



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Gaynell A.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Logistics Agency),
Agency.

Appeal No. 2021005236

Hearing No. 532-2019-00069X

Agency No. DLAC-17-0165

DECISION

On September 24, 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 August 30, 2021, final order 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked for the Agency as a GS-0201-13 Human Resources Specialist (Human Resource Development) in Human Resources Services in Columbus, Ohio.

Complainant stated that she has multiple disabling medical conditions, including pain and numbness, nerve issues, arthritis, abdominal pain, Ehlers-Danlos Syndrome (EDS), migraines, periodic loss of sight and double vision, Attention Deficit Disorder (ADD) and memory issues, diaphragm issues, lung issues including asthma, chronic bronchitis, and breathing problems when sitting upright or standing for long periods, Postural Orthostatic Tachycardia Syndrome (POTS),

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.

esophageal problems, intestinal motility issues, irritable bowel, colitis, and diverticulosis, kidney stones and intermittent hydronephrosis, Raynaud's, persistent anemia; nutritional deficiencies, a sleep disorder and daytime sleepiness, and open wounds. Report of Investigation (ROI) at 269, 273-74. According to Complainant, her medical conditions affect her energy levels and her ability to walk, talk, breathe, eat, write, lift, sleep, see, sit, stand, work, and engage in activities of daily living such as cooking, bathing, and getting around her house. ROI at 269, 273-74. Complainant stated that, with accommodation, her disability did not limit her ability to perform the essential functions of her position. ROI at 277.

Complainant began working for the Agency in 2007. She averred that the Agency was aware of her disabilities when she was hired and had provided her with reasonable accommodations throughout her employment. ROI at 270-72. According to Complainant, since March 2014, one of her accommodations was an ergonomic office including a chair with a headrest, adjustable reclining capability, and adjustable foot and leg elevation. ROI at 272. Complainant averred that it is obvious that her reclining office chair is meant for a person with a disability. ROI at 272. Complainant stated that, when she was assigned a new supervisor ("Supervisor") in January 2017, her former supervisor informed her that she informed Supervisor of Complainant's medical conditions and accommodations. ROI at 270.

However, Complainant averred that, on January 20, 2017, she filed a request for reasonable accommodation after it became evident that the Agency did not have records related to some of the ways her former supervisor had accommodated her. ROI at 270. In the January 20, 2017, request for accommodation, Complainant requested the ability to flex her hours within Agency business hours as needed, to be exempt from core hour requirements, to telework up to five days per week as needed, and flexibility in her schedule to accommodate symptoms and medical appointments. ROI at 270. According to Complainant, she met with Supervisor and the Disability Program Manager in January and February 2017, and they reached verbal agreements that were memorialized in an April 12, 2017, written agreement. ROI at 63-64, 270. The agreement stated that Complainant could telework as needed if she informed her supervisor no later than 9:00 a.m. on the day she needed to telework, the ability to complete an eight-hour workday between 6:00 a.m. and 6:00 p.m. as long as she informed her supervisor if starting after 9:00 a.m., the ability to use leave as needed to make up for an eight-hour day, and the ability to waive her lunch break or take her lunch break outside 11:00 a.m. to 1:00 p.m. ROI at 271. However, Complainant alleged that the April 12, 2017, document negated some of the granted accommodations by stating that, to the extent possible, Complainant would be expected to follow Agency procedures for requesting leave, core hours, start and stop times, and lunch breaks. ROI at 271.

Complainant alleged that, from January 23, 2017, through May 26, 2017, Supervisor only asked her to serve as acting supervisor in her absence one time, while her three coworkers served as acting supervisor between three and seven times during the same period. ROI at 281-85. Supervisor stated that, when determining which employee she will designate in her absence, she reviews leave and work schedules and sends an email to the employee in question to confirm availability.

ROI at 304. According to Supervisor, although she rotated the acting designation to the extent possible, Complainant was only designated to act on her behalf on April 10, 2017, during this period because of her work and leave schedule and the availability of others. ROI at 304. According to Complainant, on many of the dates in question, she was available or could have been available if Supervisor had asked. ROI at 281-82. Complainant stated that, except when she has major surgeries, she generally works a full-time schedule and that, if asked by Supervisor, she would avoid scheduling medical appointments and surgeries during the dates she would be acting supervisor or reschedule her medical appointments. ROI at 285-86.

Complainant stated that, on May 15, 2017, Supervisor emailed her and told her that she needed to attend a May 18, 2017, all-hands meeting in person. ROI at 288. Supervisor stated that all employees were required to attend the meeting in person, that she verbally informed employees to attend the meeting in person on or about May 9, 2017, and that she sent an email reminder on May 12, 2017. ROI at 305. Supervisor averred that there was accommodative seating at the meeting location and added that Complainant did not have an approved reasonable accommodation to attend meetings via live stream at that time. ROI at 305-06.

According to Complainant, attending the meeting in person violated her reasonable accommodations because she could not recline or elevate her legs in accordance with her doctors' orders in the auditorium where the meeting was held. ROI at 279-80. Complainant stated that, while she and Supervisor did not have a formal written agreement to attend meetings by live stream, she "had been allowed to do this as an accommodation for years before [Supervisor] because there is no accommodative seating at the meeting venue that is like my chair." ROI at 288. On May 15, 2017, Complainant responded to Supervisor's May 12 email, "Are they not broadcasting this one? Usually, they give us a call in number and a link to view it online." ROI at 10. Supervisor did not respond to Complainant's May 15 email. ROI at 10.

Supervisor was on leave the week of May 15-19, 2017. ROI at 10, 280, 306. Complainant stated that, at the suggestion of her coworker serving as acting supervisor, she texted Supervisor on May 16, 2017, to ask to attend the meeting remotely, but her request was refused. ROI at 279-80, 289. Complainant stated that Supervisor told her that the live stream of the meeting was meant for employees who are stationed outside of Columbus. ROI at 289. According to Complainant, because she was denied the ability to use her chair accommodation and her telework accommodation to attend the meeting, on May 17, 2017, she submitted a request for reasonable accommodation to attend the in-person all-hands and other meetings remotely as a reasonable accommodation or, as an alternative, permanent full-time telework. ROI at 65-66, 278. On May 18, 2017, the Disability Program Manager emailed Complainant, confirming receipt of her May 17 reasonable accommodation request. ROI at 171-72. Complainant averred that she attended the meeting in person on May 18, 2017, because she feared she would be subjected to discipline if she did not. ROI at 288. Complainant alleged that sitting in the cramped auditorium for the two-hour meeting caused pain to her hips, legs, and lower back. ROI at 288, 292.

Supervisor approved Complainant's request to attend meetings via teleconference or live stream on May 25, 2017. ROI at 66. The approval stated that Complainant would need to notify her supervisor when she needed to invoke this reasonable accommodation. ROI at 66. On May 25, 2017, Complainant emailed Supervisor, notifying her that she was invoking the accommodation for every meeting in the auditorium. ROI at 67. On May 30, 2017, Supervisor responded that, as noted in the approval, Complainant would need to notify her each time she needed to invoke this accommodation. ROI at 67. Complainant alleged that, although her May 17, 2017, request for accommodation was granted on or about May 30, 2017, it is ineffective as granted because she has to make a request to Supervisor in order to attend a meeting remotely. ROI at 279. Complainant noted that she had texted Supervisor before the May 18, 2017, meeting and asked to participate remotely, to no avail. ROI at 279. Complainant averred that having to re-request an accommodation over and over creates a hostile work environment. ROI at 279-80.

On August 21, 2017, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination and harassment based on disability (physical) when:

1. During the period of January 23, 2017, through May 26, 2017, Supervisor designated Complainant to act in Supervisor's absence only one time;
2. On May 18, 2017, Supervisor required her to attend a meeting in person rather than view the meeting via streaming video; and
3. On May 30, 2017, Supervisor responded to a request for accommodation by indicating that "[Complainant] is authorized to attend meetings via teleconference and/or live streaming (from her duty location or telework site) when she is unable to report to the designated meeting location. [Complainant] will need to notify her supervisor when there is a need to invoke this Reasonable Accommodation."

At the conclusion of 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). Complainant timely requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's motion for a decision without a hearing and issued a decision without a hearing.

The AJ found the record adequately developed and determined that there were no genuine issues of material fact. The AJ found that Complainant is an individual with a disability under the Rehabilitation Act. The AJ determined that the record did not establish that Complainant was denied a reasonable accommodation for the May 18, 2017, meeting, noting that she made the request the evening before the meeting and that her request was approved approximately one week later. The AJ also found that there was no evidence that Complainant was denied the opportunity to serve as acting supervisor because the record showed that Complainant had limited availability on the dates her coworkers served as acting supervisor. Concerning Complainant's harassment claim, the AJ concluded that there was insufficient evidence of any harassment based on Complainant's disability.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that there are genuine issues of material fact that require a hearing. According to Complainant, she established a prima facie case of disparate treatment, harassment based on disability, and denial of reasonable accommodation. Regarding the Agency's legitimate, nondiscriminatory reason for not asking Complainant to act for Supervisor, Complainant contends that she would have been available to step in for Supervisor on nearly all of the dates her coworkers were asked to do so since she could have rearranged her schedule. Complainant argues that she had a reasonable accommodation to telework when necessary and she should have been allowed to participate in the all-hands meeting by live stream instead of being required to attend in person.

In response to Complainant's appeal, the Agency requests that the Commission affirm its final order.

ANALYSIS AND FINDINGS

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chap. 9, § VI.A. (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").

The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving party's evidence and must draw justifiable inferences in the non-moving party's favor. Id. at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case.

An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). We carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, Complainant must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, Complainant has not done so. Accordingly, the AJ properly issued a summary judgment decision.

Complainant contends that there is a genuine issue of material fact regarding her availability on many of the dates Supervisor designated one of her coworkers as the acting supervisor because she would have rearranged her schedule or cancelled planned leave, medical appointments, and surgeries. However, this is not material. Even assuming for the purposes of summary judgment that, if Supervisor had approached Complainant, she would have rearranged her schedule and/or cancelled planned leave and appointments, this would be insufficient to establish that the Agency's legitimate, nondiscriminatory reason for its actions was a pretext for disability discrimination. Supervisor stated that she determined which employee to ask based on their work schedule and planned leave, and the record reflects that Complainant's availability was limited and/or she took leave. There is no evidence that Supervisor asked Complainant's coworkers to serve as acting supervisors on days when they had limited availability or had requested leave. Upon review, we find no reason to disturb the AJ's decision with respect to claim 1.

In claim 2, Complainant alleged that she was denied a reasonable accommodation when she was required to attend the May 18, 2017, all-hands meeting in person, causing her significant pain because the seating in the auditorium did not meet her documented medical needs. We find that there are no material facts in dispute; however, we find that the AJ improperly determined that Complainant did not establish that the Agency violated the Rehabilitation Act.

In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability; (2) she is 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, No. 915.002 (Oct. 17, 2002). 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. §§ 1630.2(o) and (p). "The term "qualified," with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without

reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m).

It is undisputed that Complainant is an individual with a disability and a qualified individual with a disability. We find that Complainant requested to attend the May 18, 2017, all-hands in person meeting via live stream as a reasonable accommodation.

On May 3, 2017, Supervisor forwarded an email notifying her subordinates about the all-hands meeting, but Supervisor did not state that in person attendance was required. Agency Motion for Summary Judgment at Exhibit 10. On May 9, 2017, Complainant emailed Supervisor, stating that she would be having surgery on Friday, May 12, 2017, would work that morning until she had to report for surgery, and then take leave. Agency Motion for Summary Judgment at Exhibit 9. Complainant also noted that, last time she had this particular surgery, “they kept me on telework for a week.” Id. On May 11, 2017, Complainant emailed Supervisor that her surgery the next day would be early, so it was unlikely she would be able to work at all. Agency Motion for Summary Judgment at Exhibit 3. Complainant stated, “I also have concern about next week because I suspect that like last time the doctor will either take me out for several days next week or put me on telework.” Id. On May 11, 2017, Supervisor responded that she would be on leave the following week and asked Complainant to call or text her if she planned to take leave and/or telework. Id. On May 15, 2017, Complainant replied that she did not see Supervisor’s May 11th email until that day, as she had taken leave on May 12th. Id.

On May 12, 2017, while Complainant was on leave for surgery, Supervisor emailed her subordinates, “please note everyone is required to be in the office on Thursday due to the All Hands” meeting. ROI at 10. Complainant emailed Supervisor on May 15, 2017, asking if the meeting would be broadcast online, noting that she was usually provided with a call in number and a link to participate in such meetings remotely. ROI at 10. Complainant stated that her former supervisor had accommodated her in this manner “for years” because the seating in the auditorium did not allow her to recline or elevate her legs. ROI at 288. On May 16, 2017, Complainant texted Supervisor asking if she could view the all-hands meeting remotely. ROI at 10. Supervisor responded that she expected her employees to attend the all-hands meeting in person because the live stream was for employees located outside of Columbus. ROI at 10. Complainant responded that, while she was fine with reporting to the office, she did not usually go to the auditorium because of the seating and because of issues traveling there with her service animal. ROI at 10. Supervisor responded that Complainant could take the shuttle to the auditorium early to find adequate seating for herself and her service animal. ROI at 10. Complainant sent a subsequent text message explaining that the issue was the auditorium seating, not traveling to the auditorium, as the seating in the auditorium would not allow her to put her feet up like the chair in her office, causing swelling in her legs, breathing problems, stomach issues, neck pain, and shoulder pain. ROI at 10. Supervisor did not respond. ROI at 10.

On May 17, 2017, Complainant submitted a request for reasonable accommodation to the Disability Program Manager by email at 4:52 p.m., asking to participate in meetings by live stream. ROI at 173-74.

Complainant explained that the auditorium seating was not sufficient for her medical needs because the seats would not allow her to lean back or elevate her feet, as the chairs at her workstations in the office and at home allowed her to do. ROI at 174. The record contains photos of Complainant's office, which show an office chair capable of reclining as well as elevating the legs and the computer situated on a platform with a swivel arm to swing over someone reclining on the chair. ROI at 175-76.

Complainant attended the all-hands meeting in person, causing significant pain. However, Complainant did not feel that she had a choice. Supervisor told Complainant she expected her to attend the all-hands meeting in person, and Complainant did not receive a decision on her May 17, 2017, accommodation request until May 25, a week after the meeting.

The Disability Program Manager's May 18, 2017, email confirming receipt of the request for accommodation characterized Complainant as requesting to attend all-hands and other meetings via teleconference because she needed to be able to lean back in her chair and elevate her feet, which she could not do in the auditorium seating. ROI at 171. The Disability Program Manager stated that Complainant's existing medical documentation established the need to lean back in a chair and elevate her feet, which was accommodated in the workplace with a specialized chair and the ability "to live stream any auditorium event from [her] desk." ROI at 171. The Disability Program Manager described the office chair and the ability to live stream from her desk when needed as alternative accommodations already provided by the Agency. ROI at 172.

Based on the record, we disagree with the AJ's conclusion that Complainant was not denied a reasonable accommodation for the May 18 meeting because she did not submit her request until the evening before the meeting. As early as May 9, 2017, Complainant informed Supervisor that she would be having surgery on May 12, 2017, and that her doctor might put her on leave and/or telework the following week which was the week of the all-hands meeting. Moreover, although Supervisor notified Complainant about the meeting on May 3, 2017, the record does not show that Supervisor informed her that she expected Complainant to attend the meeting in person until the May 12th email. Complainant did not receive this email until May 15, 2017, because she was on leave for surgery. Furthermore, Complainant communicated that she required accommodation for the May 18th meeting by email to Supervisor on May 15 and by text message on May 16. Although Supervisor was on leave, she responded to some of Complainant's messages but did not make any effort to accommodate Complainant until after the May 18, 2017. The Agency possessed medical documentation that showed Complainant needed a chair that could recline and allow her to elevate her legs as needed. Complainant averred that Supervisor was aware of Complainant's use of the reclining chair. ROI at 311. Moreover, the Disability Program Manager's May 18, 2017, email confirming receipt of the May 17 request for accommodation reflects that the Disability Program Manager was under the impression that the ability to participate in meetings remotely was one of Complainant's existing accommodations. Therefore, we find that the record does not support the AJ's conclusion.

Further, we note that the Agency was clearly aware of Complainant's need for accommodation, including appropriate specialized seating, prior to the week of May 15, 2017, based on her approved reasonable accommodations, including her specialized chair found in her workstation. Although Supervisor asserted that the auditorium had some type of "accommodative seating" available, the Agency provided no evidence that seating in the auditorium met Complainant's specific needs.² Instead, Complainant attended the meeting in person and sat in a seat which did not accommodate her needs resulting in pain. Accordingly, we find that the Agency denied Complainant a reasonable accommodation by requiring her to attend the May 18, 2017, all-hands meeting in person. There was already a live stream of the meeting set up for employees located outside of Columbus, so providing Complainant to access the live stream would not have constituted undue hardship.

An Agency is not liable for compensatory damages under the Rehabilitation Act where it has consulted with Complainant and engaged in good faith efforts to provide a reasonable accommodation, but has fallen short of what is legally required. See Teshima v. U.S. Postal Serv., EEOC Appeal No. 01961997 (May 5, 1998). Where an Agency has failed to provide 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 her disability. 42 U.S.C. § 1981a(a)(3); Gunn v. U.S. Postal Serv., EEOC Appeal No. 0120053293 (June 15, 2007).

Upon review, we find that the Agency is liable for compensatory damages. Although the Agency possessed medical documentation that described Complainant's need for seating with the ability to recline and elevate her legs, Supervisor required Complainant to attend the all-hands meeting in the auditorium that did not have such seating. Moreover, the Disability Program Manager's May 18, 2017, email shows that the Disability Program Manager thought that attending meetings remotely was part of Complainant's existing accommodations, including the specialized chair and the ability to telework as needed. The Agency has therefore failed to establish that it made a good faith effort to reasonably accommodate Complainant.

With regard to claim 3, Complainant's contention that, moving forward, the accommodation will not be effective because she is required to request accommodation each time she needed to participate in a meeting by live stream, is not supported by the record. Under her reasonable accommodation, Complainant is required to inform her supervisor of the need for accommodation for meetings, and Supervisor stated that this was so she would know the location of her subordinates. The record reflects that the all-hands meetings in the auditorium occur once or twice per year, so it is not unreasonable for Complainant to remind management that she will need to attend the meetings by live stream as a reasonable accommodation.

² One of Complainant's coworkers described the accommodative seating as seats in the back of the auditorium with some room to stretch. ROI at 324. Complainant stated that none of the auditorium seats reclined or allowed her to elevate her legs. ROI at 278-79. On May 18, 2017, Complainant sat in the first available aisle seat, which was towards the front of the auditorium, noting that she had fallen at work in the past. ROI at 11.

Both Complainant and management should be more proactive so Complainant can be reasonably accommodated for future meetings.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE IN PART the Agency's final order fully implementing the AJ's summary judgment decision finding no discrimination and REMAND the matter for further action in accordance with this decision and the ORDER below.

ORDER

The Agency shall take the following remedial actions:

1. The Agency shall determine the amount of compensatory damages to which Complainant is entitled and pay Complainant that amount:
 - a. Within 60 calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages in connection with her claim that she was denied a reasonable accommodation as alleged in claim (2).
 - i. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993).
 - ii. Complainant shall cooperate with the Agency in this regard, including by responding to Agency requests for information and by completing any Agency forms. Complainant shall reply to any Agency requests for information within 30 calendar days.
 - b. Within 30 calendar days of the completion of the supplemental investigation, the Agency shall issue a final decision, with appeal rights to the Commission, addressing the issues of compensatory damages.
 - c. Within 60 calendar days of determining the amount of compensatory damages due Complainant, the Agency shall issue a check to Complainant for the undisputed amount.
2. Within 90 calendar days of the date this decision is issued, the Agency shall provide a minimum of four hours of in-person or interactive EEO training to the responsible management officials, including, at a minimum, Supervisor.

3. The required training shall address unlawful disability discrimination, with a special emphasis on management's obligation under Section 501 of the Rehabilitation Act to reasonably accommodate individuals with disabilities. The Commission does not consider training to constitute disciplinary action. For assistance in obtaining the necessary training, the Agency may contact the Commission's Training and Outreach Division via email, at FederalTrainingandOutreach@eeoc.gov.
4. Within 120 calendar days of the date this decision is issued, the Agency shall report whether it proposed discipline against the responsible management officials, including, at a minimum, 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).
5. Within 30 calendar days of the date this decision is issued, the Agency shall post a notice in accordance with the Statement 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 evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Columbus, Ohio facility 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

February 8, 2023
Date