



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Georgeann R.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Capital Metro Area),
Agency.

Appeal No. 2021003547

Agency No. 1K-271-0003-19

DECISION

On May 18, 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 2, 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. For the following reasons, we REVERSE the Agency's final decision and REMAND the matter for further processing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Mail Processing Clerk at the Agency's Processing and Distribution Center in Raleigh, North Carolina. See Report of Investigation (ROI) at 6.

On October 4, 2017, Complainant's doctor diagnosed her with Bilateral Knee Degenerative Disease, which reportedly physically affected her ability to perform the duties of her position. ROI at 68. Complainant's duties as a Mail Processing Clerk included working the Flat Sorter Machine, among other things. Id. at 69.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

Complainant however maintained that performing duties on the Flat Sorter Machine were very strenuous on her knee condition because the work required heavy lifting, twisting, turning, and leaning in awkward positions. Id. at 72.

On February 7, 2018, and March 8, 2018, Complainant submitted requests for a reasonable accommodation to the Agency, notifying the Agency that she could not work the Flat Sorter Machine due to her knee condition. ROI at 73. As a reasonable accommodation, Complainant requested that she be reassigned to perform the duties of an AFCS 200 Machine Operator with additional scheduled 15-minute breaks. Complainant previously worked as an AFCS 200 Machine Operator and believed that the position was less strenuous on her knee condition. Id. at 74.

Complainant's request for accommodation was forwarded to the District Reasonable Accommodation Committee (DRAC), which held a meeting with Complainant on August 30, 2018. ROI at 96. Therein, Complainant submitted medical documentation dated April 9, 2018, from her doctor notifying the DRAC that she was unable to stand, walk, climb stairs, kneel and stoop for more than 4 hours a day, and could not perform Flat Sorter duties. Id. However, the physical restrictions for the AFCS 200 Machine Operator position, included standing and walking for 6 hours per day. Id. at 177. Complainant's medical documentation also indicated that she could lift 0-10 pounds continuously and 10-70 pounds intermittently. Id. at 93-94.

In a letter dated October 2, 2018, the DRAC responded to the Complainant's request for accommodation writing in pertinent part:

Based on your medical documentation and the information you have provided to DRAC, you have indicated that you cannot perform the essential functions of your position with or without an accommodation. DRAC has reviewed whether there are other positions within a 50-mile radius of your current facility that can accommodate your medical restrictions. At this time, there are not any suitable vacant positions available within your restrictions with or without an accommodation. Therefore, the Postal Service is unable to offer you any accommodations. We encourage you to continue to bid on jobs and search for jobs on eCareer and eReassign that are within the scope of your medical restrictions.

ROI at 21-22.

The Plant Manager acknowledged that there were a limited number of AFCS 200 Machine Operator bid positions available during the relevant time where Complainant was assigned. ROI at 108. But he maintained that such an accommodation would have resulted in having to back fill Complainant's position with another employee from another section on a daily basis, resulting in overtime hours and shortages in other sections for an undeterminable period of time. Id.

Furthermore, while the Plant Manager acknowledged that Complainant had requested extra 15-minute breaks, he maintained that the Agency could not grant Complainant's request beyond the breaks already allowed due to staffing concerns and because the Agency was approaching its peak season. *Id.* at 142. The Plant Manager emphasized, however, that the Agency already allowed employees to take 15-minute breaks every two hours.

On January 23, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of disability when on October 2, 2018, her request for accommodation was denied.

Following the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The Agency initially determined that Complainant did not establish that she was an individual with a disability within the meaning of the Rehabilitation Act. In so finding, the Agency observed that the last medical documentation submitted by Complainant dated April 9, 2018, noted that Complainant could lift 0-10 pounds continuously and 10-70 intermittently. The Agency nevertheless assumed, without finding, that Complainant established that she was an individual with a disability entitled to the protection of the Rehabilitation Act. The Agency noted, however, that Complainant's duties as a Mail Processing Clerk entailed working on the Flat Sorter Machine, which required her to stand all day, load mail, and involved heavy lifting. The Agency found that Complainant could not perform the Flat Sorter Machine duties that her position required, and she did not identify an accommodation that would have allowed her to perform the essential duties of her bid position, which included the Flat Sorter duties. The Agency determined that Complainant did not establish that she was a "qualified" individual with a disability in accordance with the Rehabilitation Act, and therefore she could not be accommodated in her current Mail Processing Clerk position.

The Agency further observed that Complainant's medical documentation reflected that she could not stand or walk more than 4 hours a day. The Agency noted that even if Complainant were reassigned to the AFCS 200 Machine Operator position, even with the additional two 15-minute breaks, Complainant would have been required to stand/walk more than 4 hours per day. The Agency determined that Complainant failed to identify a vacant funded position that was available, which would have accommodated her medical restrictions. As such, the Agency concluded that Complainant could not prevail on her complaint. Complainant timely appealed the Agency's decision to the Commission, which the Commission docketed under Appeal No. 2019005191.

In Georgeann R. v. U.S. Postal Serv., EEOC Appeal No. 2019005191 (Dec. 3, 2020), the Commission vacated the Agency's final decision. In vacating the final decision, the Commission initially acknowledged that the Agency had found Complainant was not a individual with a

disability within the meaning of the Rehabilitation Act; however, the Commission ultimately determined that Complainant was indeed an individual with a disability, as there was ample evidence showing that Complainant was substantially limited in the major life activities of working and walking. The Commission then turned to whether Complainant was a qualified individual with a disability. Having reviewed the record, the Commission determined that the Agency was not required to reasonably accommodate Complainant with regard to the Mail Processing Clerk position, as the medical records that she had submitted clearly stated that she could not stand, walk, climb stairs, kneel and stoop for more than four hours, and could not perform Flat Sorter duties.

The Commission emphasized, however, that the inquiry did not end there, as the discussion of “qualified” does not end at Complainant’s position of record. While the Commission acknowledged that the Agency had claimed that it had conducted a search for vacant funded positions within a 50-mile radius of Complainant’s duty station, the Commission ultimately found the search to be insufficient because 1) under existing Commission case law, the Agency was required to conduct an agency-wide search and could not limit its search to just a 50-mile radius; and 2) the Agency did not provide any specific explanation or evidence as to the extent of its search. Consequently, the Commission remanded the complaint “for a supplemental investigation regarding the availability of a vacant, funded position(s) and to provide Complainant with an opportunity to address whether she could perform the essential functions of any such vacant, funded position(s) with or without a reasonable accommodation.” The Commission also directed the Agency to provide Complainant with the opportunity to request a hearing before an AJ or have the Agency issue another final decision following the supplemental investigation. The Agency ultimately did not seek reconsideration of the Commission’s decision.

The Agency subsequently conducted the required supplemental investigation. 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 and simply added the results of the October 2, 2018 search to the record. The results of that search revealed that the Agency had identified a total of eight vacant funded position with a 50-mile radius of the Complainant’s duty station. See Supplemental Investigation at 97-98. Six of the eight vacant funded positions were Mail Processing Clerk positions like the one Complainant currently encumbered. Id. The remaining two were Sales Service & Distribution Associate and Lead positions. 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.

See Supplemental Investigation at 16-17.

After receiving supplemental affidavits from Complainant and the Plant Manager, the Agency afforded Complainant the opportunity to request a hearing before an AJ or have the Agency issue another final decision following the supplemental investigation. When Complainant failed to request either a hearing or a final decision, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency again concluded that Complainant failed to show that she had been subjected to discrimination.

In finding no discrimination, the Agency first analyzed whether Complainant had been subjected to disparate treatment when her request for accommodation was denied. Given the Commission's finding that there was ample evidence showing that Complainant was substantially limited in the major life activities of working and walking, the Agency conceded that Complainant was indeed an "individual with a disability"; however, the Agency ultimately concluded that Complainant could not establish disparate treatment because she failed to "identify any similarly situated individuals not in her protected group that were treated more favorably."

The Agency then analyzed whether Complainant had been denied reasonable accommodation. Having reviewed the record, the Agency determined that Complainant was not a "qualified individual with a disability" because "she could not perform the essential functions of the positions that were available on October 2, 2018." With regard to the Mail Processing Clerk positions, the Agency acknowledged that Complainant had stated that she could perform the essential functions of that position; however, the Agency found that Complainant's medical restrictions on walking and standing rendered her unable to perform the essentials of the position. With regard to the Lead Sales Service & Distribution position, the Agency determined that it was not required to reassign Complainant to that position because it would have constituted a promotion to the PS-07 level. Furthermore, the Agency emphasized that the position required a minimum one year of experience as a Window Clerk, which Complainant did not have.

As for the Sales Service & Distribution Associate position, the Agency acknowledged that the record was devoid of evidence on the functional requirements of the position; however, based on the duties identified in the Standard Position Description, the Agency surmised that the position required continuous walking and standing.

The Agency further found that as a Sales Service & Distribution Associate,² Complainant “would be required to accept and deliver packages, distribute incoming mail, and prepare mail for dispatch – all of which require continuous lifting of mail/packages weighing up to 70 pounds.” Given that Complainant’s medical restrictions limited Complainant to 0-10 pounds of continuous lifting and 10-70 pounds of intermittent lifting, the Agency concluded that Complainant was medically restricted from performing the essential functions of the Sales Service & Distribution Associate position.

Finally, the Agency asserted that the Agency could not reassign Complainant to any vacant funded position because the collective bargaining agreement required it to post all vacant positions and select candidates based on seniority. Based on the foregoing, the Agency concluded that Complainant could not prevail on her complaint.

This appeal followed.

CONTENTIONS ON APPEAL

Complainant requests that the Commission overturn the Agency’s final decision. In so arguing, she expresses her disbelief that the Agency found no vacant funded positions for her to perform and maintains that the denial of her request for reasonable accommodation was indeed discriminatory.

The Agency did not file any contentions on appeal.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

ANALYSIS AND FINDINGS

Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. 29 C.F.R. §§

² We note that the Agency internally refers to the Sales Service & Distribution Associate position as “Retail Clerk.”

1630.2(o) and (p). To prevail on her denial of reasonable accommodation claim, Complainant must show that: (1) she was an individual with a disability; (2) she was a qualified individual with a disability; and (3) the Agency failed to provide a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation), No. 915.002 (Oct. 17, 2002).

Individual with a Disability

The threshold question is whether a complainant is an individual with a disability within the meaning of the regulations. An individual with a disability is one who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). Major life activities include such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; and the operation of a major bodily function. 29 C.F.R. § 1630.2(i). An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to the ability of most people in the general population. 29 C.F.R. § 1630.2(j)(1)(ii).

As the Agency did not seek reconsideration of our decision in EEOC Appeal No. 2019005191, wherein we found Complainant to be an “individual with a disability,” we shall reaffirm our prior finding with regard to that element.

Qualified Individual with a Disability

As Complainant has met the threshold requirement that would entitle her to the protections of the Rehabilitation Act, she must now show that she was a “qualified” individual with a disability within the meaning of 29 C.F.R. § 1630.2(m). The regulation defines such an individual as a disabled person who, with or without a reasonable accommodation, can perform the essential functions of the position in question. We note that reassignment is the accommodation of last resort and is required only after it has been determined that there are no effective accommodations that will enable Complainant to perform the essential functions of her current position or all other reasonable accommodations would impose an undue hardship. King W. v. U.S. Postal Serv., EEOC Appeal No. 2019001070 (Mar. 20, 2019); Zachary K. v. Dep't of Vet. Aff., EEOC Appeal No. 0120130795 (Nov. 19, 2015).

As the Commission previously found that Complainant could not perform the essential functions of her current position as a Mail Processing Clerk position, we need only determine if there were vacant funded positions that Complainant could perform with or without reasonable accommodation. As an initial matter, we decline to consider whether Complainant was entitled to reassignment as a Lead Sales Service & Distribution Associate, as the record clearly shows that her reassignment to that position would have constituted a promotion from PS-06 to PS-07. See Jefferies v. U.S. Postal Serv., EEOC Appeal No. 01A51415 (June 9, 2006), which she was not entitled to receive.

Having reviewed the record, we agree with the Agency that the probative record demonstrates that Complainant would be unable to perform the essential functions of vacant funded Mail Processing Clerk positions within her district; however, we nevertheless find that Complainant was a qualified individual with a disability, as the record shows that Complainant was capable of performing the essential functions of the Sales Service & Distribution Associate position. In reaching this conclusion, we acknowledge the Agency's finding that the essential functions of the Sales Service & Distribution Associate exceeded Complainant's medical restrictions as Complainant "would be required to accept and deliver packages, distribute incoming mail, and prepare mail for dispatch – all of which require continuous lifting of mail/packages weighing up to 70 pounds" and continuous walking and standing. Ultimately, we find the Agency's conclusion to be speculative given the Agency's admission that the record contains no evidence whatsoever regarding the functional requirements of the position and the extent and frequency of the lifting, walking, and standing requirements.

However, even if we assume *arguendo* that the position description contained functional requirements to continuously stand, walk, and lift up to 70 pounds, we are still disinclined to agree with the Agency. Based on the available evidence, it is apparent to us that the primary duty of the Sales Service & Distribution Associate is not to continuously stand, walk and lift up to 70 pounds, but rather to assist customers at the retail window and help maintain the store. We find the Agency's blanket 70-pound lifting and continuous walking and standing requirements for the Sales Service & Distribution Associate position were not carefully tailored to measure Complainant's actual duties and ability to perform the essential functions of the position. See Cecille W. v. U.S. Postal Serv., EEOC Appeal No. 0120181915 (Aug. 6, 2020), citing Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013) (finding that the agency's blanket 70 pound lifting requirement was not carefully tailored to measure the complainant's actual ability to perform the essential functions of her position).

Consequently, we find that Complainant was a qualified individual with a disability during the relevant period, as she has persuasively shown that she would have been capable of performing the essential functions of the Sales Service & Distribution Associate with reasonable accommodation. Thus, the Agency was under a legal duty to accommodate Complainant by reassigning her to the Sales Service & Distribution Associate position. However, given the Agency's failure to adduce any persuasive evidence of undue hardship, we ultimately conclude that the Agency violated the Rehabilitation Act when it failed to reassign Complainant.

In entering a finding of discrimination against the Agency, we are mindful of the Agency's position that it was under no obligation to reassign Complainant to any vacant funded position because the collective bargaining agreement required it to post all vacant positions and select candidates based on seniority. While we acknowledge that the U.S. Supreme Court in U.S. Airways v. Barnett, 535 U.S. 391 (2002) held that it is usually unreasonable to reassign an employee with a disability if to do so would violate the rules of an established seniority system, we note that Barnett goes on to hold that if there are "special circumstances" that alter other employees' expectations of "uniform treatment," it may be a reasonable accommodation, absent a showing of undue hardship, to reassign a disabled employee.

In Jambora v. U.S. Postal Serv., EEOC Appeal No. 07A40128 (May 16, 2006), the Commission found that these “special circumstances” existed where the agency’s own collective bargaining agreement included provisions requiring the agency to find work for disabled and injured employees. As our review of the record shows that the same collective bargaining provision referenced in Jambora was in effect during the relevant period, we are compelled to reach the same conclusion. See ROI at 210-214. Consequently, we reject the Agency’s position. Based on the foregoing, we conclude that Complainant has shown that she was subjected to discrimination when she was denied reasonable accommodation 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. To the contrary, through Complainant’s two appeals, the Agency has remained steadfast that it was under no legal obligation to accommodate Complainant. We disagree. Given the totality of the circumstances, including the Agency’s failure to comply with our order to conduct an Agency-wide search, we conclude that Complainant is entitled to present a claim for compensatory damages with regard to the Agency’s failure to accommodate her. See West v. Gibson, 527 U.S. 212 (1999); see also Complainant v. Dep’t of Justice, EEOC Appeal No. 0120121339 (May 8, 2015)

CONCLUSION

Based on a thorough review of the record, we REVERSE the Agency’s final decision and REMAND the matter to the Agency for further processing. The Agency shall comply with the relief in the Order below.

ORDER

The Agency shall take the following actions:

1. The Agency shall immediately take all steps necessary to provide Complainant with effective reasonable accommodation, to include reassigning Complainant to the Sales Service & Distribution Associate, PS-06, and allowing her to take “occasional short breaks for stretching to relieve knee pressure.” If Complainant is no longer employed by the Agency, the Agency shall, within 30 calendar days of the date this decision is issued, offer Complainant reinstatement as a Sales Service & Distribution Associate, retroactive to the date of her resignation or removal. The offer shall be made in writing and include a written position description. Complainant shall have 15 calendar days from receipt of the offer to accept or decline. Failure to accept the offer within 15 calendar days will be considered a declination of the offer, unless

Complainant can demonstrate that circumstances beyond her control prevented a timely response.

2. Within 60 calendar days of the date of this decision, the Agency shall determine the appropriate amount of back pay (if any) with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check 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. 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."
3. Within 30 days from the date the backpay amount is paid to Complainant, the Agency shall request that Complainant submit her claim for compensation for all additional income-tax liability associated with lump sum payments. The Agency shall afford Complainant 60 days to submit her 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 her claim for additional tax liability.
4. Within 60 calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages as a result of the Agency's discriminatory actions. During the course of the investigation, the Agency shall afford Complainant the opportunity to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (January 5, 1993). Complainant, in turn, shall cooperate with the Agency's investigation, to include responding to the Agency's requests for documentation and completing Agency forms within 30 calendar days of the Agency's request.
5. After completing the investigation into Complainant's entitlement to compensatory damages, the Agency shall have 60 calendar days to issue a final decision as to whether Complainant is entitled to such damages. The Agency shall expeditiously pay Complainant the compensatory damages as determined by the Agency and submit a copy of the final decision on compensatory damages to the Compliance Officer at the address set forth herein.

6. Within 90 calendar days of the date this decision is issued, the Agency shall provide eight hours of training to the responsible management officials, namely the Raleigh Processing and Distribution Center Plant Manager and the members of the District Reasonable Accommodation Committee who denied Complainant's request for reasonable accommodation. 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.
7. Within 120 calendar days from the date this decision is issued, the Agency shall consider disciplining the Plant Manager and DRAC members. 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. If these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

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 Raleigh Processing and Distribution Center 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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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