



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

[REDACTED]  
Charles B.,<sup>1</sup>  
Complainant,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Federal Emergency Management Agency (FEMA)),  
Agency.

Appeal No. 2022001239

Agency No. HS-FEMA-00797-2020

**DECISION**

On January 5, 2022, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), per 29 C.F.R. § 1614.403(a), from a December 28, 2021 final Agency decision (FAD) on his 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**

Starting in April 2017, Complainant was employed by the Agency in the permanent career position of Program Specialist, GS-0301-12, in the Mission Support Division of Region Nine, Employee Services Branch, in Oakland, California. His first-level supervisor in this position was the Employee Branch Chief (“Branch Chief”). Effective October 27, 2019, Complainant accepted a competitive four-year excepted service appointment as a Field Support Unit Lead, IT-0301-2, in the same region and location, in the Incident Management Assistance Team Program (“the Team”) within the Response Division. His first-level supervisor for this position was the Incident Team Lead. Both jobs were a human resources function.

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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 February 27, 2020, Complainant filed an EEO complaint alleging that the Agency subjected him to discrimination based on his disability (post-traumatic stress disorder (PTSD)) and reprisal for his ongoing disability accommodation when:

1. On October 29, 2019, the Incident Team Lead denied Complainant's request to change his work-station to a quieter area as an accommodation to his disability.
2. On November 4, 2019, at the Incident Team Lead's behest, he was denied reasonable accommodation for his disability when he was instructed to change his weekly telework schedule so that his in-office days were changed from Monday and Wednesday to Monday and Thursday.
3. In November 2019, the Branch Chief denied his request to return to his career Program Specialist position.<sup>2</sup>

After an EEO investigation, Complainant requested a FAD without a hearing. The Agency then issued a FAD finding no discrimination or unlawful retaliation was established.

The instant appeal from Complainant followed.

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, per 29 C.F.R. § 1614.110(b), the FAD is subject to *de novo* review by the Commission. 29 C.F.R. § 1614.405(a). The *de novo* standard "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker... and... issue its decision based on the Commission's own assessment of the record and its interpretation of the law. EEOC Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A., p. 9-16 (REV. Aug. 5, 2015).

#### Coverage Under the Rehabilitation Act

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 record of such an impairment, or (3) is regarded as having such an impairment. 29 C.F.R. § 1630.2(g). A mental impairment is any mental or psychological disorder, including an emotional or mental illness. 29 C.F.R. § 1630.2(h). The impairment must substantially limit the ability of the complainant to perform a particular major life activity 29 C.F.R. § 1630.2(j)(1)(ii). Major life activities include, in part, concentrating, and thinking. 29 C.F.R. § 1630.2(i)(1)(i).

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<sup>2</sup> The Agency's definition of the complaint did not include the basis of reprisal. But on page 2, field 15 of the complaint form, Complainant alleged "Disability retaliation as it pertains to medical telework... and reasonable accommodation." We also added detail to the Agency's framing of the issues.

The definition of disability is construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the Rehabilitation Act. 29 C.F.R. § 1630.1(c)(4). The primary object of attention in cases brought under the Rehabilitation Act should be whether covered entity has complied with its obligations and whether discrimination has occurred, not whether an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment "substantially limits" a major life activity should not demand extensive analysis. 29 C.F.R. § 1630.2(j)(iii).

In May 2017, soon after starting his initial job with the Agency, Complainant requested to telework from home three days per week and work in the office the other two days as a reasonable accommodation for his disability. This was supported by a May 25, 2017 Veterans Affairs letter requesting this telework schedule for the duration of one year for medical reasons. The request was approved by the Director of Mission Support ("Director"), who was then Complainant's second-line supervisor, and implemented by Branch Chief. Report of Investigation (ROI), Exhs. F-2 at 3, Bates No. 178 (Branch Chief affidavit); F-1(a) at 1, ¶ 10, Bates No. 105 (Complainant's EEO investigatory rebuttal statement); F-1(b) at Bates No. 110 (email from Director to Branch Chief and Complainant and Branch Chief reply). Branch Chief confirmed that documentation established Complainant had a medical condition that formed the basis of his disability discrimination claim, and it was clear to her from the medical documentation that he needed to telework three days a week.

Later, Complainant submitted to the Agency June 15, 2018 and May 1, 2019 letters by Veterans Affairs, respectively, from another nurse practitioner and a physician, each renewing the same telework accommodation request for another year – one starting in June 2018 and the other in June 2019. ROI, Ex. F-1(q) at Bates Nos. 157 – 158 (non-redacted versions in the administrative file). Both letters explained that Complainant had service-connected disabilities which may present major challenges when confronted with congested or confining situations for extended periods of time, and he would benefit from teleworking three days a week. The documentation specifically referenced as a potential trigger for his symptoms, Complainant's approximately two-hour commute each way on Amtrak to and from home and the office. ROI, Exhs. F-4, at Bates Nos. 202 – 203 (December 20, 2019 Veterans Affairs physician letter. Non-redacted version in administrative file); F-1(a) at 1, ¶ 10, Bates No. 105 (Complainant's EEO investigatory rebuttal statement). Complainant wrote that his telework schedule, which continued throughout this time, was accommodating his PTSD. ROI, Ex. F-1(q) at Bates No. 155 (non-redacted version in the administrative file).

The FAD assumed, for purposes of analysis only, that Complainant is an individual with a disability. Based on his identifying his disability as PTSD and the medical documentation describing his symptoms which is consistent with this, we find Complainant is an individual with a disability.

The term “qualified” with respect to an individual with a disability means 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). The Agency does not contest that Complainant was qualified to continue working in his Team job.

Under the Commission's regulations, an agency is required to make reasonable accommodation of 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), 1630.2(p).

### Issue 1

This issue regards the location of Complainant’s assigned work-station. When he first reported to his second job on the Team’s 11<sup>th</sup> floor on October 29, 2019, he learned his cubicle was near the computer server room and was noisy because of cooling fan noise. Complainant stated when he saw the Incident Team Lead, he asked if he could use one of the desks near her because of the noise, she indicated no and did not point to another quieter location, so he immediately returned to his previous work location from his prior job on the 12<sup>th</sup> floor.

The EEO investigator asked the Incident Team Lead about her denying Complainant accommodation for his disability on October 29, 2019, but did not identify what accommodation. The Incident Team Lead responded that she had no knowledge of Complainant’s disability.

Without reference to work-station location, the Agency found that the Incident Team Lead did not deny a request by Complainant for reasonable accommodation on October 29, 2019, because she was unaware of Complainant’s disability or his need for accommodation that day.

In reply to Complainant’s appeal, the Agency submits a new declaration by the Incident Team Lead that Complainant’s cubicle was in a noisy location, and when he complained she immediately arranged for a cubicle for him on the 12<sup>th</sup> floor. The Agency argues that the Incident Team Lead was not aware of Complainant’s disability, but immediately granted him relief.

Regardless of whether Complainant took his own action on moving back to the 12<sup>th</sup> floor or the Incident Team Lead arranged it, Complainant was reasonably accommodated with an Agency cubicle away from the noise, and by the Incident Team Lead allowing him to stay there.<sup>3</sup>

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<sup>3</sup> Accordingly, we need not decide whether the Incident Team Lead was aware Complainant had a disability then and his workspace request was a reasonable accommodation request.

### Issue 2

It is uncontested that the Incident Team Lead wanted Complainant to change his weekly two in-office days from Monday and Wednesday to Monday and Thursday because the two teams in the Incident Management Assistance Team Program had mandatory Readiness Training on Thursdays. The Incident Team Lead stated that when the instruction was given to Complainant, she was unaware he had a disability or that he had any problem with changing his schedule. In fact, she said that when he was asked to switch his Wednesday in-office day to Thursday, he responded “okay, no problem.”

The letters by Complainant’s Veterans Affairs medical providers in May 2017, June 2018, and May 2019 all opine that Complainant would medically benefit from teleworking from home three days a week. But none indicate there was a medical or other need for him to telework from home on Wednesday versus Thursday, and Complainant does not explain such a need.

The Agency found that the Incident Team Lead was unaware of Complainant’s disability and his three-day-a-week telework schedule was continued as a reasonable accommodation.

The Agency found that Complainant’s medical documentation stated he “would benefit from a three-day medical telework schedule”. It found that Complainant’s telework schedule remained within his restrictions, and he did not submit any evidence that his telework arrangement was no longer effective. We agree.

### Issue 3

On November 14, 2019, just a little more than two weeks after starting his Team job, Complainant emailed Branch Chief requesting that she accept his request to exercise his reinstatement privileges to return to his prior career position under her. At that time, this job had just been posted to competitively refill. The evidence shows that if Branch Chief accepted Complainant’s request to exercise his reinstatement privileges, he could return to his old position noncompetitively.

According to the EEO counselor’s report, Director relayed to the EEO counselor that Region 9 had 100 vacancies at the time, and Complainant could be reinstated to a vacant (career) position. Director also relayed that Complainant was a high performer, professional all the time, and very valuable.

Regarding Complainant’s reinstatement request, on December 6, 2019, Branch Chief emailed him asking whether he really needed to telework three days a week while reporting to Oakland since he did not telework when deployed in the field. In response, Complainant submitted to Branch Chief the referenced December 20, 2019 Veterans Affairs physician letter that reiterated his medical need for three days a week of telework particularly regarding his long commute from home to the Oakland office.

The physician explained Complainant does not need this accommodation when deployed because he is provided hotel room or lodging that is reasonably close the worksites, so there was no need for the lengthy Amtrak ride. The physician added that if Complainant was assigned more than two in-office days in a week in Oakland, he could be reasonably accommodated with the provision of nearby hotel lodging.

Branch Chief stated that when Complainant worked in the first job, he performed what was asked except he was not willing to handle recruitment actions, and on-boarding was not something that can be done virtually. She stated she told Complainant that if he returned, he would have to do recruitments and take his turn doing new hire on-boarding, which was four and possible five days (in a week), and he responded again with the note by his medical provider about hotels or lodging. Branch Chief stated this was not something the Region could accommodate.

On January 13, 2020, Branch Chief emailed Complainant that based on the workload in the Employee Services Branch, she decided to go in a different direction, meaning she chose a person who applied via the vacancy announcement to fill Complainant's old job. In her investigative statement, Branch Chief stated that when Complainant asked to be reinstated to his old position, the recruitment process had started, and she told him he should apply for the vacancy announcement like any other applicant. She stated Complainant applied, he was interviewed, and a decision was made to choose the selectee. When asked to respond to Complainant's contention that she denied his request to return to his old job based on his disability, Branch Chief responded it was not based on disability, rather someone was needed who could perform the full-range of duties including on-boarding, that on-boarding cannot be done virtually, all other staff do onboarding, and it was decided to hire a person who applied per the vacancy announcement to fill Complainant's old position who could hit the ground running on all aspects of the job.

The Agency found that Branch Chief denied Complainant's request for reinstatement to his previous position because she already began the recruitment process by advertising it with a vacancy announcement. In reply to Complainant's appeal, the Agency reiterates this.

Branch Chief stated that when Complainant was in his old position, he only wanted to do work in his specialty area, which was payroll, leave and pay issues, and this impacted other staff, but workload adjustments were made.

Before working in his old job in Oakland, Complainant was employed by FEMA's Office of the Chief Component Human Capital Officer, Human Resources Operations Division in Washington, DC as a Program Analyst, GS-0343-09.

In his EEO investigatory rebuttal statement, Complainant stated Branch Chief personally recruited him to his old job, gave him a link to the vacancy announcement, interviewed him with one other, and the urgency was for him to support human resources functions including payroll, RUMBA,<sup>4</sup> time and attendance; field operations, policy and procedures; and processing actions using the Federal Human Resources site (FHR). This selection resulted in a promotion to GS-11/12, effective April 30, 2017. Complainant stated he performed more functions than the Branch Chief mentioned, such as conducting investigations for congressional inquiries assigned by Director, being deployed to the field as a “fix it guy” for all human resources issues and wearing many hats. Complainant stated he never communicated to the Branch Chief that he was not willing to process recruitment actions, he performed onboarding in the past when the Branch Chief had no staff, and on-boarding could be done virtually. Complainant added that in the years he worked for the Branch Chief, he received performance appraisal ratings of “exceeded expectations”.

Based on the Branch Chief’s emails and affidavit, we find she did not accept Complainant’s request to be reinstated to his old career position under her because she did not want to accommodate Complainant’s PTSD by continuing his telework of three days a week. While the Branch Chief advised Complainant that reinstatement eligibility does not guarantee a job offer, and the record shows that under federal regulations the Branch Chief was free to reject Complainant’s request, the rejection must still be nondiscriminatory.

We find that the preponderance of the evidence shows Complainant could perform the essential functions of his old position in the Employee Services Branch with the reasonable accommodation of telework. He stated Director, who was his second line supervisor when he worked in the Branch, told him when he sought reinstatement that the Mission Support Division needed him because he knew human resources. This is consistent with Director relaying to the EEO counselor that Complainant was a high performer and very valuable. Complainant stated onboarding had been done virtually, and the Branch Chief did not identify any specific parts of on-boarding that must be done in-person. Moreover, Complainant stated that in the more than two years he worked in his old position under the Branch Chief, he received performance appraisals ratings of “exceeded expectations”. The Agency’s contention, in essence, that Complainant was unable to perform all the essential functions of his old job under Branch Chief with the reasonable accommodation of telework is unpersuasive for the above reasons and because the Agency already gave him the same accommodation in that job for over two years, which he asked to return to just a little more than two weeks after he left the job. The Agency’s decision to deny Complainant reinstatement because of his reasonable accommodation of telework for his disability violated the Rehabilitation Act.

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<sup>4</sup> An internet search suggests RUMBA allows users to connect to legacy systems via a desktop computer.

### CONCLUSION

The FAD's finding of no discrimination on issues 1 and 2 is AFFIRMED. The FAD's finding of no discrimination on issue 3 is REVERSED. The Agency must comply with the Order set forth below.

### ORDER

The Agency is ordered to take the following remedial actions:

1. Within 30 days of the date of this decision, the Agency shall offer to reinstate Complainant to a career position of Program Specialist, GS-0301-12, Regional Offices, Region 9, Mission Support Division, Employee Services Branch in Oakland, California, or with his consent, offer him another substantially equivalent position.
2. The Agency shall determine the appropriate amount of back pay, if any, with interest, and other benefits due the Complainant, per 29 C.F.R. § 1614.501, no later than 60 days after the date of this decision. The back pay period is from December 2, 2019,<sup>5</sup> until Complainant accepts or rejects the ¶ 1 offer. 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.<sup>6</sup> 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 60 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 must be filed with EEOC's Compliance Officer, at the EEOC Public Portal at <https://publicportal.eeoc.gov/Portal/Login.aspx>, or alternatively using regular mail addressed to the Office of Federal Operations, Equal Employment Opportunity Commission or by certified mail addressed to 131 M Street, NE, Washington, DC 20507.
3. The Agency must do a supplemental investigation on the issue of Complainant's entitlement to compensatory damages and afford him an opportunity to establish a causal relationship between the Agency's discriminatory action and his pecuniary and non-pecuniary losses, if any. Within 15 days of the date of this decision, the Agency must notify Complainant he can submit evidence on his compensatory damages per EEOC Enforcement Guidance: Compensatory and Punitive Damages Available under sec 102 of

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<sup>5</sup> Complainant requested reinstatement on November 14, 2019. We find the Agency would have been enough time to process this action by December 2, 2019.

<sup>6</sup> The career position to which Complainant asked to be reinstated had a full performance level of GS-12 and paid virtually the same as Complainant's position on the Team. ROI, Ex. F-1 at Bates No. 79 (SF-50 effecting Complainant's move to the Team). Accordingly, we are not requiring the Agency to pay Complainant adverse tax consequences resulting from getting a one-time lump sum back pay payment for earning loss over time.



the CRA of 1991, OLC Control No. EEOC-CVG-1992-3 (July 14, 1992). The guidance can be found at: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-compensatory-and-punitive-damages-available-under-sec-102-cra> (but punitive damages are not available against the federal government). Complainant must cooperate in the Agency's efforts to compute the amount of compensatory damages and provide all relevant information requested by the Agency within 30 days of its requests. The Agency must determine the amount of compensatory damages within 60 days of the date of this decision, and pay that amount to Complainant and issue a FAD appealable to this office within 60 days after it makes the above determination.

4. The Agency is directed to conduct training for Branch Chief addressing the Rehabilitation Act requirements on reasonable accommodation, and that they also apply for the position an individual seeks but is not currently occupying. This training must be in-person and be for a minimum of four hours. The training must be completed within 90 days from the date of this decision.
5. The Agency must consider taking appropriate disciplinary action against Branch Chief. If the Agency decides to take disciplinary action, it must identify the action taken. If the Agency decides not to take disciplinary action, it must set forth the reason(s) for its decision not to impose discipline. If the Branch Chief has left the Agency's employ, the Agency must furnish documentation of her departure date. The Agency must report actions it took regarding this paragraph within 120 days of the date of this decision.
6. The Agency must, within 30 days of the date this decision is issued, post a notice in accordance with the Order below.

The Agency must submit a report of compliance in digital format as written in the statement entitled "Implementation of the Commission's Decision." The report must be submitted via the Federal Sector EEO Portal (FedSEP). 29 C.F.R. § 1614.403(g). 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.

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). 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 Region 9, Mission Support Division in Oakland, California copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are

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

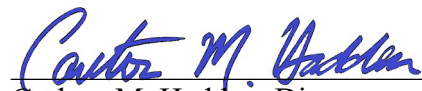
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

January 26, 2023

Date