



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

[REDACTED]  
Tania O.,<sup>1</sup>  
Complainant,

v.

Christine Wormuth,  
Secretary,  
Department of the Army,  
Agency.

Appeal No. 2022001333

Agency No. ARHOOD21MAY01529

**DECISION**

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 January 10, 2022 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

**BACKGROUND**

During the period at issue, Complainant worked as an Office Support Assistant at the Agency's Integrated Disability Evaluation System, Patient Administration Department at Fort Hood in Texas.<sup>2</sup>

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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.

<sup>2</sup> According to Complainant's position description, her position provides clerical administrative processing of forms, reports, and other material to support health care treatment services provided to service members undergoing the Physical Disability Evaluation processing. The assignment primarily involves assurance that the service member is eligible for treatment in accordance with the Agency's regulations and guidelines. Report of Investigation (ROI) at 75.

On June 3, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of her race (African American), sex (female), and disability (Hidradenitis Suppurativa (HS)). By letter dated June 14, 2021, the Agency accepted Complainant's complaint for investigation and determined that it was comprised of the following claims:

1. On April 14, 2021, [Complainant's supervisor] denied [her] reasonable accommodation request to telework;
2. [A co-worker] ordered her bed/dog training pads as an alternative to [her] reasonable accommodation request.

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 EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

Under a disparate treatment analysis, the Agency found that assuming Complainant established a prima facie case of discrimination, the Agency articulated legitimate, nondiscrimination reasons for its actions which Complainant failed to establish was pretext for discrimination. Final Agency Decision (FAD) at 5-6, 12. The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Under a reasonable accommodation analysis, the Agency found that Complainant was a qualified individual with a disability. FAD at 10. The Agency further found that Complainant's supervisor and other Agency officials engaged in the interactive process with Complainant and provided her with alternative accommodations such as a sit-stand desk, a private office closer to restroom, toilet seat covers, an alternate work schedule and telework on Tuesday and Thursday. Final Agency Decision (FAD) at 10. Thus, the Agency found that it made a good faith effort to accommodate Complainant and that she was unable to show that the provided accommodations were not effective. Id.

Regarding claim (2), the Agency also found no discrimination. The Agency reasoned:

Complainant agreed to seat covers when she signed the alternative accommodation decision. The evidence in the record shows miscommunication as to what type of seat covers were requested. Complainant's accommodation request states she had leakage of bodily fluids on her clothing and chair. No evidence in the record indicates the confusion over pad type was purposeful on the part of [named] Agency officials or counter to the medical information Complainant provided. No evidence indicates the pads were intended for animus

or ordered to embarrass her. Additionally, no evidence or testimony in the record shows that [a co-worker] was made aware Complaint required the pads because of a medical need or that she had a disability requiring such pads.

FAD at 11.

The instant appeal followed. Complainant, through her attorney, asserts that the Agency failed to provide Complainant with an effective reasonable accommodation and requests that we reverse the Agency's final decision regarding this matter.

Complainant's attorney notes that the Agency did not dispute that Complainant is an individual with a disability. In addition, Complainant's attorney sets forth that Complainant's HS substantially limited her ability to walk, sleep, sit, and concentrate. Complainant's attorney sets forth that Complainant is also a "qualified" individual with a disability. Complainant's attorney notes that the Agency does not dispute that Complainant can perform the essential functions of her position with or without accommodation. In addition, Complainant asserts that she successfully performed her duties while teleworking on a full-time basis during the COVID-19 pandemic.

Complainant's attorney asserts that Complainant provided medical documentation of her medical condition, limitations and recommendation for telework due to her condition. Complainant, on appeal, asserts "[t]he Agency did not contend that providing [her] episodic telework when her HS symptoms flared would cause it undue hardship or that it would require the removal of any of her essential functions." Complainant further sets forth that the Agency's alternative accommodations were ineffective. Specifically, Complainant's attorney states "[n]one of the alternative accommodations the Agency provided [Complainant] alleviated her need to abstain from sitting, walking, and wearing clothing that aggravated her painful lesions during unpredictable flare-ups of her condition. The only accommodation the Agency provided that even remotely addressed her needs – the fixed telework days – was also ineffective because [Complainant's] condition did not only flare on Tuesdays and Thursdays. Significantly and critically, neither [Complainant] nor her doctor can predict those days when her condition may flare." Complainant's Brief at 12 (internal citations omitted).

Complainant asserts that the Agency never contended that providing her situational telework during her flare-ups would cause undue hardship. Complainant's attorney notes that the Agency failed to consider effective accommodations until after she filed an EEO complaint, and did not take her condition seriously; thus, the Agency failed to make a good faith effort to accommodate her. Specifically, Complainant states that "the Agency refused to provide any telework at all until July 15, 2021, nearly four months after [Complainant] requested episodic telework, and over one month after she filed a formal EEO complaint about the Agency's failure to accommodate her." FAD at 16.

In response, the Agency requests that we affirm its final decision finding no discrimination. The Agency found that it articulated legitimate, nondiscriminatory reasons for its actions which

Complainant failed to establish was pretext. Regarding a reasonable accommodation analysis, the Agency acknowledged that Complainant was a qualified individual with a disability and set forth that after the interactive process, Complainant agreed to an alternate reasonable accommodation. Agency Brief 11-12.

### ANALYSIS AND FINDINGS

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

#### *Claim (1)-Denial of a Reasonable Accommodation Claim*

Under the Commission’s regulations, a federal agency may not discriminate against a qualified individual on the basis of disability and is required to make reasonable accommodations to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that reasonable accommodation would cause undue hardship. See 29 C.F.R. § 1630.2(o), (p). To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a “qualified” individual with a disability pursuant to 29 C.F.R. § 1630.2(m), and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC Notice No. 915.002(Oct 17, 2002) (Enforcement Guidance on Reasonable Accommodation). An individual with a disability is “qualified” if he or she satisfies the requisite skills, experience, education, and other job-related requirements of the position that the individuals holds or desires and, with or without reasonable accommodation and can perform the essential functions of such position. 29 C.F.R. § 1630.2(m).

A reasonable accommodation must be effective. See U.S. Airways v. Barnett, 535 U.S. 391, 400 (2002). If more than one accommodation will enable an individual to perform the essential functions of his or her position, “the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations and may choose the less expensive accommodation or the accommodation that is easier to provide.” Enforcement Guidance on Reasonable Accommodation at Question 9.

Allowing an employee to telework is a form of reasonable accommodation. “An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable

accommodation, but only if this accommodation would be effective and would not cause undue hardship.” An “undue hardship” is a significant difficulty or expense in light of the agency’s circumstances and resources. See 29 C.F.R. § 1630.2(p). The Agency bears the burden of establishing, through case-specific evidence, that a reasonable accommodation would cause an undue hardship. U.S. Airways, Inc. v. Barnett, 535 U.S. at 402. “Generalized conclusions will not suffice to support an undue hardship.” Enforcement Guidance on Reasonable Accommodation, “Undue Hardship Issues.” An employer may deny an employee’s request to telework if it can show that an alternative accommodation would be effective or that telework would cause an undue hardship. Enforcement Guidance on Reasonable Accommodation, at Question 34. The Agency has the burden of production to show that there is an effective alternative accommodation.

The record reflects that on March 19, 2021, Complainant submitted a request for reasonable accommodation, specifically telework. Report of Investigation (ROI) at 116. Complainant, in her accommodation request asserted that she has “Hidradenitis Suppurative (HS) a painful skin [condition]. The [condition causes] lumps to form underneath the skin and they break open or tunnels can form. I get the lumps under my armpits, under my breast, on my buttocks which prevents me from sitting, but I am mostly affected in my groin area, which is painful for me to walk because any type of clothes that can rub against it begins to irritate the lumps...They break open and leak all over my clothes...which causes me the need to change my clothes or pad my clothes. Id.

Complainant’s supervisor, via memorandum dated March 22, 2021, requested medical documentation from Complainant to support her reasonable accommodation request. ROI at 122. In a letter dated March 25, 2021, Complainant’s physician stated in pertinent part that Complainant was under her care for HS, “an inflammatory condition that affects mostly the skin, but symptoms can be debilitating...The disease presents with painful nodules and plaques (boils) mostly involving skin folds (especially the armpits, groin, and the area under the breasts). Active flaring lesions are not only painful but can also create a significant amount of drainage. Flare ups depend on the severity and activity of the disease and can happen daily in patients that are poorly controlled, furthermore it can take several days for the lesions to improve...Especially, painful lesions in the groin/buttocks area make prolonger sitting, standing, and walking very difficult. Furthermore, certain clothes, work attire can be difficult to wear during flares. Another debilitating factor is the drainage, which can be quite significant during flares. Patients can feel very embarrassed by the leaking drainage that often shows on clothing as well as the associated odor. Lastly, using public bathrooms with open/draining sores in the groin/buttocks area can feel very uncomfortable for affected patients. Remote working from home can be very helpful during flares to allow for increased comfort and reduce stress and embarrassment.” ROI at 105.

On April 14, 2021, Complainant’s supervisor did not approve telework but provided alternate accommodations. ROI at 128. Specifically, the supervisor offered a sit-to-stand desk and noted that Complainant was currently assigned to a private office located near several restrooms. ROI at 129. Complainant signed the April 14, 2021 document but indicated that she disagreed with

the accommodations offered and initiated an informal dispute resolution process. ROI at 130. On May 26, 2021, Complainant again was not approved for telework. ROI at 135. However, the Chief, Patient Administration Division (Chief) offered Complainant toilet seat covers and an alternate work schedule from 7 a.m. to 4:30 p.m. Monday to Fridays. ROI at 134. Complainant responded that she disagreed with the offered accommodations and was initiating an EEO complaint. ROI at 136.

In an email dated June 3, 2021, Complainant informed her doctor, “[m]y supervisor wanted me to ask you if you had any other alternatives, you could recommend other than teleworking. I have included my duties I do at work and a [position description]. If you don’t have any other suggestions that is fine, just please state that in the letter.” ROI at 109. In a letter dated June 4, 2021, the doctor set forth that Complainant is still under her care for HS and that she recommended remote work as much as possible while they are trying to control her disease. ROI at 110.

On July 15, 2021, the Agency issued a memorandum setting forth that Complainant could request leave under the Family and Medical Leave Act (FMLA). The Agency also set forth that Complainant could telework Tuesdays and Thursdays and work from her regular worksite on Mondays, Wednesdays, and Fridays. ROI at 249. On July 15, 2021, Complainant initially indicated that she agreed with the accommodation offered. ROI at 250. However, shortly thereafter, in an affidavit dated August 6, 2021, Complainant set forth that the two days of telework were not working for her. ROI at 178.

The Agency found that Complainant was a qualified individual with a disability. FAD at 10; Agency Brief at 11. We further note that Complainant’s supervisor asserted that Complainant was able to perform her essential functions. Report of Investigation (ROI) at 187. Complainant’s physician set forth that sitting, standing, and walking are very difficult during flares of her condition and that flare-ups of HS can be debilitating. ROI at 105. In addition, Complainant asserted that the condition impacts various major life activities including concentrating “because of the pain, and [she] also h[as] to spend a lot of time adjusting [her] clothes...” ROI at 181. Based on the foregoing, we find that Complainant is a qualified individual with a disability.

We find that while the Agency offered alternate accommodations, as set forth above, these accommodations were not effective. Complainant indicated, which was supported by her medical documentation, that her condition during flare ups was painful and impacted her concentration. ROI at 105, 173. Complainant and her physician noted that wearing certain clothing could be painful. ROI at 105, 173. In addition, the Chief, in her affidavit, set forth that Complainant asked, “do you want me to come to work with no underwear and bra, and the boil bursts drains onto my clothing and chair and causes a [foul] odor.”<sup>3</sup> ROI at 195. Complainant’s treating physician set forth in March 2021 that remote working from home can be helpful during

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<sup>3</sup> Complainant asserts that she can’t wear undergarments during flare-ups and that while teleworking from home she does not have to wear them. ROI at 176.

flare ups. ROI at 105. In addition, in June 2021, Complainant's physician recommending allowing Complainant to allow remote work as much as possible while she tried to control Complainant's condition. ROI at 110. Complainant's physician indicated that Complainant's condition was difficult to predict and not well-controlled during the period in question. ROI at 106-107. Thus, we concur with Complainant's attorney that telework for two set days would not be an effective accommodation when Complainant could also experience flare ups of her condition on Monday, Wednesdays, and/or Fridays.

The Agency has not shown that allowing Complainant to telework on a situational basis during flare ups of her condition would have resulted in an undue hardship. In addition, Complainant, in her affidavit, asserted that, during the COVID-19 pandemic, she successfully performed her duties for ten months via telework. ROI at 178. See What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (Updated July 12, 2022) at Question D.16 ("the period of providing telework because of the COVID-19 pandemic could serve as a trial period that showed whether or not this employee with a disability could satisfactorily perform all essential functions while working remotely...").

Where a finding of discrimination involves a failure to provide a reasonable accommodation, damages may be awarded if the Agency fails to demonstrate that it made a good faith effort to provide the complainant with a reasonable accommodation. 42 U.S.C. § 1981a(a)(3); see also Jones v. Dep't of Agric., EEOC Appeal No. 0120080833 (July 18, 2012). The record reflects that while Complainant submitted a request for reasonable accommodation in March 2021, the Agency did not provide any telework until months later in July 2021, and subsequent to Complainant filing a formal EEO complaint in June 2021. The Agency offered Complainant telework only for two set days even though Complainant's physician recommended remote work as much as possible during flare-ups. Complainant's treating physician did not indicate that two set telework days would be sufficient to accommodate Complainant's condition during flare-ups. Thus, the Agency appears to have substituted its judgment for that of Complainant's treating physician and determined that two set days of telework would be sufficient to accommodate her disability. Under these circumstances, we find that the Agency did not engage in good-faith efforts to accommodate Complainant. See Alonso T. v. Equal Empl. Opp. Comm., EEOC Appeal No. 0120162340 (Jan. 15, 2020) (finding that the agency did not engage in good faith efforts to accommodate complainant when it provided her with one day of telework while the medical documentation recommended three days of telework, the Commission reasoned that an Agency official substituted her judgment for that of complainant's doctor).<sup>4</sup>

### *Claim (2)*

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<sup>4</sup> Having found that the Agency discriminated on the basis of disability, we need not determine whether its actions were also discriminatory based on race or sex because it would not alter the relief to which Complainant is entitled.

Complainant asserts that the Agency subjected her to harassment when it had a co-worker deliver “puppy pads” to her desk. ROI at 176-177. Complainant asserts that this was done to embarrass and humiliate her. Id. To establish a claim of harassment a complainant must show that: (1) they belong to a statutorily protected class; (2) they were subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on their statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been “sufficiently severe or pervasive to alter the conditions of [complainant’s] employment and create an abusive working environment.” Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser’s conduct should be evaluated from the objective viewpoint of a reasonable person in the victim’s circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

We find that Complainant failed to establish that she was subjected to a hostile work environment regarding the alleged incident set forth in claim (2). Complainant asserted during a meeting she told the Chief that she needed toilet seat covers but not pads for her condition. ROI at 177. The Chief, in her affidavit, asserted that puppy pads were not ordered for Complainant but “disposable medical chucks.” ROI at 202. The Chief stated that Complainant requested padding due to leakage through her clothing. ROI at 202-203. We concur with the Agency that while there may have been confusion over what type of padding or covers Complainant needed, Complainant has not established, by a preponderance of the evidence, that this incident occurred as a form of harassment based on her protected classes.

Regarding claim (2), the record reflects that Complainant also alleged that the Agency provided one of her co-workers (C1) with information regarding her condition and that he did not have a need to know this information.<sup>5</sup> ROI at 8, 174. The Rehabilitation Act prohibits the disclosure of an employee’s medical information except in certain limited situations to the following personnel: supervisors and managers regarding reasonable accommodations; first aid and safety personnel; government officials investigating statutory and regulatory compliance; workers compensation offices or insurance carriers; and officials responsible for maintaining records and reporting on the processing of reasonable accommodation requests. Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Question 20 (Oct. 20, 2000). Disclosure of confidential medical information in a manner that does not conform to one of these five exceptions constitutes a violation of the Rehabilitation Act (sometimes referred to as a “per se” violation). Scott v. United States Postal Service, EEOC Appeal No. 0120103590 (Sept. 19, 2012), req. for recons. den. EEOC Request No. 052013008 (April 16, 2013).

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<sup>5</sup> The record reflects that while the co-worker was a supervisor, he was not in her supervisory chain during the time of the incident. ROI at 174, 286.



Complainant alleges that on May 20, 2021, C1 delivered the sit-stand desk and pads to her office and stated that the items were due to her reasonable accommodation request. ROI at 177. An employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. Enforcement Guidance on Reasonable Accommodation at Question 42. The Chief asserted that she did not disclose Complainant's medical condition to C1. ROI at 196. She stated that C1 became involved in the process because only "hand receipt" (HR) holders are authorized to order and receive supplies and that she instructed C1 to deliver the items to Complainant. Id. The Chief stated that since this incident, the process is that if there is a reasonable accommodation request in which supplies are needed, HR holders order the equipment but that the HR holder delivers the supplies to the supervisor and the supervisor provides it to the employee who requested the accommodation. Id.

C1, in an affidavit, asserted that he was not informed of Complainant's medical condition. ROI at 286. C1 stated that the Chief requested that he order the pads and later was told to provide them to Complainant. ROI at 288. The EEO Investigator did not expressly ask C1 if he had been informed by management that Complainant was receiving a reasonable accommodation. Complainant had also requested that the EEO Investigator interview two employees regarding this matter stating that C1 had informed them that he ordered items for her as part of a reasonable accommodation. ROI at 167-168. The EEO Investigator only interviewed one of these employees. The employee was an Office Support Assistant and asserted that "there is nothing that is not shared between supervisors in this clinic. If a supervisor knows anything regarding their employee, it is shared amongst all supervisors." ROI at 291. However, the EEO Investigator did not expressly ask this employee if C1 told him that Complainant was receiving a reasonable accommodation. Based on the foregoing, we find that the record is insufficient for a determination as to whether there was a violation of the Rehabilitation Act concerning a improper medical information disclosure and order that the Agency conduct a supplemental investigation regarding this matter as set forth in the Order below.

Accordingly, we REVERSE the Agency's final decision finding no discrimination regarding claim (1) and remand this matter to the Agency for compliance with the Order below. Regarding claim (2), we AFFIRM the Agency's final decision finding no discrimination under a hostile work environment analysis. However, regarding the portion of claim (2) regarding an unlawful disclosure of medical information in violation of the Rehabilitation Act, we VACATE the Agency's decision finding no violation and remand this matter to the Agency for a supplemental investigation.

#### ORDER

1. Within thirty (30) calendar days from the date this decision is issued, the Agency shall provide Complainant with an effective reasonable accommodation, if still needed, such as situational telework during HS flare-ups.

2. Within forty-five (45) calendar days from the date this decision is issued, the Agency shall restore any leave that Complainant may have used due to the Agency's failure to provide her with an effective accommodation.
3. Within ninety (90) calendar days from the date this decision is issued, the Agency shall conduct a supplemental investigation on the issue of Complainant's entitlement to compensatory damages with respect to the finding of denying Complainant an effective reasonable accommodation and determine the amount of compensatory damages to which Complainant is entitled. Complainant will cooperate in the Agency's efforts to compute the amount of compensatory damages, if any, and provide all relevant information requested by the Agency. The Agency shall issue a final decision on the issue of compensatory damages with appeal rights to the Commission. A copy of the final decision must be provided to OFO as referenced below in the section entitled "Implementation of the Commission's Decision." Within thirty (30) days of its determination of the amount of compensatory damages owed to Complainant, the Agency shall pay Complainant that amount.
4. Within ninety (90) days from the date this decision is issued, the Agency shall provide eight (8) hours of in-person or interactive training to Complainant's supervisor and the Chief. The training shall emphasize the Rehabilitation Act's requirements with respect to an Agency's duties to provide reasonable accommodations to individuals with disabilities.
5. Within sixty (60) days from the date this decision is issued, the Agency shall consider taking disciplinary action against the responsible management officials (Complainant's supervisor and the Chief during the relevant time period). If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).
6. The Agency shall pay reasonable attorney's fees and costs pursuant to the section below entitled "Attorney's Fees."
7. The Agency shall post a notice in accordance with the paragraph entitled "Posting Order."
8. Within ninety (90) days from the date this decision is issued, the Agency shall conduct a supplemental investigation on the issue of whether the Agency committed a per se violation of the Rehabilitation Act by disclosing to individuals who did not have a need to know that Complainant was receiving a reasonable accommodation. The evidentiary record shall include a supplemental affidavit from C1 expressly asking him if Agency officials informed him that Complainant was receiving a

reasonable accommodation. The Agency shall also obtain affidavits from the two employees that Complainant proposed as witnesses which she asserts that C1 told them that she was receiving a reasonable accommodation. ROI at 167-168. The affidavits shall specifically address whether they were informed by C1 or another Agency official that Complainant was receiving a reasonable accommodation. The Agency shall obtain any other affidavits from individuals that appear to have knowledge of this alleged incident. Finally, the Agency shall provide Complainant an opportunity to provide an additional affidavit on this issue. The Agency shall then issue a new final decision, with appeal rights to the Commission, as to whether the Agency committed a per se violation of the Rehabilitation Act.

The Agency is 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). The report must include supporting documentation that the corrective action has been implemented.

#### POSTING ORDER (G0617)

The Agency is ordered to post at its Fort Hood 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 31, 2023  
Date