



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

[REDACTED]  
Angelo P.,<sup>1</sup>  
Complainant,

v.

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

Appeal Nos. 2022002880 and 2022003452

Hearing No. 550-2019-00159X

Agency No. 4F-956-0066-18

**DECISION**

Following its May 2, 2022, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). In Appeal No. 2022002880, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. In Appeal No. 2022003452, Complainant appeals the Agency's rejection of the AJ's award of attorney's fees. For the following reasons, the Commission REVERSES the Agency's final orders.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Rural Letter Carrier at the Agency's Shingle Springs Post Office in Shingle Springs, California.

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<sup>1</sup> 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.

On August 9, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of disability (obsessive compulsive disorder (OCD)) when, on April 25, 2018, he was issued a notice of proposed removal dated April 25, 2018, for Unacceptable Conduct with an effective date of June 4, 2018.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing and the AJ held a hearing on February 23, 2022. Following the hearing, the AJ issued a bench decision on February 24, 2022.

The AJ noted that the parties submitted a joint statement of stipulated facts, which included that during the last rural mail count period ending on March 8, 2018, Complainant made a total of more than 300 duplicate scans of bar coded items for delivery and was removed for those duplicate scans, which were deemed unacceptable conduct. Bench Decision Tr. at 6-7. The AJ found that Complainant testified credibly as to his OCD and its effects and triggers, which was also corroborated by the credible testimony of the psychiatrist who examined Complainant multiple times and diagnosed Complainant as having OCD which impacted his job duties, specifically with regard to his compulsive behavior regarding the mail scans. See Bench Decision Tr. at 14-17. The AJ found that the Postmaster (PM) was not credible in her explanation of why she did not investigate the degree to which Complainant's OCD affected his mail count or why she did not discipline other carriers for duplicate scans. See Bench Decision Tr. at 18. The AJ also found that neither the PM nor the then-Acting Manager of Post Office Operations (AM), who concurred with the PM's removal decision, were credible concerning their conclusion that Complainant's duplicate scans were the result of a deliberate attempt to inflate his mail count and not due to his disability because they both also acknowledged that they knew nothing about OCD. See Bench Decision Tr. at 19-20. The AJ concluded that the Agency's legitimate reason for removing Complainant was a pretext for discrimination as it was not credible and inconsistent. See Bench Decision at Tr. at 27. They therefore found Complainant was entitled to back pay with interest and awarded nonpecuniary compensatory damages in the amount of \$125,000, while also ordering the Agency to provide training to the responsible management officials and post a notice of the finding. See Bench Decision Tr. at 28-31. The Agency subsequently issued a final order rejecting the AJ's finding that Complainant proved that the Agency subjected him to discrimination as alleged.

Thereafter, in accordance with the AJ's Notice Regarding Complainant's Entitlement to Attorney's Fees, Complainant submitted an attorney's fee petition, seeking a total attorney's fee of \$230,901.68 representing 284.4 hours of attorney time at an hourly rate of \$390; 377.3 hours of law clerk time at an hourly rate of \$225; 39.7 hours of paralegal time at an hourly rate of \$170; and requesting an enhancement of the lodestar of 15%, as well as costs of \$11,706.78. The Agency objected to the fee petition, arguing that Complainant's attorney's requested hourly rate was excessive, the hours billed were vague and duplicative, and the requested enhancement of the lodestar is unwarranted.

On May 4, 2022, the AJ issued an Order awarding attorney's fees, rejecting Complainant's request for a 15% enhancement of the lodestar and also accepting the Agency's argument that some of the hours billed were unnecessary, vague, and duplicative. The AJ implicitly found that Complainant's requested hourly rates were appropriate.<sup>2</sup> The AJ found that a reduction of 25% in the requested fees and costs was appropriate in light of the vague and duplicative entries and awarded a total attorney's fee of \$160,698.21. The Agency issued a final order rejecting the AJ's award of attorney's fees in its entirety on May 9, 2022.

### CONTENTIONS ON APPEAL

In Appeal No. 2022002880, the Agency first assigns error to the AJ for finding that Complainant established a prima facie case, contending that the other letter carriers were not valid comparators as they did not have more than 300 duplicate scans. The Agency also contends that the AJ's decision was not supported by substantial evidence and seeks to have its rejection of the AJ's decision affirmed. In response, Complainant contends that the AJ's decision finding discrimination was supported by substantial evidence and should be affirmed.

In Appeal No. 2022003452, Complainant appeals the Agency's order rejecting the AJ's award of attorney's fees.<sup>3</sup> The Agency did not file a response to Complainant's appeal.

### ANALYSIS AND FINDINGS

#### *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), at Chap. 9, § VI.B. (Aug. 5, 2015).

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<sup>2</sup> The AJ's Order did not directly address the hourly rate but accepted the total attorney's fee Complainant requested prior to the 15% enhancement as the starting point for the fee award.

<sup>3</sup> We note that Complainant raised a threshold issue arguing that the Agency failed to issue a final agency decision regarding the AJ's order on attorney's fees. Complainant later withdrew that issue after receiving notice of the Agency's final order on attorney's fees. On appeal, he contends that the AJ's decision on the merits and his attorney's fee order should be affirmed.

*Disparate Treatment*

Complainant must satisfy a three-part evidentiary scheme to prevail on a claim of disparate treatment reprisal discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). First, Complainant must establish a prima facie case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). Second, the burden is on 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). Third, should the Agency carry its burden, Complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the Agency were not its true reasons, but were a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804; St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

*Prima Facie Case*

The parties do not dispute that Complainant is a qualified individual with a disability within the meaning of the Rehabilitation Act. 29 C.F.R. § 1630.2(g)(1).

The only issue raised herein is whether Complainant established an inference of discrimination by presenting comparator evidence. The Agency assigns error to the AJ for finding that Complainant established a prima facie case, arguing that the AJ erred by determining that the other letter carriers were valid comparators. In order to be considered similarly situated, the person with whom the complainant is comparing himself must be similar in substantially all aspects, so that it would be expected that they would be treated in the same manner. See Grappone v. Dep't of the Navy, EEOC Appeal No. 01A10667 (Jan. 28, 2002). To meet this standard, all relevant aspects of the employees' work situation must be identical or nearly identical, i.e., that the employees report to the same supervisor, perform the same job function, and work during the same periods. See Complainant v. U.S. Postal Serv., EEOC Appeal No. 0120132558 (March 27, 2014).

In this case, the Agency bases its contention on the difference in degree between the number of duplicate scans made by the comparators and the number of duplicate scans made by Complainant. We reject the Agency's contention as the Agency's argument adds additional requirements to the standard of valid comparators with no legal basis. We emphasize that the Agency does not argue that the comparators are not similarly situated as far as performing different duties or having a different supervisor or any other aspect of their employment. The Agency's argument is instead predicated on a difference of degree in conduct. We note, however, that here, the Agency's argument fails as it is inconsistent with the record. If the essential difference between Complainant and the comparators was, in fact, the degrees of their respective "misconduct" in making duplicate scans of bar-coded mail, the comparators who also all had recorded duplicate scans should also have been disciplined even if to a lesser degree than Complainant.

Instead, the AJ emphasized, and the parties admitted in their joint stipulation of facts, that none of the other letter carriers were ever disciplined in any way for their duplicate scans nor did anyone in management ever mention the issue of duplicate scans to them. See Bench Decision Tr. at 8-9. We find that the AJ properly found that Complainant established a prima facie case of discrimination because the identified comparators who were treated more favorably were similarly situated except with regard to Complainant's protected class, i.e. disability status.

#### *Legitimate, Nondiscriminatory Reason*

Having found that Complainant has established a prima facie case, the burden then shifted to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. See Burdine, 450 U.S. at 253. We find that the AJ properly concluded that the Agency articulated a legitimate, nondiscriminatory reason for its action in terminating Complainant, namely management's belief that he improperly scanned mail in order to inflate his mail count to obtain a monetary benefit. See Bench Decision Tr. at 24.

#### *Pretext*

The burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination. At all times, Complainant retains the burden of persuasion, and it is his obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Serv. v. Aikens, 460 U.S. 711, 715-716 (1983).

Upon review, we agree with the AJ that the reasons given by the PM and the AM lack credibility. In doing so, we note that 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 EEO MD-110 at Chap. 9, at § VI.B. However, where credibility determinations are based on the content of witness testimony, the Commission may assess the evidence for itself, and need not defer to the AJ's credibility determinations. Id.

In this case, the AJ's assessment of the credibility of the witnesses was, for the most part, based on the record. However, upon our review of the record, we find that the AJ's credibility determinations are reasonable and supported by the evidence in the record. We emphasize that Agency has not identified any way in which the AJ's credibility determinations in this case are contradicted by the evidence in the record. The crux of the Agency's argument amounts to little more than insisting that the AJ should have ignored the inconsistencies in management's testimony. We reject the Agency's argument and agree with the AJ that the PM's testimony was not credible based on the numerous internal inconsistencies. For example, the PM stated her conviction that Complainant's duplicate scans were not due to his OCD, even though she also admitted that she does not know anything about OCD and is not qualified to make a determination of whether his duplicate scanning was due to his condition. See Hr'g Tr. 2 at 241.

The AM also stated that he accepted the PM's statement that Complainant's scanning behavior was deliberate and not due to a disability, while acknowledging that he does not have any knowledge of the effects of OCD and neither he nor the PM are qualified to make a determination of the effects of OCD on behavior. See Hr'g Tr. 2 at 301-302.

We further agree with the AJ that Complainant established that the Agency's stated reason was a pretext for discrimination. We note that the PM acknowledged that the Agency has a policy of progressive discipline to ensure that discipline is meted out commensurate with the misconduct. See Hr'g Tr. 2 at 269. The AJ noted that the PM did not adequately explain why she apparently determined that Complainant's misconduct with the duplicate scans merited termination when Complainant had worked for the Agency for over 20 years with no other misconduct and when none of the other letter carriers with duplicate scans were disciplined in any way. See Bench Decision Tr. at 22-23. The AJ also found that the PM's statement that if she had believed that Complainant's duplicate scans were the result of his OCD, she would not have issued the notice of removal, was inconsistent with her admission that, when Complainant stated to her that his duplicate scanning could be attributed to his disorder, she simply did not believe Complainant, even after receiving confirmation from Complainant's union representative that there was medical documentation of Complainant's disorder.<sup>4</sup> See Bench Decision Tr. at 23; Hr'g Tr. 2 at 242, 248.

We therefore find that the AJ properly concluded that Complainant established that his removal was discriminatory and reverse the Agency's rejection of the AJ's decision.

#### *Attorney's Fees*

In rejecting the AJ's Order on Attorney's fees, the Agency appears to argue that because the AJ erred in finding discrimination, the AJ also erred in concluding that Complainant was entitled to an attorney's fee at all. Complainant therefore filed the instant appeal of the Agency's rejection of the AJ's order on attorney's fees.

Title VII and the Rehabilitation Act authorize an award of reasonable attorney's fees. 29 C.F.R. § 1614.501(e). To establish entitlement to attorney's fees, the complainant must first show that he or she is a prevailing party. See Buckhannon Bd. and Care Home, Inc. v. WV Dep't of Health & Human Resources, 532 U.S. 598 (2001).

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<sup>4</sup> Moreover, we note that, to the extent the AM apparently discredits that Complainant has a disability at all based on the fact that Complainant had not filed a request for leave under the Family and Medical Leave Act (FMLA), see Hr'g Tr. at 294, 301, that is not in accordance with the law. Leave under the FMLA is unrelated to the issue of whether an employee is a qualified individual with a disability. See 29 C.F.R. §1630.2(g). We are troubled by the fact that a management official, such as the AM, who is responsible for making employment decisions with respect to hundreds of employees, apparently feels free to substitute his own standard for when an employee has a disability.

A prevailing party for this purpose is one who succeeds on any significant issue and achieves some of the benefit sought in bringing the action. See Davis v. Dep't of Transp., EEOC Request No. 05970101 (Feb. 4, 1999) (citing Hensley v. Eckerhart, 461 U.S. 427, 433 (1983)).

Because we are affirming the AJ's finding of discrimination and reversing the Agency's rejection of the AJ's decision, we find that Complainant is a prevailing party in this matter for purposes of awarding attorney's fees. We also find that Complainant was fully successful on the single issue of whether his removal was due to discrimination and therefore unlawful.

The fee award is ordinarily determined by multiplying a reasonable number of hours expended on the case by a reasonable hourly rate, also known as a "lodestar." See 29 C.F.R. §1614.501(e)(2)(ii)(B); Bernard v. Dep't of Vet. Aff., EEOC Appeal No. 01966861 (July 17, 1998). In determining the number of hours expended the Commission recognizes that the attorney "is not required to record in great detail the manner in which each minute of his time was expended." Id.

In this case, neither the Agency nor Complainant has raised any specific arguments with respect to the AJ's calculation of the appropriate attorney's fee. We find that the AJ correctly determined that Complainant, as the prevailing party, was entitled to an attorney's fee and also that the AJ acted within his discretion in applying a 25% across-the-board reduction of Complainant's requested fee. See Tessa G. v. U.S. Postal Serv., EEOC Appeal No. 0120182836 (Nov. 21, 2019). In the absence of any specific arguments challenging the amount of the AJ's attorney's fee award, we affirm the AJ's order awarding a total attorney's fee of \$160,698.21.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision rejecting the AJ's finding of discrimination and the Agency's final decision rejecting the AJ's award of attorney's fees. We REMAND this matter to the Agency for further processing in accordance with this Decision and the ORDER below.

### ORDER

The Agency is ordered to take the following remedial actions:

- 1) Within 30 days of the date this decision is issued, the Agency shall offer to reinstate Complainant to the position of Rural Letter Carrier or a substantially equivalent position retroactive to the date he was terminated.<sup>5</sup> Complainant may decline the offered position, and his entitlement to back pay shall cease as of the date he declines the position. Even in the event Complainant declines reinstatement, the Agency shall remove all indications of termination for

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<sup>5</sup> We note that the parties stipulated that Complainant has been reinstated pursuant to a union grievance, however, we do not have evidence of the reinstatement.

misconduct from Complainant's Form SF-50. The revised Form SF-50 shall also be updated in the Complainant's eOPF file.

- 2) Complainant is entitled to back pay beginning on March 9, 2018 for the nine-month period in which Complainant was on leave without pay until Complainant is reinstated or the date Complainant declines the Agency's offer. The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due the Complainant, pursuant to 29 C.F.R. § 1614.501, no later than sixty (60) calendar days after the date this decision was issued.<sup>6</sup> The Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to the Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. The 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) Following the backpay payment, the Agency shall conduct a supplemental investigation, including providing Complainant an opportunity to submit evidence of his increased tax burden. For guidance on what evidence is necessary to prove pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at [eeoc.gov](http://eeoc.gov)). The Agency shall complete the investigation and issue a FAD appealable to the EEOC determining the appropriate amount of damages.
- 4) Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$125,000 in nonpecuniary, compensatory damages.
- 5) Within 120 days of the date this decision is issued, the Agency shall consider taking disciplinary action(s) against AM and PM identified as being responsible for the unlawful discrimination perpetrated in this case. The Agency shall report its decision to the Commission. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline.
- 6) Within 90 days of the date this decision is issued, the Agency shall provide at least 2 hours of live training with a focus on the Rehabilitation Act to the PM and the AM, as well as other managers and supervisors at the Shingle Springs Post

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<sup>6</sup> We note that the AJ specifically found that Complainant was not obligated to mitigate his back pay due to the worsening of his medical condition as a result of the Agency's discriminatory actions. See Bench Decision Tr. at 30.

Office and Post Office Operations Group 1.<sup>7</sup> In light of the apparent disregard for the requirements of the Rehabilitation Act displayed by the responsible management officials in this case, we strongly recommend that the Agency provide additional hours of live training in addition to the minimum required 2 hours.

- 7) The Agency is also ordered to pay an attorney's fee of \$160,698.21 for work performed before the AJ. We note that this fee award is separate from the attorney's fee for work performed on these appeals, which may be pursued in accordance with the paragraph below entitled "Attorney's Fees."
- 8) Within 30 days of the date this decision is issued, the Agency is ordered to post a notice in accordance with the paragraph below entitled "Posting Order."

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

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Shingle Springs Post Office 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.

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<sup>7</sup> At the time of the events relevant to this case, the AM was the Acting Manager of Post Office Operations Group 1.

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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

August 22, 2022

Date