



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

[REDACTED]
Brenda M.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2021003686

Agency No. 200P-0612-2020103655

DECISION

On June 14, 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 May 26, 2021 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. 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.

BACKGROUND

Complainant worked as a Nurse, VN-02, in the Mental Health Service (MHS) within the Agency's Healthcare System in Mather, California. On July 17, 2020, Complainant filed an EEO complaint in which she alleged that the Agency discriminated against her and subjected her to a hostile work environment on the bases of disability (asthma, chronic obstructive pulmonary disease, hypertension, prediabetes) and age (64) when:

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.

1. On March 23, 2020, and on April 3, 2020, the MHS Chief Nurse (RMO1)² and the Outpatient Nurse Manager (RMO2)³ denied Complainant's request for a reasonable accommodation;
2. On April 15, 2020, RMO1 and RMO2 changed Complainant's duty station from the McClellan Campus to the Mather Campus;
3. On April 21, 2020, Complainant became aware that RMO1 told other managers that she had made a request to move Complainant from McClellan to Mather in order to "keep eyeballs" on Complainant;
4. Since May 19, 2020, Complainant made a second reasonable accommodation request, to which management failed to respond;
5. On July 13, 2020, RMO1 sent Complainant an email asking what office she was located in and what days of the week she reported to work without including RMO2 on the email; and
6. On at least one unspecified date, RMO1 asked Complainant when she was going to retire.⁴

At the conclusion of the investigation, the Agency provided Complainant with a copy of the investigative report and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). According to the Agency's final decision, Complainant requested an immediate final decision without a hearing between February 17 and February 22, 2021. In accordance with Complainant's request, the Agency issued its final decision on May 26, 2021, pursuant to 29 C.F.R. § 1614.110(b). In that decision, the Agency concluded that Complainant failed to prove that she had been subjected to discrimination as alleged.

Denial of Reasonable Accommodation – Allegations (1) and (4) (Denial of Telework)

A health record detail prepared for Complainant and printed out on December 21, 2020 indicated that as of that date, Complainant was experiencing the following medical conditions:

- Abnormal Lipid metabolism - assessed April 2, 2015;
- Abnormal Mammogram - assessed November 22, 2013;
- Acid Reflux - assessed December 27, 2012;
- Angina Pectoris - assessed May 24, 2018;
- Asymptomatic microscopic hematuria - assessed July 16, 2020; and
- Basal cell carcinoma of skin of other part of trunk - assessed December 18, 2019.

² RMO1 transferred to Orlando, Florida in July 2020. Investigative Report (IR) 52, 116, 185.

³ RMO2 resigned from the Agency on an unspecified date. The EEO investigator's attempts to obtain an affidavit from RMO2 were unsuccessful. IR 50, 185, 403-13.

⁴ The allegations have been rearranged in chronological order for clarity.

IR 294-295. No other information concerning prognoses, symptoms, or impact on major life activities is present in the investigative record. In email correspondence with RMO2 dated March 16, 2020, Complainant referred to herself as “a senior with chronic health condition,” but did not elaborate further on what that condition was. IR 210. In email correspondence with RMO2 dated March 23, 2020, Complainant made reference to her physician recommending that she self-isolate due to her age and chronic condition, but again, did not identify that condition. IR 215.

In her affidavit, Complainant did not refer to any of the above-referenced health conditions. She averred that she requested a reasonable accommodation in the form of telework due to her doctor’s determination that she was at high risk for contracting COVID-19. She also claimed that she was considered high-risk under health guidelines issued by Centers for Disease Control and the State of California. Complainant pointed out that she had successfully teleworked in the past and that because her position was 100 percent administrative, she did not have to be present in the mental health wards. IR 73, 216. An email exchange with ROM2 includes a doctor’s note from the Sutter Medical Group dated March 17, 2020, in which Complainant’s treating physician states that, “due to age and disease processes, it is recommended that [Complainant] continue to self-isolate due to cold symptoms, runny nose, joint pain, headache, fatigue as well as a non-productive cough.” IR 91, 210-11. She stated that on March 23 and again on April 2, 2020, RMO1 denied her request for telework despite her doctor’s recommendation on the grounds that, “nurses don’t telework.” IR 139. Complainant contended that other nurses whose duties were administrative in nature were allowed to telework. IR 78-81. On May 19, 2020, Complainant submitted a formal written request to telework as a reasonable accommodation in which she again emphasized that her workload was administrative in nature. IR 331. She received an email dated June 3, 2020, from the Local Reasonable Accommodation Coordinator (LRAC), who informed her that her request was received but would not be processed until she submitted the required supporting medical documentation. IR 332-38. The LRAC averred that Complainant did not request reasonable accommodation until May 19, 2020, and that she never provided medical documentation for her request or otherwise complete the reasonable accommodation process. IR 148. 151-52. Complainant admitted that she never submitted the requested documentation because she was allowed to telework after RMO1 left the Mather facility in July 2020. IR 82-84, 340-48.

RMO1 denied being aware that Complainant had a disability and that she had received medical documentation from Complainant. IR 116-17, 123-24, 128. RMO1 also affirmed that she was aware that Complainant wanted to telework but asserted that Complainant’s request was not a reasonable accommodation request due to a medical condition documented by a doctor. Further, RMO1 also stated that RMO2, who was Complainant’s immediate supervisor, did not want her nurses teleworking in general and that RMO2 did not think it was a good idea for Complainant to telework because she was never present when she was supposed to be physically at work. IR 124. In an email dated March 23, 2020, RMO2 did inform Complainant that telework was not being approved for nursing but mentioned that she checked with RMO1 about it that morning. IR 212.

Change of Duty Station – Allegations (2) and (3)

Complainant claimed that on April 15, 2020, RMO1 and RMO2 changed her duty station from the McClellan Campus, which was 20 minutes away from where she lived to the Mather Campus, which entailed a two-plus-hour commute. She also averred that on April 21, 2020, she became aware that RMO1 had told other managers that she had made the request to move Complainant's duty station in order to "keep an eye on her" or words to that effect. She maintained that her office at McClellan was relatively isolated and that a move to Mather would have exposed her to many people, which would have put her at increased risk for contracting COVID-19. Complainant was to report to her new duty station by May 5, 2020, but there is conflicting information in the record as to whether she ever reported to her new duty station at Mather. IR 126. She stated that on July 15, 2020, after RMO1's departure, she had been allowed to return to her old work location at McClellan. IR 74-75, 81-83, 90. According to RMO1, Complainant never reported to Mather. IR 126, 130.

RMO1 asserted that when Complainant was originally hired, she was assigned to the Mather Campus. Under a previous supervisor, Complainant had successfully requested to move to McClellan. According to RMO1, it was RMO2 who directed Complainant to move to Mather on May 4, 2020. IR 125-26. RMO1 also affirmed that she had received word of Complainant bragging about how she was able to undermine RMO1's authority by manipulating the Director of Patient Care Services, who was RMO1's immediate supervisor, to reverse the move and allow Complainant to return to McClellan in July 2020. RMO1 stated that the Director of Patient Care Services was very aware of Complainant's "undermining behaviors." She also maintained that Complainant needed to be close to the wards so that she could provide better customer service to the units that she was supporting. However, the Director of Patient Care services, the Program Manager at Mather, who was in charge of allocating space, and other officials stated that the space at Mather was limited and prioritized for patient care, and that they did not have adequate space for administrative personnel at Mather. They stated that they did not understand why RMO1 insisted on moving Complainant to Mather in the absence of a need to do so. While RMO1 denied saying that she wanted to keep an eye on Complainant, several managers averred that they heard her make that statement. IR 94-95, 100-02, 106-07, 109, 117-19, 133, 135, 137-39, 141-45, 184-86, 191-92, 197-98, 200, 325-27.

Harassment – Allegations (5) and (6)

In essence, Complainant claims that RMO1 harassed her by sending her an email demanding to know where she was and by questioning her regarding when she intended to retire. She maintained that RMO1's actions were intended to make her miserable enough to quit. IR 76. As to the alleged retirement conversation, Complainant alleged that it had taken place several years earlier but did not specify a date. She also asserted that she observed an "R" next to her name on the organization charge and was told by the unit leader that it stood for "retiring." However, Complainant gave no date for this incident either. According to Complainant, RMO1 also told her that she would have to go back to school if she wanted to be promoted to Nurse Level III. IR 76-78.

As to allegation (5), RMO1 responded that RMO2, Complainant's immediate supervisor, was out of the office and maintained that as a supervisor, she could ask for the whereabouts of employees whose timecards she was signing. She also stated that on an unspecified date, RMO2 made an unannounced visit to McClellan and Complainant was not there. IR 119-20. Regarding allegation (6), RMO1 affirmed that when Complainant raised the issue of promotion to Level III, she informed Complainant that she would have to go back to school, to which Complainant responded that she would be retiring soon. IR 121-22.

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").

Denial of Reasonable Accommodation - Telework

An Agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. 29 C.F.R. § 1630.9; Barney G. v. Dep't. of Agric., EEOC Appeal No. 0120120400 (December 3, 2015). In order show that she was denied a reasonable accommodation, Complainant must prove that: (1) she is an individual with a disability, as defined by 29 C.F.R. 1630.2(g); (2) she is a qualified individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002) ("Enforcement Guidance"). Although Complainant's health record lists six conditions, she has not shown whether and to what extent any of these conditions substantially limit at least one major life activity. To the extent she argues that her susceptibility to COVID-19 constitutes a disability, this contention also fails due to a lack of documentation. Even if she somehow had shown that she was a qualified individual with a disability, the Agency subsequently allowed her to telework. We therefore find the evidentiary record insufficient to support Complainant's contention that the Agency failed to provide her with a reasonable accommodation for her medical conditions in violation of the Rehabilitation Act.

Disparate Treatment – Attempted Change of Duty Station

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

Her first step would be to establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Const. Co. v. Waters, 438 U.S. 567, 576 (1978). While comparative evidence is typically used to establish a prima facie case, it is not the only way to do so. O'Connor v. Consolidated Coin Caters Corp., 507 U.S. 308, 312-13 (1996). Here, affidavit testimony from the Director of Patient Care Services and the Program Manager at Mather established that RMO1 insisted that Complainant's duty station be moved to Mather despite the lack of room at Mather for administrative personnel and the lack of a need for Complainant to be there. This is sufficient to establish a prima facie case based upon age and disability.

The Agency must now articulate a legitimate and nondiscriminatory reason for pressuring Complainant to transfer to Mather. Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981). As noted above, RMO1 asserted that Complainant had been undermining her authority by going over her head to complain to senior management and that Complainant's presence was needed at Mather so that she could be close to the patient wards. In addition, RMO1 had expressed concern that Complainant had not been showing up for work.

To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); St. Mary's Hon. Ctr. v. Hicks, 509 U.S. 502, 519 (1993). Pretext can be demonstrated by showing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007), req. for recon. den. EEOC Request No. 0520080211 (May 30, 2008). Indicators of pretext include deviations from standard procedures without explanation or justification, or inadequately explained inconsistencies in the evidentiary record. Mellissa F. v. U.S. Postal Serv., EEOC Appeal No. 0120141697 (Nov. 12, 2015).

When asked why she believed that she had been discriminated against because of her age and disability in connection with being pressured by RMO1 to move to Mather, Complainant opined that RMO1 had resented her age and used her disability as an excuse to further harass her. IR 75-76, 83. The Program Manager for Mather affirmed that Complainant was a hard worker and highly professional, that RMO1 had retaliated against other staff members, and that RMO1's insistence on moving Complainant to Mather despite lack of space was highly irregular. IR 94-97. The Administrative Officer confirmed the Program Manager's assertion that space at Mather was limited and needed for patient care and that it was not necessary or desirable to move Complainant to Mather. The Administrative Offer also stated that although she was not aware that Complainant had a disability, she believed that RMO1 discriminated against Complainant on the basis of age. IR 100-01, 103. The Chief of Staff, who was RMO1's second-level supervisor, averred: "based on my observations, Complainant's belief that she was harassed based on her age seems founded;" and "[i]t appeared to me that age was the most likely form of discrimination." IR 109. In an email addressed to RMO1 and RMO2 dated April 30, 2020, a Human Resources Specialist directed them to "cease and desist" their attempts to relocate Complainant from McClellan to Mather. IR 137.

To summarize, RMO1's assertions that Complainant had performance or attendance issues that justified moving her to Mather were contradicted by statements from the Program Manager, the Administrative Officer, and the Chief of Staff, all of whom opined that Complainant's age motivated RMO1's treatment of her in connection with the attempts to move her to Mather. Despite RMO1's insistence otherwise, there was neither a need for Complainant's presence at Mather nor sufficient space to provide her with an office. The fact that the Human Resources told RMO1 to stop her efforts to move Complainant casts further doubt on her truthfulness as a witness. Ultimately, we find that RMO1 was motivated by unlawful considerations of Complainant's age when RMO1 attempted to force a change in her duty station from the McClellan Campus to the Mather Campus. With regard to the basis of disability, however, the record is insufficient to establish that considerations of Complainant's medical conditions played a role in this personnel action.

Hostile Work Environment

To prevail on her claim of discriminatory harassment, Complainant would have to show that: (1) she belongs to 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 her statutorily protected classes; (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). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

We find that Complainant satisfies the first two prongs of the Henson test. Being over the age of 40, she falls with the class of those entitled to protection under the ADEA. The conduct to which she was allegedly subjected, being scrutinized by RMO1 without RMO2 being aware of it and being subjected to questions about when she was going to retire was certainly unwelcome from her own, subjective viewpoint. The antidiscrimination statutes that the Commission enforces are not civility codes, however. Rather, they forbid "only behavior so objectively offensive as to alter the conditions of the victim's employment." Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998). Complainant must therefore present enough evidence to show that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also show that the conduct of RMO1 and the other named officials was motivated by unlawful considerations of her protected classes. Only if Complainant establishes both of those elements, hostility, and motive, can the question of Agency liability for discriminatory harassment present itself.

Applying the third prong of the Henson test, we note that indicators of discriminatory intent are the same as those raised in disparate treatment claims such as those discussed above. See Melissa F., *supra*.

RMO1 averred that in asking Complainant about where she was, she was simply exercising her supervisory discretion. As for the alleged retirement inquiries, RMO1 maintained that it was Complainant who brought up being close to retirement when RMO1 discussed the educational requirements for promotion to Nurse III. Unlike the situation involving the duty station transfer, Complainant did not present any witness testimony or documents tending to show that RMO1 was making any age-related inquiries or otherwise putting pressure on her to retire in connection with incidents (5) and (6). The evidentiary record is insufficient for Complainant to establish the necessary discriminatory motive on the part of RMO1 to satisfy the third prong of the Henson test.

Even if such a motive had been established, Complainant's hostile work environment claim would still fail under Henson. In applying the fourth prong of the Henson test, we find that neither of the incidents complained of, either singly or collectively, were severe or pervasive enough to rise to the level of harassment. Mikki P. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120182183 (Feb. 19, 2020). Moreover, it is well established that routine work assignments, instructions, and admonishments do not rise to the level of harassment because they are common workplace occurrences which are not sufficiently severe or pervasive to constitute harassment, unless the incidents occurred to harass complainant for a prohibited reason. Annalee D. v. U.S. Postal Serv., EEOC Appeal No. 0120180162 (Dec. 28, 2017). Both RMO1's alleged inquiry as to Complainant's whereabouts on July 13, 2020 and her alleged inquiry as to when Complainant was going to retire, assuming they occurred in the way Complainant described, were nothing more than isolated incidents involving routine interactions between supervisor and employee. Neither incident, either by itself or together, is sufficient to constitute harassment.

We therefore agree with the Agency that the record in this case is insufficient to establish that Complainant was subjected to a discriminatory hostile work environment in connection with incidents (5) and (6).

REMEDIES

When discrimination is found, an agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore the complainant as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975). In the federal sector, the agency's efforts in this regard would typically include equitable relief, such as (1) notification to all employees of the agency in the affected facility of their right to be free of unlawful discrimination; (2) a commitment that corrective, curative, or preventive action will be taken to ensure that violations of the law similar to those found will not recur; (3) an unconditional offer to the particular victim of discrimination of placement in the position the victim would have occupied but for the discrimination suffered (or placement in a substantially equivalent position); (4) payment to the victim for any loss of earnings resulting from the discrimination (i.e., backpay and/or front pay); and (5) a commitment that the agency shall cease from engaging in the specific unlawful employment practice found. See, e.g., 29 C.F.R. § 1614.501 (setting forth various equitable remedies available to prevailing federal sector complainants).

In addition, Section 102 (a) of the Civil Rights Act of 1991, codified as 42 U.S.C. § 1981a, generally authorizes an award of compensatory damages as part of the “make whole” relief for intentional discrimination. Josephine S. v. U.S. Postal Serv., EEOC Appeal No. 0120151286 n.2 (May 2, 2017).

Here, Complainant did not lose any earnings as a result of RMO1’s attempts to transfer her duty station from McClellan to Mather. Nor had her position changed. Consequently, she has no entitlement to back pay or benefits typically associated with a finding of discrimination. Also, due to our finding of discrimination only on the basis of age, Complainant is not entitled to compensatory damages as they are not available in cases involving age discrimination. Kirby S. v. U.S. Postal Serv., EEOC Appeal No. 2020005006 (Mar. 7, 2022); Falks v. Dep’t of the Treasury, EEOC Request No. 05960250 (Sept. 5, 1996). Accordingly, we will enter orders directing the Agency to provide training in EEO to RMO1, to consider taking disciplinary action against RMO1, and to post appropriate notice.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we AFFIRM the Agency’s final decision as it pertains to allegations (1), (4), (5), and (6) and REVERSE that decision as it pertains to allegations (2) and (3).

ORDER (C0618)

The Agency is ordered to take the following remedial action:

1. Within 90 calendar days of the date this decision is issued, the Agency is ordered to provide eight hours of in-person or interactive training to the official identified in the decision as RMO1. The required training shall cover that official’s responsibilities under the Age Discrimination in Employment Act of 1967, particularly her responsibility to maintain a workplace free of discrimination against any employee. If RMO1 is no longer employed, the Agency shall provide documentation of her departure dates.
2. The Agency shall consider taking disciplinary action against the official identified as RMO1 to the extent that she is still employed by the Agency. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. 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. The Agency will report its decision whether or not to take disciplinary action against RMO1 within 120 calendar days of the date this decision is issued. If RMO1 is no longer employed, the Agency shall provide documentation of her departure dates.

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).

POSTING ORDER (G0617)

The Agency is ordered to post at its Healthcare System McClellan Campus, California 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).

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).

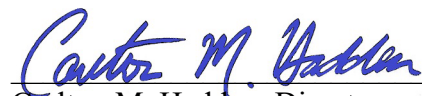
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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 issued 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

December 5, 2022

Date