



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

[REDACTED]

Ollie L.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021003374

Prior Appeal No. 2019000141

Hearing No. 510-2014-00482X

Agency Nos. 4G-335-0114-14, 4G-335-0015-14, 4G-335-0064-14

DECISION

On May 3, 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 12, 2021, final order concerning his 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., 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 MODIFIES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Carrier Technician at the Agency's Oak Street Branch Post Office in Kissimmee, Florida.

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.

The record indicated that Complainant injured his shoulder while on the job on November 26, 2012. Complainant was seen by his physician as well as an Agency physician regarding the injury. He filed a claim with the Office of Worker's Compensation Program (OWCP) which was approved. Complainant was limited to light duty, no reaching above the shoulder, pushing/pulling/lifting for up to three hours and up to 20 pounds.

Starting in November 2013, Complainant sought work within his restrictions from the acting manager (Supervisor). However, the Supervisor indicated that there was no work available within his restrictions. The Supervisor contacted several post offices via emails seeking work within Complainant's limitations. However, no post office reported back that they had work available. On or about December 16, 2013, Complainant applied for disability retirement. During an arbitration hearing associated with Complainant's union grievance, the Agency and Complainant agreed to settle the matter as the Agency offered Complainant a modified carrier technician assignment. The position listed the delivery of Complainant's route limiting the lifting to 20 pounds. Complainant accepted the modified job offer on March 18, 2014.

Complainant returned for duty to the modified position on March 21, 2014. Complainant called the Supervisor while performing his route stating that he was suffering from pain throughout his body. The Supervisor instructed Complainant to return to the facility. Complainant declined medical attention. Complainant filled out a Continuation of Pay leave for March 21, 2014, which was approved. Complainant did not report to work on March 22, 24, 25, or 26, 2014. He did not request leave for those days. On March 31, 2014, the Supervisor instructed Complainant to report for an investigative interview relating to his failure to follow instructions and failure to report for work. Complainant did not report for the investigative interview. He was issued two letters of warning on April 12, 2014. On September 29, 2014, Complainant retired from the Agency based on his disability which became effective on May 13, 2014.

Complainant filed three EEO complaints alleging that the Agency discriminated against him on the bases of race (Asian), national origin (Chinese), disability (shoulder injury), age (53), and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Section 501 of the Rehabilitation Act of 1973 when:

1. On October 26, 2013, and ongoing, management did not provide him with limited duty work within his medical restrictions.
2. On March 18, 2014, management served him with a modified job description which did not accommodate his disabilities.
3. On March 21, 2014, management ordered him to fulfill the work requirements of the modified job description which lead to his sustaining additional physical injuries.
4. On April 12, 2014, he was issued a Letter of Warning (LOW) for Failure to Follow Instructions.
5. On April 12, 2014, he was issued a LOW for Failure to Meet the Requirements of his position/AWOL.

At the conclusion of the investigations, the Agency provided Complainant with copies of the reports of investigation and notices of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ held a hearing on April 25 and 26, 2018. The AJ issued a decision on July 28, 2018, finding no discrimination.

In the decision, the AJ assumed that Complainant established that he is an individual with a disability. The AJ noted, however, that the parties stipulated that Complainant was no longer able to perform the essential functions of his job as Carrier Technician. Complainant approached management and asked if there were any other positions, he could do other than his position. The AJ determined that Complainant had not met his burden of establishing that there were vacancies during the relevant time to which he could have been reassigned. As a result, the AJ found that Complainant had not established that he was denied a reasonable accommodation in violation of the Rehabilitation Act. Finally, with regard to Complainant's disparate treatment claims, the AJ found that Complainant failed to demonstrate that the Agency's actions constituted discrimination based on his age, race, national origin, and/or his prior EEO activity.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged. Complainant filed an appeal with the Commission.

In Ollie L. v. U.S. Postal Serv., EEOC Appeal No. 2019000141 (Sept. 22, 2020), we found that Complainant established that he was an individual with a disability. However, we determined that the record was inadequate to determine whether the Agency fulfilled its obligations under the Rehabilitation Act. We noted that the investigation should have disclosed more information (if available) about Complainant's condition, including what duties or jobs he could have performed within those restrictions. We also determined that the investigation also should have identified any available positions into which Complainant could have been reassigned, and the investigator should have given Complainant an opportunity to address whether he could have performed the essential functions of the vacant positions with or without reasonable accommodation.

In addition, we noted that the Supervisor and the Agency's investigation limited the scope of its search for a reassignment to a 50-mile radius without explanation. We remind the Agency that the Rehabilitation Act contains no language limiting the obligation to reassign only to positions within a particular radius. Rather, the extent to which an employer must search for a vacant position will be an issue of undue hardship. Hampton v. U.S. Postal Serv., EEOC Appeal No. 01986308 (Aug. 1, 2002) (advising that 29 C.F.R. § 1614.203(b) applies to federal sector reassignment cases and provides, among other things, a broader search for a vacancy citing Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act at Questions 25-30).

Based on the foregoing, our decision in EEOC Appeal 2019000141 found that the record was not adequately developed and remanded this matter for a supplemental investigation. Furthermore, as to claims 4 and 5, Complainant asserted that the Agency subjected him to disciplinary actions in the forms of letters of warning issued on April 12, 2014, based on the failure to provide him with reasonable accommodation. Therefore, our decision similarly found that the record on the disparate treatment claim was likewise insufficient to support a finding on the merits.

The Agency, in compliance with our decision, accepted the supplemental investigation on September 29, 2020. On November 17, 2020, the investigation was completed, and the report provided to Complainant on November 19, 2020. Complainant, through counsel, requested a final decision. The Agency issued the final decision finding no discrimination on April 12, 2021. The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant requests that the Commission review the matter and find that the Agency subjected him to discrimination as alleged.

The Agency asks that the Commission deny the appeal.

ANALYSIS AND FINDINGS

Preliminary Matters

We note that the Agency had issued a final decision on April 12, 2021. However, it subsequently withdrew the final decision as it was erroneously issued. We note that the matter was previously addressed by the AJ following a hearing. Our prior decision found that the record had not been adequately developed and remanded the matter to the Agency to supplement the record. Now that the Agency has conducted its investigation as ordered in EEOC Appeal No. 2019000141, the matter is ripe for the Commission's review on appeal. As such, the instant appeal should be treated as an appeal from a final order from the Agency implementing the AJ's decision following a hearing applying the appropriate standard of review.

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9, at § VI.B. (Aug. 5, 2015).

Denial of Reasonable Accommodation – Claims 1, 2, and 3

In claims 1, 2, and 3, Complainant maintained that the Agency failed to offer him reasonable accommodation from October 26, 2013 and ongoing. Further, when the Agency provided him with a modified carrier position in March 2014, he was required to work outside of his limitations resulting in further injuries.

In order to establish that he was denied a reasonable accommodation, Complainant must show that: (1) he is an individual with a disability, as defined by 29 C.F.R. 1630.2(g); (2) he 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 (Enforcement Guidance), EEOC No. 915.002 (Oct. 17, 2002).

In EEOC Appeal No. 2019000141, we found that Complainant is an individual with a disability under the Rehabilitation Act because he is substantially limited in the major life activity of lifting. We must now ascertain whether Complainant was a qualified individual with a disability. A qualified individual with a disability is an “individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. Julius C. v. Dep’t of the Air Force, EEOC Appeal No. 0120141294 (June 16, 2017) citing 29 C.F.R. § 1630.2(m).

As noted in our previous decision, the AJ concluded that the record did not dispute that Complainant could not perform the essential functions of the Carrier Technician position. The next question to address is whether Complainant was a qualified individual with a disability with respect to other positions, and as such, was eligible for reassignment to a vacant, funded position for which he could perform the essential functions. The record showed that Complainant approached the Supervisor and asked for a reasonable accommodation in the form of a reassignment to another position. The AJ determined that, rather than engage in the interactive process when it was clear that Complainant was asking for a reassignment, the Supervisor sent out a blanket email to other offices asking generally if they had positions available for an individual with Complainant's limitations. In addition, Complainant provided evidence that he had also been a 204B supervisor while stationed in New York.

As to the Window Clerk position, Complainant stated that he had previously performed the duties of a Window Clerk at his facility in Florida. Hearing Transcript at 25-26. Complainant testified that he could perform the duties of the Window Clerk position. Id.

However, Complainant was not asked to provide additional information as to when he was assigned to the Window Clerk position. The Supervisor stated that Complainant had worked the Window Clerk position. Id. at 216. He averred that the Window Clerk position was not within Complainant's medical restrictions noting that the position required lifting of 45 pounds in order to receive and provide packages to customers. When the Supervisor was further questioned by Complainant's Attorney, he stated that there were individuals who could not lift 45 pounds due to age who served as Window Clerks. However, he stated that they could not accommodate anyone due to disability. However, we note that during the hearing, the testimony provided by the Supervisor was inconsistent and unclear regarding whether he sought reassignment for Complainant to a Window Clerk position.² Complainant asserted that he could have been reassigned to either of those positions and he would have been able to perform their essential functions. However, the AJ ultimately concluded that Complainant's reasonable accommodation claim failed because he failed to show that there were vacant positions available to which he could have been reassigned.

As the AJ found, the Agency failed to engage in the interactive process following Complainant's request for accommodation. However, as correctly stated by the AJ, the Agency cannot be held liable solely for a failure to engage in the interactive process. Liability attaches when the failure to engage in the interactive process results in the agency's failure to provide reasonable accommodation. Broussard v. U.S. Postal Serv., EEOC Appeal No. 01997106 (Sept. 13, 2002), req. to recon. den'd, EEOC Request No. 05A30114 (Jan. 9, 2003). The sole purpose of the interactive process is to facilitate the identification of an appropriate reasonable accommodation, and an agency's failure to engage in this process does not give rise to a separate cause of action because the interactive process is not an end in itself. Broussard, supra.

In litigation, an employee seeking reassignment as a reasonable accommodation generally must make a facial showing that there existed a vacant, funded position whose essential functions the employee could perform. See, e.g., Mengine v. Runyon, 114 F.3d 415, 418 (3d Cir. 1997); see also Hampton, supra (complainant can establish that vacant, funded positions existed by producing evidence of particular vacancies or by showing that s/he was qualified to perform a job or jobs that existed at the agency and there were trends or patterns of turnover in the relevant jobs so as to make a vacancy likely during the time period). However, we note that during the interactive process, the Agency is in the best position to know which jobs are vacant or will become vacant within a reasonable period of time and is therefore obligated to expeditiously inform Complainant about vacant positions for which he might be eligible in a reassignment. Enforcement Guidance at Q. 28; Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 16, 2016) (investigator must obtain relevant information about the availability of vacant, funded positions).

² The Supervisor's responses to questions regarding his search for a Window Clerk position ranged from "yes" to "no" to "I don't know" to "I didn't do it right. I might have just messed it up." Hearing Transcript, p. 318 – 233.

Based on the supplemental investigation, we find that Complainant has provided evidence that there were vacant funded clerk positions to which he could have been reassigned. While the Commission had specifically ordered the Agency to conduct an Agency-wide search for vacant funded positions that Complainant could perform, the Agency ultimately failed to do so. However, Complainant provided lists of vacant funded clerk positions in September and November 2013 as part of the supplemental investigation. Supplemental Report of Investigation (Supplemental ROI) at 67-71. We note that the Supervisor was asked to provide an affidavit. However, in response to most of the questions, the answers provided by the Supervisor included: "I don't exact recall but it is on record," "I don't recall," and "No." Id. at 263-66. In response to the question of which positions he considered from the list Complainant provided as an exhibit to his affidavit, the Supervisor stated, "None, because he was a city carrier and it was out of his craft." Id. at 264.

The Agency's supplemental investigation provided a copy of the job description for the clerk position of the Sales Service & Distribution Associate which were vacant. Supplemental ROI at 275-76. Examples of duties for the Sales Service & Distribution Associate included the following tasks:

1. Performing any variety of sales and customer services at a retail window;
2. Providing sales and customer service support;
3. Providing product and service information to customers;
4. Handling and processing customer purchases and returns relating to products and services;
5. Maintaining appearance of store by setting up, arranging, and replenishing displays and merchandise racks;
6. Conducting product inventories by counting items on hand;
7. Verifying presort and bulk mailings of all classifications;
8. Checking and setting post office stamp-vending machines and postage meters;
9. Renting post office boxes, receiving rental payments, and conducting reference checks;
10. Assigning and clearing accountable items;
11. Distributing primary and one or more secondary schemes of incoming mail; and
12. Performing additional duties such as maintaining records of mail.

Id. Although the Supervisor had stated that there was a 45-pound lifting requirement, the job description provided has no such requirement listed.

Furthermore, the Agency failed to provide any reason or explanation for the limitation of Complainant to the carrier craft either before the AJ or in its supplemental investigation. Therefore, based on the evidence in the record including the supplemental investigation, we find the substantial evidence shows that the Agency violated the Rehabilitation Act when it failed to provide Complainant with a reasonable accommodation as alleged in claim 1. Further, as to claims 2-3, based on the evidence in the record, it was clear that Complainant could not perform the carrier position with or without reasonable accommodation.

As such, when, on March 18, 2014, the Agency provided him the modified carrier position and required him to perform the position on March 21, 2014, the Agency required him to perform work outside of his limitations in violation of the Rehabilitation Act.

Compensatory Damages

Where a discriminatory practice involves the provision of a reasonable accommodation, compensatory damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the individual with a reasonable accommodation for his or her disability. 42 U.S.C. § 1981a(a)(3); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007). Having reviewed the record, we find no persuasive evidence showing that the Agency acted in good faith to accommodate Complainant. As such, we find that Complainant may be entitled to compensatory damages.

Claims 4-5

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

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

With regard to the two LOWs issued on April 12, 2014, the record indicated that, subsequently, Complainant was provided with a modified position on March 21, 2014. Complainant called the Supervisor while performing his route stating that he was suffering from pain throughout his body. Complainant filled out a Continuation of Pay leave for March 21, 2014, which was approved.

Complainant did not report to work on March 22, 24, 25, or 26, 2014. On March 31, 2014, the Supervisor instructed Complainant to report for an investigative interview relating to his failure to follow instructions and failure to report for work. Complainant did not report for the investigative interview. He was issued two letters of warning on April 12, 2014.

Upon review of the record, we find that the substantial evidence supports the AJ's decision finding no discrimination with respect to claims 4 and 5. The Supervisor indicated that the LOWs were issue for Complainant's failure to follow instructions and failure to report for work based on Complainant's misconduct. Further, Complainant failed to show that the Agency's reasons for the LOWs were pretext for discrimination. Therefore, we conclude that Complainant did not establish his claim of discrimination with respect to claims 4 and 5.

CONCLUSION

Accordingly, we REVERSE the Agency's implementation of the AJ's finding that it did not violate the Rehabilitation Act with respect to claims 1-3 and ORDER the Agency to take further action, in accordance with the Order below. We also AFFIRM the Agency's implementation of the AJ's decision finding no discrimination with respect to claims 4 and 5.

ORDER

The Agency is ordered to take the following remedial action:

1. Within 60 days from the date this decision is issued, the Agency shall determine the appropriate amount of backpay, with interest, and other benefits (such as Thrift Savings Plan and FERS pension) due Complainant (if any), pursuant to 29 C.F.R. § 1614.501, from the time the Agency failed to provide him with a reasonable accommodation on October 26, 2013, to May 13, 2014, the date he resigned from the Agency. Complainant shall cooperate in the Agency's efforts to compute the amount of backpay and benefits due, and she shall provide all relevant information requested by the Agency. The Agency shall pay the amount within 60 days from the date of that determination of the appropriate amount. If there is a dispute regarding the exact amount of backpay and/or benefits, the Agency shall pay Complainant the undisputed amount within 60 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. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

2. Within 30 days from the date the backpay amount is paid to Complainant, the Agency shall request that Complainant submit his claim for compensation for all additional income-tax liability associated with lump sum payments. The Agency shall afford Complainant 60 days to submit his claim and supporting documents. The burden of proof to establish the amount of additional tax liability, if any, is on Complainant. The calculation of additional tax liability must be based on the taxes Complainant would have paid had she received the backpay in the form of regular salary during the backpay

period, versus the additional taxes he paid due to receiving the back-pay in a lump-sum award. Thereafter, the Agency shall issue a decision regarding claimed additional tax liability within 60 days after the time period expires for Complainant to submit his claim for additional tax liability.

3. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages, attorney's fees, and costs. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages, attorney's fees, and costs no later than 30 days after the completion of the investigation.

4. Within 90 calendar days of the date this decision is issued, the Agency shall provide eight hours of training to the Supervisor. The training shall address the Agency's obligations under the Rehabilitation Act with respect to reasonable accommodation requests. The Agency may, if it so chooses, contact the EEOC Office of Federal Operation's Training and Outreach Division for assistance in obtaining the necessary training.

5. Within 120 calendar days from the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against the Supervisor. 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. If any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).

6. The Agency shall immediately post a notice in accordance with the paragraph below.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Oak Street Branch Post Office in Kissimmee, Florida, copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted.

The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

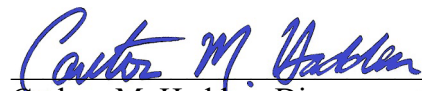
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:


Carlton M. Hadden, Director
Office of Federal Operations

August 29, 2022
Date