X) was previously decided by the San Antonio Field Office and is not at issue here.

³ The first AJ retired and the case was therefore reassigned to another AJ. See Order on Damages fn. 1.

ANALYSIS AND FINDINGS

Because the Agency specifically is not disputing the merits of the AJ's finding of discrimination nor the portion of the AJ's order on damages concerning equitable relief, we will limit this decision only to the portion of the AJ's order on compensatory damages and attorney's fees.

The Agency's sole argument on appeal is focused on Complainant's degree of success on the merits and reiterating its contention that Complainant's allegedly limited success should limit his entitlement to compensatory damages and attorney's fees by some unspecified amount. We reject the Agency's argument. The Agency's argument is strikingly lacking in any legal support for its contention that Complainant's entitlement to compensatory damages should be proportionally reduced because of an alleged limited degree of success on the merits. Moreover, the Agency's argument that Complainant's success on the merits was limited is utterly without merit, focusing myopically on its own convoluted framing of the issues raised in Complainant's complaint while disingenuously ignoring the substance of the claim. Notably, all of the supposedly discrete issues as framed by the Agency in its Notice of Acceptance revolve around the issue of whether the Agency violated the Rehabilitation Act. That is also the gravamen of Complainant's actual complaint, which only included the details which the Agency later reframed as distinct issues as part of Complainant's narrative explaining the context and background of his claim. We decline to elevate the form of the Agency's unnecessarily tortured framing of the issues over the substance of Complainant's allegation. When considered as a whole, as the AJ found, the "claims" on which the Agency contends Complainant was unsuccessful were not cognizable claims for relief but only assertions of fact supporting Complainant's ultimate claim, i.e. whether the Agency violated the Rehabilitation Act by denying Complainant a reasonable accommodation and ultimately withdrawing its employment offer. The first AJ assigned to the case found, and the Agency does not dispute, that the Agency had violated the Rehabilitation Act, making Complainant fully successful on the merits of his claim. We find that Complainant is fully entitled to compensatory damages and attorney's fees.

Attorney's Fees

Title VII and the Rehabilitation Act authorize an award of reasonable attorney's fees. 29 C.F.R. § 1614.501(e). To establish entitlement to attorney's fees, complainant must first show that he or she is a prevailing party. Buckhannon Bd. and Care Home Inc. v. West Virginia Dept. of Health and Human Res., 532 U.S. 598 (2001). A prevailing party for this purpose is one who succeeds on any significant issue and achieves some of the benefit sought in bringing the action. Davis v. Dep't of Transp., EEOC Request No. 05970101 (February 4, 1999) (citing Hensley v. Eckerhart, 461 U.S. 427, 433 (1983)).

As stated above, the Agency limits its argument on appeal concerning its rejection of the AJ's award of attorney's fees to Complainant's alleged lack of success on the merits. Because we find that Complainant was fully successful on the merits, we reject the Agency's contention that the AJ's award of attorney's fees should be reduced. See Marybeth C. v. Dep't of Defense, EEOC Appeal No. 2020001726 (Aug. 3, 2021).

In the absence of any specific arguments challenging the amount of the AJ's attorney's fee award, we affirm the AJ's award of attorney's fees and costs in the total amount of \$623,727.91.

Pecuniary, Compensatory Damages

To receive an award of compensatory damages, a complainant must demonstrate that he has been harmed by the agency's discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14. Compensatory damages may be awarded for the past pecuniary losses, future pecuniary losses, and non-pecuniary losses which are directly or proximately caused by the agency's discriminatory conduct. Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991 (Enforcement Guidance), EEOC Notice No. 915.002, at 8 (July 14, 1992).

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. Enforcement Guidance 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.

The AJ awarded Complainant compensatory pecuniary damages in the amount of \$77,811.59 to compensate Complainant for his out-of-pocket expenses relating to his bankruptcy proceedings, child support arrearages, mortgage interest and principal, and foreclosure proceedings, which Complainant accrued due to the Agency's discriminatory actions and his consequent loss of income. See Order on Damages at 4. The AJ rejected Complainant's request for an additional \$1,866.69 in medical and dental expenses, finding that Complainant did not establish a nexus between the treatment rendered and the Agency's discriminatory action. We affirm the AJ's award of \$77,811.59 in compensatory, pecuniary damages. See Elliot J. v. Social Sec'y Admin., EEOC Appeal No. 2019000550 (Jan. 28, 2020).

Nonpecuniary, Compensatory Damages

The AJ also awarded \$275,000 in non-pecuniary, compensatory damages. Upon our review of the record, however, we find that an award of \$300,000 in non-pecuniary, compensatory damages is more appropriate considering the extent and severity of the non-pecuniary losses which Complainant has suffered and the duration of the harm he continues to suffer to this day, more than eight years after the actual discriminatory action.

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 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 his 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 his 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).

In this case, the AJ awarded compensatory, non-pecuniary damages in the amount of \$275,000, which they determined was appropriate considering the nature and severity of the harm Complainant has suffered and the significant changes in his behavior, personality, and demeanor, as well as the deleterious consequences to his physical health.

However, upon our review of the record, we find that an award of the statutory limit of \$300,000 is more appropriate, taking into account the nature and severity of the emotional harm Complainant has suffered and the duration of the harm he continues to suffer to this day, more than eight years after the Agency's discriminatory actions.

Complainant submitted affidavits from himself, his wife, his step-daughter, a life-long friend, and his primary care provider. Complainant asserted that prior to the Agency's discriminatory actions, he was an outgoing, happy, and self-motivated man who was physically active and enjoyed close, loving relationships with his wife, his four biological daughters, and his step-daughter. See Complainant's Brief on Damages, Ex. 1. After the Agency withdrew its offer and thereby caused him to lose not only what he had described as the "perfect" job opportunity for him but also depriving him of his ability to support his family financially, he became depressed and anxious, suffering feelings of anger, humiliation, and low self-esteem. See Complainant's Brief on Damages, Ex. 1. As a result, he became withdrawn, irritable, and short-tempered, suffered from insomnia and persistent nightmares, and began drinking to excess. See Complainant's Brief on Damages, Exs. 1 and 2. He also stated that he suffered intense headaches and has been diagnosed with high blood pressure, both of which have sent him to the emergency room more than once, which his doctors told him were all caused by stress. See Complainant's Brief on Damages, Ex. 1. His wife stated that their relationship is now "broken." See Complainant's Brief on Damages, Ex. 2. He has also become estranged from his biological daughters due to his inability to pay his child support payments and his withdrawal from his family so that he was not invited to two of his daughters' weddings and has not been allowed to meet his new granddaughter. See Complainant's Brief on Damages, Exs. 1, 2, and 3. Complainant stated that losing his relationship with his daughters has "broken [his] heart." See Complainant's Brief on Damages, Ex. 1. Complainant and his wife both attested to the financial difficulties they have suffered, stating that the loss of Complainant's livelihood has required him to file for bankruptcy five times between 2015 and 2021, which has destroyed his credit rating and resulted in the withdrawal of several offers of employment from different federal agencies on the grounds of his poor credit and financial delinquencies, which has exacerbated his inability to find a job. See Complainant's Brief on Damages, Exs. 1 and 2.

We find that the award of \$300,000 is more appropriate considering the severity of the emotional harms he has suffered, the lasting damage to his relationship with his family, the loss of his credit standing and professional reputation, and loss of enjoyment of life, compounded by the duration of time that has passed since the Agency's discriminatory actions more than eight years ago and which remain unresolved to this day due to the protracted nature of the litigation. We find that this award is not monstrously excessive, is not the product of passion or prejudice, and is consistent with the amount awarded in similar cases. See Miquel G. v. Dep't of Transp., EEOC Appeal No. 2019002129 (Sept. 23, 2021) (awarding complainant \$300,000 where the Agency's discriminatory conduct caused the complainant to suffer a severe deterioration in his physical health as well as severe psychological and emotional distress and the loss of his professional reputation since 2013 and continuing); Taunya P. v. U.S. Postal Service, EEOC Appeal No. 0720180022 (Sept. 27, 2019) (affirming an AJ's award of \$250,000 where the Agency's denial of a reasonable accommodation caused the complainant seven months of

constant pain which required her to go to the emergency room more than once, caused her nerve damage, and severe depression); Geraldine B. v. Dep't of Agric., EEOC Appeal No. 0720180025 (June 5, 2019) (upholding an AJ's award of \$250,000 where discrimination caused the employee to suffer a severe setback in her mental and emotional health and major depression, reputational damage, exacerbation of PTSD).

We may consider the present-day value of older comparable awards, taking into consideration the age of the comparable awards and adjusting the current award accordingly. See Lara G. v. U.S. Postal Serv., EEOC Request No. 0520130618 (June 9, 2017). Using the CPI Inflation Calculator,⁴ we find that an award of \$250,000 award in June 2019 would be equivalent to approximately \$290,000 today. After review of the record and in light of Commission precedent, we are persuaded that Complainant is entitled to the maximum statutory award of \$300,000 in compensatory, nonpecuniary damages.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order rejecting a portion of the AJ's Order on Damages, AFFIRM in part the AJ's Order on Damages with respect to pecuniary, compensatory damages and attorney's fees, and MODIFY the AJ's Order on Damages to award Complainant \$300,000 nonpecuniary, compensatory damages.

ORDER (D0617)

The Agency is ordered to take the following remedial actions:

- 1) Reinstatement. To the extent it has not already done so, within 30 days of the date this decision is issued, the Agency shall make an offer to place Complainant into the GS-11 Historian position or a substantially equivalent position "with compensation, promotional opportunities, job responsibilities, working conditions and job status" similar to the GS-11 Historian position. The unconditional offer must be retroactive to the date upon which Complainant would have started the position, i.e., April 7, 2014. Complainant has 30 days from the receipt of the offer to either accept or reject the offer of placement.
- 2) Reasonable Accommodation. In the event that Complainant accepts the offer of placement, we remind the Agency that Complainant is entitled to a reasonable accommodation for his disabilities and order the Agency to engage in the informal, interactive process to determine an effective, reasonable accommodation.
- 3) Back Pay. Complainant is entitled to a back pay award, beginning from the date Complainant would have entered on duty in 2014 to the date he accepts or rejects

⁴ The CPI Inflation Calculator can be found at <https://data.bls.gov/cgi-bin/cpicalc.pl>.

the offer of retroactive placement into the GS-11 Historian position. 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. The Agency's back pay calculation shall include all forms of compensation and reflect fluctuations in working time, overtime rates, Sunday premium and night work, changing rate of pay, transfers, promotions, privileges of employment, and, if applicable, any pay differentials associated with overseas deployments Complainant would have completed, such as maintenance allowances, post differentials, danger pay, and overtime pay. The Agency shall provide Complainant a clear and concise plain language statement of the formulas and methods it used to calculate Complainant's back pay. If there is a dispute regarding the exact amount of back pay, 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 he 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."

- 4) Benefits. Within 60 days of the date this decision is issued, the Agency shall determine and restore to Complainant the appropriate amount of benefits, including (a) tax-deferred contributions to his TSP account and earnings on his TSP contributions, (b) retirement contributions and earnings, (c) seniority, (d) sick and annual leave, and (e) service credit, pursuant to 29 C.F.R. §1614.501, from the date Complainant would have entered on duty in 2014 to the date he accepts or declines the Agency's unconditional offer of retroactive placement into the GS-11 Historian position or a substantially equivalent position. The Agency shall report to OPM that Complainant is deemed to have been employed by the Agency since the date on which he would have entered on duty and shall notify OPM of Complainant's restored sick leave. The Agency shall provide Complainant a clear, concise plain language statement of the formulas and methods it used to calculate Complainant's benefits. If there is a dispute regarding the exact amount of benefits, the Agency shall compensate Complainant for the undisputed amount within 30 days of the date the Agency determines the amount it believes to be due.
- 5) Tax Burden. 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 his 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 final Agency decision appealable to the EEOC determining the appropriate amount of damages.

- 6) Nonpecuniary, Compensatory Damages. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$300,000 in nonpecuniary, compensatory damages.
- 7) Pecuniary, Compensatory Damages. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$77,811.59 in compensatory, pecuniary damages.
- 8) Attorney's Fees. Within 60 days of the date this decision is issued, the Agency is also ordered to pay an attorney's fee of \$623,727.91 for work performed before the AJ. We note that this fee award is separate from the attorney's fee for work performed on these appeals, which may be pursued in accordance with the paragraph below entitled "Attorney's Fees."
- 9) Posting Notice. 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."⁵

POSTING ORDER (G0617)

The Agency is ordered to post at the Laughlin Air Force Base in Laughlin, Texas 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).

⁵ We note that, due to the significant passage of time since the discriminatory actions occurred in this case, the AJ declined to order training for any of the responsible management officials. However, in light of the striking indifference to, or ignorance of, the Agency's obligations under the Rehabilitation Act displayed at various points by the management officials in this case, we strongly urge the Agency to provide training on the Rehabilitation Act and its requirements to all Agency Human Resources personnel and management officials at the Laughlin Air Force Base and the Joint-Base San Antonio-Randolph, Texas.

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.

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.

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)

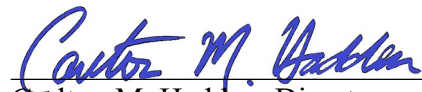
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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

September 30, 2022
Date