



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

[REDACTED]
Anne G.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2022003036

Agency No. 200J-0589-2020105825

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 May 5, 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

At the time of events giving rise to this complaint, Complainant worked as a Social Worker (GS-11) at the Agency's Homeless Program (Behavioral Health), Kansas City Medical Center in Kansas City, Missouri.

On November 16, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American/Mixed), color (Dark), religion (Christian), and disability (Relapsing Remitting Multiple Sclerosis which causes her to experience issues with her speech and to appear to have a speech impediment during flare-ups), as well as in reprisal for prior protected EEO activity, when:

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.

1. since 2013, Complainant has been assigned an unfair number of cases that included cases based solely on race or religion;
2. in or about 2018, Complainant's first-line supervisor, the Program Manager, referred to Complainant as "girl";
3. in or about August 2020, Complainant was not selected for the position of a GS-11 Social Worker (HUDVASH Housing Specialist), posted under vacancy number CBDA-10410505-19-MHME-BU;
4. on various dates, multiple coworkers subjected Complainant to racial slurs, disparaging remarks, and a comment about a past "lynching";
5. in June 2020, Complainant was forced to participate in an event where racial slurs and stereotypes were made, and she was required to roleplay a "slave";
6. on August 6, 2020, Complainant was notified by her second-line supervisor that the Program Manager made disparaging remarks about Complainant's physical appearance and lisp; and
7. on various dates, Complainant was denied training opportunities.

The Agency accepted claims 1, 3, and 7 as independent actionable claims, in addition to an overall discriminatory harassment claim. Report of Investigation (ROI) at 59-60. At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge. When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that she was subjected to discrimination or unlawful retaliation as alleged.

The instant appeal from Complainant followed.

ANALYSIS AND FINDINGS

Standard of Review

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 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").

Disparate Treatment (Claims 1, 3, and 7)

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). She must generally establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978). The prima facie inquiry may be dispensed with in this case, however, since the Agency has articulated legitimate and nondiscriminatory reasons for its conduct. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983); Holley v. Dep't of Veterans Affairs, EEOC Request No. 05950842 (Nov. 13, 1997). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981); Holley, *supra*; Pavelka v. Dep't of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995).

Assuming, arguendo, that Complainant established a prima facie case of discrimination based on her color, disability, race, and religion, or reprisal for prior EEO activity, we find that the Agency proffered legitimate, nondiscriminatory reasons for claims 1, 3, and 7. For claim 1, a Team Lead explained that the number of assigned cases was not indicative of workload responsibilities because cases were assigned a weighted value. For example, a veteran who is seen once annually does not require the same level of contact as an unhoused veteran who would be seen weekly. Even if Complainant had the greatest number of cases, this did not reflect a disproportionate workload, and just looking at the number of cases alone is deceptive. ROI at 156-7.

For claim 3, two interviewers responded that the Selectee was chosen because she scored higher than Complainant for her interview.² The Team Lead noted that the Selectee had prior housing experience, addressed substance abuse, impact of trauma, and evidence-based practice models, such as Motivational Interviewing and Harm Reduction, while Complainant provided examples of working with landlords and the outgoing Housing Specialist. ROI at 160-2, 164.

While the other interviewer, a Housing Specialist, preferred Complainant's selection over the Selectee, she acknowledged that Complainant did not interview well. For example, Complainant was lacking in working with the housing authority; ensuring that the numbers were correct to house a veteran; and following the direction of the Public Housing Authority staff to make a successful placement. ROI at 235. The Housing Specialist averred that she raised concerns that the Selectee was an "intern," who had not graduated from college. ROI at 238. However, the Selectee's resume shows that she received her Bachelor's degree in Social Work and was

² The Program Manager was the selecting official, but she resigned from the Agency on January 8, 2021, and she did not provide an affidavit for the instant complaint. ROI at 336, 87.

obtaining a Master's degree in Social Work at the time of her selection. She also had experience as a Housing Advocate. ROI at 436.

For claim 7, Complainant alleged that she was denied the opportunity to complete the "PMBDD" course on September 15, 2020, by the Prevention and Management of Disruptive Behavior Coordinator ("Coordinator"). ROI at 111. The Coordinator responded that Complainant was registered for a course on August 24, 2020, but she did not attend. Since the courses fill up quickly, Complainant was placed on the waitlist, and she attended the course on November 5, 2020. ROI at 178-9.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008).

On appeal, Complainant argues that the Agency's final decision did not take into account the required number of cases that were supposed to be assigned to a Social Worker in the Homeless Program and that the decision was not based on the "clinical stages of housing," which are fluid. However, we find that Complainant's arguments do not contradict the Agency's explanation that cases are weighted, and the total number of case assignments alone do not reveal the actual workload of the employees. She did not prove that she also had more heavily weighted cases than others. As such, we are not persuaded that Complainant established pretext for claim 1.

Complainant did not challenge the findings for claims 3 or 7, and we note that the Commission has the discretion to review only those issues specifically raised in an appeal. See EEO MD-110, at Chap. 9, § IV.A.3. Accordingly, we find that Complainant did not establish that the Agency discriminated against her based on her color, disability, race, or religion, or in reprisal for prior EEO activity, for claims 1, 3, or 7.

Hostile Work Environment Harassment

An agency must take reasonable care to protect its employees from discriminatory harassment. EEOC's Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). It is well-settled that harassment based on an individual's race is actionable. To prove her harassment claim, Complainant must establish that she was subjected to conduct that was so severe or so pervasive that a "reasonable person" in her position would have found the conduct to be objectively hostile or abusive. See Enforcement Guidance on Harris v. Forklift Sys. Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). Complainant must also prove that the conduct was taken because of her protected bases. Only if Complainant establishes both of those elements--hostility and motive--will the question of Agency liability present itself. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).

As discussed above, we found that Complainant did not establish a case of discrimination or unlawful retaliation on any of her alleged bases for claims 1, 3, or 7. Therefore, these matters will not be considered in adjudicating Complainant's claim of ongoing discriminatory harassment based on our finding that Complainant did not establish that any of these actions taken by the Agency were motivated by her protected bases. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Accordingly, we find that Complainant did not show that the Agency subjected her to harassment based on her color, disability, race, or religion, or in reprisal for prior EEO activity, for the matters in claims 1, 3, or 7.

With regard to the remaining allegations, we find that Complainant belongs to protected classes based on her color, disability, race, religion, and prior EEO activity and, with one exception,³ that she was subjected to unwelcome/harassing conduct. In addition, the incidents proffered by Complainant to support her harassment claim (except those discussed above) were reasonably connected to her race/color or disability. There is, however, inadequate evidence to connect any of the incidents to Complainant's religion or prior protected EEO activity.

For incident 2, Complainant alleged that the Program Manager, who was white, referred to her as "girl" on multiple occasions in 2018, implying she was considered a child or less than a woman. Complainant asserted the Program Manager did not similarly refer to her white colleagues as "girl." ROI at 108. The Commission has found that calling an employee "boy" was racial harassment. See McAllister v. Dep't of Defense, EEOC Appeal No. 01945248 (Mar. 1, 1996), request for recon. denied, EEOC Request No. 05960416 (May 22, 1997). Similarly, we find that the use of the term "girl" was harassment based on Complainant's race/color.

Regarding allegation 4, Complainant alleged the Case Manager referenced a "lynching" during a meeting. The Commission has found that a comment about "lynching" is objectively hostile and related to race due to the past role of lynching in African American history; and it is sufficiently severe to alter the conditions of Complainant's employment and create an abusive work

³ However, we find that Complainant did not establish that one alleged incident occurred as alleged. Complainant averred that, when she was first hired in 2013, the Homeless Program Manager stated that she thought Complainant was going to be white based on her last name. ROI at 105-6. The Homeless Program Manager denied making the remark. ROI at 184. Complainant bears the burden to prove, by a preponderance of the evidence, that the alleged discriminatory acts occurred. When the evidence is at best equipoise, Complainant fails to meet that burden. See Lore v. Dep't of Homeland Security, EEOC Appeal No. 0120113283 (Sept. 13, 2013) (complainant failed to establish that witnesses made false statements where he withdrew his request for a hearing and credibility determinations were unable to be made); Brand v. Dep't of Agriculture, EEOC Appeal No. 0120102187 (Aug. 23, 2012) (complainant failed to establish that his coworker made offensive comments in a "he said, she said" situation where complainant requested a final decision and an Administrative Judge did not make credibility determinations). Here, Complainant provided no evidence to support that the Homeless Program Manager made the alleged comment about her race.

environment. See Jay C. v. U.S. Postal Serv., EEOC Appeal No. 2021000763 (Aug. 2, 2022). The evidence shows that sometime after the “lynching” remark, the Case Manager also stated during another meeting that they should give a veteran “enough rope to hang himself” during a discussion of his ability to live independently. ROI at 218. We also find that Complainant’s claim that a coworker confused her with another Black woman is reasonably based on her race/color. ROI at 105.

For allegation 5, Complainant averred that she was asked to participate in an event for a Juneteenth celebration and play the role of a slave for a “living museum.” Complainant stated that she was asked to do so in an email sent by an EEO Manager, and she alleged that she felt “forced” to participate. ROI at 106. We note that the EEO Manager did not provide an affidavit for this complaint,⁴ but Complainant’s account is unrebutted by the Agency.

During the planning of the Juneteenth event, someone suggested that they serve red “kool aid” and fried chicken, which Complainant found offensive. *Id.* The Associate Director explained that she conducted online research about food to celebrate Juneteenth and read about strawberry soda. A participant responded that the Associate Director should not believe everything on the internet and another participant explained the meaning of strawberry soda and fried chicken in African American culture. The Associate Director apologized for her question, and said she realized that her attempt to understand Juneteenth food was offensive to some. ROI at 201-2. It is undisputed that the Associate Director’s comments about red “kool aid” or soda and fried chicken were based on stereotypes associated with African Americans. As such, we find that the allegations related to the Juneteenth program were based on Complainant’s race/color.

On June 23, 2020, the EEO Program Manager led a “Courageous Conversations” meeting to discuss current events. Complainant reported that an employee started yelling the n-word and began cursing during the call. ROI at 106. The Commission has found that this term is an unambiguous racial epithet and a “pure anathema to African Americans.” See EEOC Compliance Manual, Section 15, “Race and Color Discrimination,” No. 915.003 (Apr. 19, 2006) (quoting Spriggs v. Diamond Auto Glass, 242 F.3d 179, 185 (4th Cir. 2001)); see also Brooks v. Dep’t of the Navy, EEOC Request No. 05950484 (Jun. 25, 1996).

For incident 6, the Housing Specialist clarified that it was the Team Lead, not the Program Manager, who made the comment about Complainant’s lisp, and denied anyone made a comment about Complainant’s weight or negative comments about her appearance or intelligence. ROI at 234, 528. Complainant explained that she suffered from Relapsing Remitting Multiple Sclerosis, which affected her speech and made it appear as if she has a speech impediment with some flare-ups. ROI at 101. Accordingly, we find that Complainant established

⁴ We are concerned that this EEO Manager participated in the processing of this complaint. The record shows, for example, the assigned EEO Investigator requested information from the EEO Manager, such as information about the Program Manager’s separation from the Agency. ROI at 249. We remind the Agency of its obligation to avoid even the appearance of a conflict of interest in the processing of EEO complaints. See EEO MD-110, at Chap. 1 § IV(B)(2).

that she was subjected to harassment based on disability when the Team Lead made a comment about Complainant's lisp.

In looking at the totality of the circumstances, we find that Complainant's workplace was permeated with discriminatory ridicule, insult and microaggressions by multiple Agency employees that, in cumulative effect, were sufficiently severe or pervasive to create a hostile work environment for Complainant that altered the conditions of her employment. See Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81 (1998); Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

Regarding liability, with regard to harassment by coworkers, an agency is responsible for acts of harassment in the workplace where the agency (or its agents) knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action. EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). See Jones v. Dep't of Labor, EEOC Appeal No. 01A41672 (Oct. 22, 2004). What corrective action is appropriate and effective will necessarily depend on the particular facts of the case. See Larae S. v. Dep't of Justice, EEOC DOC 0120143209 (Mar. 9, 2017). When an agency initiates corrective action that only has a temporary or partial impact on the alleged harassment that action is insufficient to establish an affirmative defense. Instances where an agency takes some type of corrective action, but the harassment reoccurs, are considered evidence of the agency's failure to take appropriate corrective action. See Lemons v. Dep't of Justice, EEOC Appeal No. 0120081287 (Apr. 23, 2009) (harassment escalated after the agency took remedial action), citing Logsdon v. Dep't of Agriculture, EEOC Appeal No. 07A40120 (Feb. 28, 2006) (taking only some remedial action does not absolve the agency of liability where that action is ineffective).

Here, in sum, we conclude that Complainant has established that she was subjected to discriminatory racial harassment in violation of Title VII that was ineffectively addressed by Agency management, resulting in Agency liability for its failure to protect Complainant from the harassment.

The Case Manager made the "lynching" comment in September 2018 in the Program Manager's presence, and as such, the Program Manager was aware of the complained of conduct. ROI at 217. While the Chief responded that the Program Manager spoke with the Case Manager, we find that it was not sufficiently corrective since the Case Manager made the "rope" comment subsequently in September 2019. ROI at 139, 217. The Case Manager attempted to explain that the "rope" comment was made in the context of a veteran's ability to live independently, but we find that her reference to "rope" was troubling based on her past use of "lynching." Complainant also averred that she first reported harassment to the EEO Manager, starting with the "lynching" comment in 2018. ROI at 107. The Agency provided no evidence that the EEO Manager exercised reasonable care to address Complainant's concerns starting in 2018.

For the "Courageous Conversations" incident, we find that the Agency conducted a fact-finding and initiated the Employee's removal within one week of the incident. A Human Resources

Officer testified that the fact-finding did not substantiate the Employee's use of the n-word because only two witnesses, out of fifteen, reported hearing it.⁵ However, they determined that the Employee's comments regarding Black-on-Black violence were inappropriate for the workplace, and began the process of terminating the employee. The employee resigned, effective June 30, 2020, prior to receiving the termination notice. ROI at 106, 362-416, 209-10, 417. These actions on the part of the Agency were appropriate with regard to removing the Employee from the workplace. However, the fact that the incident occurred at all supports Complainant's allegation of an ongoing hostile work environment and her claim that previous management efforts to address it had not been effective.

Regarding incident 6, the Chief conducted a fact-finding upon notification of the incident by Complainant. The Agency took no corrective action against the Team Lead because she had transferred to another facility in June 2019, prior to the Agency's fact-finding. ROI at 150, 525-45.

For the remaining incidents of harassment, we find that they were not made by coworkers, and an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Burlington Industries, Inc., v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998). However, where, as here, the harassment does not result in a tangible employment action the agency can raise an affirmative defense, which is subject to proof by a preponderance of the evidence, by demonstrating: (1) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (2) that complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the agency or to avoid harm otherwise. See Burlington Industries, supra; Faragher, supra; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

It is undisputed that the Program Manager was Complainant's first-line supervisor at the time of events, and Complainant provided un rebutted testimony that she repeatedly corrected the Program Manager when she called Complainant "girl." ROI at 108. Further, we find that Complainant acted properly when she addressed the matter directly with the Program Manager, and she did not fail to take advantage of corrective opportunities. As such, we find that the Agency is liable for the "girl" comments made by the Program Manager.

An employer may be subject to vicarious liability for harassment by a supervisor who does not have actual authority over the employee, if the employee reasonably believed that the harasser had such power. However, if the harasser had no actual supervisory power over the employee, and the employee did not reasonably believe that the harasser had such authority, then the standard of liability for coworker harassment applies. See Marielle L. v. Social Security Admin., EEOC Appeal No. 0120162299 (Mar. 29, 2018). We note that Complainant is also a Special

⁵ We note that other witnesses reported that, after the Employee started making comments, multiple people began speaking at the same time and it was difficult to hear, and that it was possible that the Employee used the n-word. ROI at 379, 383.

Emphasis Program Manager (SEPM), and the request that she act as a slave for a Juneteenth program came from the EEO Manager. ROI at 106. We find that it was reasonable for Complainant to believe that the EEO Manager had supervisory authority to “force” Complainant to participate in the program as part of her duties as an SEPM.

The comments regarding the food related to the Juneteenth program were made by the Associate Director of the Kansas City Medical Center. ROI at 197. While the Associate Director averred that she was not in Complainant’s line of supervision, she appears to be a high-ranking official based on her reporting directly to the Medical Center Director. *Id.* The Commission has recognized the “alter ego” theory, in which an agency is liable for unlawful harassment whenever the harasser is of sufficiently high rank to be treated as the organization’s proxy. See Scarlet M., Maxima R., Sharolyn S. v. Dep’t of the Navy, EEOC Appeal No. 0120150940, 0120150941, 0120151220 (Apr. 13, 2016); Sebek v. Dep’t of Justice, EEOC Appeal No. 07A00005 (Mar. 8, 2001). Here, we find that it is appropriate to apply the alter ego theory of liability based on the Associate Director’s position at the Agency, and that the Agency is liable for harassment when the Associate Director commented that they should consider serving red “kool aid” or strawberry soda and fried chicken.

In summary, we find that Complainant did not establish that she was subjected to unlawful harassment based on her disability or religion, or in reprisal for prior EEO activity. However, we find that she established liability for hostile work environment harassment based on race/color when she was called “girl”; she was subjected to comments related to “lynching” and “ropes”; she was subjected to racially insensitive/epithets at a work meeting; she was “forced” to act as a slave in a Juneteenth program; and she was subjected to comments related to the Juneteenth celebration that were based on racial stereotypes.

While the Agency took some corrective action, this piecemeal effort was insufficient to address the severe or pervasive comments based on race/color, and a more systemic approach is needed. The Commission has found that training for all employees should not be ordered unless there is evidence of a broad culture of discrimination. See Marjorie L. v. Dep’t of Veterans Affairs, EEOC Appeal No. 0720170028 (Nov. 16, 2017); Joey B. v. Dep’t of Veterans Affairs, EEOC Appeal No. 0720160023 (Dec. 21, 2016). Here, we find that the multiple employees in the program were responsible for the harassing conduct and appear to have freely made statements perpetuating racial stereotypes and used “lynching” and racially insensitive or insulting language during meetings at work. As such, we order the Agency to conduct sensitivity training to all employees in the Homeless Program (Behavioral Health) at the Kansas City Medical Center as part of the remedies.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency’s final decision finding that Complainant did not establish discrimination or reprisal for claims 1, 3, and 7; or harassment based her disability or religion, or in reprisal for prior EEO activity. We REVERSE the Agency’s finding

regarding Complainant's claim of harassment based on race/color, and we ORDER the Agency to take action in accordance with the Order below.

ORDER

The Agency is ordered to take the following remedial action:

1. Within 90 days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages or costs related to the finding of harassment based on race/color in the instant decision. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision addressing the issues of compensatory damages and costs, no later than 30 days after the completion of the investigation.
2. Within 90 days of the date this decision is issued, the Agency shall provide at least four (4) hours of interactive EEO sensitivity training to all employees in the Homeless Program (Behavioral Health) at the Kansas City Medical Center, with an emphasis on microaggressions and insensitivity towards race and color. The EEO Manager, the Associate Director, and the Case Manager⁶ shall be included in the training.
3. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against the EEO Manager, the Associate Director, and the Case Manager. 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).
4. Within 30 days of the date this decision is issued, the Agency shall post notices in accordance with the paragraph below.

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

POSTING ORDER (G0617)

⁶ Complainant named the EEO Manager on page 106 of the ROI. The Associate Director's identity is found on page of 196 of the ROI, and the Case Manager's identity is on page 214 of the ROI.

The Agency is ordered to post at its Homeless Program (Behavioral Health) facility in Kansas City, Missouri 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 (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she 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 this decision becoming final. 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

January 31, 2023

Date