



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

[REDACTED]
Wes L.,¹
Complainant,

v.

Antony Blinken,
Secretary,
Department of State,
Agency.

Appeal No. 2021005122

Hearing No. 570-2021-01053X

Agency No. DOS-0315-20

DECISION

On September 16, 2021, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 17, 2021, final decision concerning 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. For the following reasons, the Commission REVERSES the Agency's final decision.

BACKGROUND

During the relevant time, Complainant worked as a contractor as a Systems Administrator with a contracting company (Contractor) at the Agency's United States Embassy in Baghdad, Iraq.² Report of Investigation (ROI) at 11-13. Complainant averred that he had been a contractor assigned to the Agency for 30 years; he had been in Iraq for 10 of those years. ROI at 78-9. Contractor Supervisor was his first level supervisor with Contractor. ROI at 79. Agency Supervisor was his first level supervisor within the Agency. ROI at 86. Information Systems Officer assigned Complainant his daily work and assigned his work schedule. ROI at 80.

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.

² The Agency did not contest their role as joint employer for purposes of EEO regulations.

On October 8, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability (Type I Narcolepsy, Colon Cancer) and in reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when:

1. On July 20, 2020, he was terminated from his position as a contractor for the Agency; and
2. Since the fall of 2018, he was subjected to a hostile work environment characterized by, but not limited to, heightened scrutiny and disapproval of his reasonable accommodation.

Complainant stated that, from 2009 until 2014, he was stationed at the U.S. Consulate in Basra, Iraq (Basra Consulate). ROI at 80. From 2014 until 2018, he worked at Baghdad Diplomatic Support Center (BDSC). Complainant was diagnosed with narcolepsy in approximately 2016 which flares up when he misses his medication. If he misses his medication, he experiences hallucinations, nausea, double vision, and daytime sleepiness. ROI at 84-5, 93. Because he experiences daytime drowsiness and sudden attacks of sleep, his narcolepsy reportedly impacts his sleep, ability to work, and his ability to eat. ROI at 86.

On April 19, 2018, Agency Supervisor contacted Contractor Supervisor and Information Management Officer (IMO 1) regarding the removal and replacement of Complainant because Agency Supervisor “[had] lost confidence in [Complainant’s] abilities and wants him gone from BDSC.” ROI at 192. Contracting Officer Representative (COR) asserted that the Global Talent Management (GTM) had noticed him sleeping from time to time and had lost faith in Complainant. ROI at 191. COR acknowledged Complainant had narcolepsy, but he was not aware of any accommodation requests. ROI at 191. COR acknowledged that, in the 10 consecutive years working for the Agency in Iraq, Complainant had been a good employee. ROI at 191.

On April 24, 2018, an Agency email stated that Complainant would be sent to Basra to cover a staffing gap. ROI at 189. The email indicated that the supervisor at Basra (Basra Supervisor) was “aware of the situation and knows to report any performance issues.” ROI at 189-90.

Complainant received a reasonable accommodation for his narcolepsy in the form of taking 15-minute naps every two hours. ROI at 86, 88, 175. A summary memorandum of a June 7, 2018, meeting further enumerated that Complainant’s physician recommended that he continue with his narcolepsy medications. ROI at 175. Special Contracts COR explained that any reasonable accommodation request requiring Agency involvement in the accommodation would require approval of both Contractor and the Agency. ROI at 173. The record indicated that Complainant is prescribed narcolepsy medication not available to him at U.S. Government medical facilities in Iraq. ROI at 91. He sees a neurologist and get refills on his medication every three months from the United States. ROI at 85, 91.

In the fall of 2018, Complainant was transferred to Basra Consulate. ROI at 80, 83, 97-8. Complainant noted that Agency Supervisor complained to Contractor Supervisor about Complainant not being in the office. Complainant stated that he was only away from the office when he was taking his scheduled naps per his reasonable accommodation. ROI at 97-8.

Complainant went on disability leave from October 2018 until December 2019, for treatment of colon cancer for which he is currently in remission. ROI at 80, 83, 84. He was on additional disability leave from December 2019, until March 2020. When he returned from leave around March 2020, the Agency transferred Complainant, against his wishes, from BDSC to Baghdad. ROI at 80, 97. The record indicated that, at this time, Agency Supervisor was to be transferred to BDSC. IMO 1 decided to transfer Complainant to Baghdad to separate him from Agency Supervisor. Complainant averred that IMO 1 informed him that this transfer was due to Agency Supervisor's complaints about his accommodations. ROI at 97-8.

Complainant said that he returned to the U.S. to obtain a refill on his prescription on April 28, 2020. ROI at 93. Complainant stated that he received a three-month supply of his narcolepsy medication; more was not allowed because his medications are controlled, highly regulated, and may only be filled on a proscribed schedule and with a limited supply at a given time. ROI at 93. His reported return date to Iraq was May 28, 2020, but the charter flight was canceled by the Agency, and he was given a new return date of June 28, 2020. ROI at 94.

Since the new return date would have left Complainant with only a one-month supply of his medications, he unsuccessfully attempted to obtain a prescription for another three-month supply of his medication in the United States before returning to Baghdad. On or around June 27, 2020, Complainant purportedly sent Contractor Supervisor an email that he was unable to obtain another three-month prescription of his narcolepsy medication and if he returned to Baghdad in June, he would have to return to the United States in July to again obtain his prescription medications. ROI at 94. To avoid the need for additional travel, Complainant requested to return to Baghdad in July, after he received his next refill of his narcolepsy medication. ROI at 94. Complainant relayed that Contractor Supervisor told Complainant that he would make arrangements for Complainant to return to Iraq on July 28, 2020.

IMO 2 said that he understood that neither Contractor nor Contractor Supervisor were made aware Complainant would miss his June flight. ROI at 149. However, Special Contracts COR stated that Contractor notified him that Complainant missed the flight because he was unable to obtain sufficient supply of his narcolepsy medication. ROI at 167 and 176. Special Contracts COR said that Complainant's need for medication was relevant, but that the issue was that Complainant only gave 4.5-hours-notice that he would miss his flight, which caused great expense to the Agency, and he believed Complainant had plenty of opportunity to take care of anything he needed to do while in the United States." ROI at 176, 187Special Contracts COR explained, "Had his employer not made this decision [to terminate Complainant's employment], the government and his employer would have had to make a determination if his actions entailed a request for accommodation

On July 16, 2020, Special Contracts COR sent IMO 2 an email addressing the mechanisms by which to remove a contractor. ROI at 205. IMO 2 was informed that he must provide the contractor's supervisor with evidence of conduct or performance issues, which would be followed by warnings or a performance improvement plan. ROI at 205. If additional performance issues persisted, it was to be escalated. ROI at 205.

On July 20, 2020, Information Programs Officer (IPO) contacted Special Contracts COR and Contractor Supervisor, stating that leadership had had a meeting and were requesting Complainant not return to post. ROI at 27. The reason given was that Complainant was on extended rest and relaxation so that he could obtain a prescription and he did not provide ample time for another contractor to fill his seat on a charter flight to post, scheduled to depart June 30, resulting in a negative effect on customer service. ROI at 28, 127, 155. That same day, Complainant received a phone call from Contractor informing him that his employment was terminated because the Agency did not want him to return to the post due to his missed June 2020 flight. ROI at 95.

In a July 22, 2020, internal Agency memorandum from the Embassy, Contracting and Acquisitions, Special Contracts COR asserted that the Agency:

[alleged] that [Contractor Supervisor] is responsible for [Complainant's] failure to make his flight on June 30. However, in the email sent to me by [IPO] he [says] the reason for [Complainant's removal as: 'Failed to inform the Contractor PM and/or his IRM supervisor within a reasonable time frame that he would miss a scheduled Charter flight on the June 30th. His late notification didn't provide ample time for another contractor to fill his seat on the plane. IRM had stated on July 20, that the failure was [Complainant's] but stated on July 21 that the failure was [Contractor Supervisor's]. One of two things happened. Either [Complainant] received proper notice and failed to make his flight or [Contractor Supervisor] failed to provide proper notice which caused Complainant to miss his flight. Both cannot be true, but [both] were stated by IRM as reasons to remove individuals within a 24-hour period.³

ROI at 198. Special Contracts COR recalled that a new contractor filled Complainant's role in September 2020. ROI at 182.

Following the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew his request. Consequently, the Agency issued a final decision concluding that Complainant failed to prove that the Agency subjected him to discrimination as alleged. The instant appeal followed.

³ PM and IRM are not clearly defined by the record.

CONTENTIONS ON APPEAL

On appeal, Complainant argues that the Agency did not provide him a reasonable accommodation for his disability in that they did not afford him the ability to obtain his prescriptions, and that he was terminated from the Agency due to his disability. Complainant further asserts that he was the recipient of hostility due to his disability and his needed accommodations. Specifically, Complainant states that Agency Supervisor complained about Complainant's reasonable accommodation, and he was transferred twice due to his required naps to accommodate his narcolepsy.

The Agency responds that the final decision was proper and should be upheld.

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, 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 – Claim 1

A claim of disparate treatment is examined under the three-part analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). For a complainant to prevail, he must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. See McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). The burden then shifts to the Agency to articulate a legitimate, non-discriminatory reason for its actions. See Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 253 (1981). Once the Agency has met its burden, the complainant bears the ultimate responsibility to persuade the fact finder by a preponderance of the evidence that the agency acted on the basis of a prohibited reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

Complainant may establish a prima facie case of reprisal by showing that: (1) he engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No.

01A00340 (Sept. 25, 2000). A nexus may be shown by evidence that the adverse treatment followed the protected activity within such a period of time and in such a manner that a reprisal motive is inferred. See Clay v. Dep't of the Treasury, EEOC Appeal No. 01A35231 (Jan. 25, 2005).

Complainant had medical conditions for which he requested reasonable accommodations. We note that a request for reasonable accommodation of a disability constitutes protected activity under the Rehabilitation Act, and therefore retaliation for such requests is unlawful. See EEOC Enforcement Guidance on Retaliation and Related Issues, EEOC Notice Number 915.004, at Example 9 (Aug. 25, 2016) citing Solomon v. Vilsack, 763 F.3d 1, 15 n.6 (D.C. Cir. 2014) (citing rulings from every federal judicial circuit holding that requests for reasonable accommodation are protected activity).

Specifically, Complainant had been afforded naps for his narcolepsy and provided with flights to and from the United States to obtain needed medication. IMO 2 was aware that Complainant required medications available only in the United States. The record indicates that Special Contracts COR was aware that Complainant missed the June 2020 charter flight in order to obtain more medication. Special Contracts COR also acknowledged that Contractor Supervisor advised him that “[t]he medication was tightly controlled and that as a result the Complainant could not obtain a long term supply.” ROI at 179. As such, we find that the Agency was aware of Complainant’s protected activity. Furthermore, we find that the Agency requested Complainant be terminated from his employment and that this action occurred within weeks of the reasonable accommodation request. As such, we find that Complainant established a prima facie case of unlawful retaliation.

In this case, the Agency asserted that Complainant missed his June flight, providing insufficient notice to fill the flight with another individual. As such, the Agency claimed that they had decreased staffing. As such, we find that the Agency articulated a legitimate, nondiscriminatory reason for requesting that Complainant be removed from the contract.

“[P]retext can be demonstrated by ‘showing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the [Agency’s] proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence.’” Dalesandro v. U.S. Postal Serv., EEOC Appeal No. 01A50250 (Jan. 30, 2006) (alterations in original) (quoting Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997)). In the instant case, upon review of the record, we find that he has.

The record shows that Complainant had a history of good performance, including admission by COR that Complainant had been a good employee, while serving in Iraq for 10 consecutive years in April 2018. The Agency initially began requesting to remove Complainant because Agency Supervisor had seen him sleeping, a symptom of his known narcolepsy. There was no other performance reason to remove Complainant, despite the Agency’s request, as is evidenced by the Agency’s own assessment that he was performing on par with his peers.

As to the issue of the June flight, Special Contracts COR asserted that Complainant provided only 4.5-hours notice that he would be missing the flight. While Complainant averred that he provided notice on June 27, 2020, three days prior to the scheduled June 30, 2020, flight. We find that the record is filled with numerous inconsistencies regarding Agency officials' testimonies and regarding the timelines surrounding the events. IMO 2 stated that Complainant had not notified anyone, including Contractor Supervisor, that he was going to miss the flight at all. Yet, Special Contracts COR acknowledged that Contractor notified him that Complainant missed the June flight to obtain prescription medication refills. The Agency provided no corroborating evidence of any of their alleged timelines or which of their alleged notification chains are accurate.

While IMO 2 stated that he was not even notified Complainant had missed his flight until July 19, 2020, evidence demonstrates to the contrary. We find that he and Special Contracts COR had a conversation about the mechanisms available to terminate a contractor by, at the latest, July 15, 2020. ROI at 149. The Agency's own internal memorandum acknowledged that the Agency said that Complainant was responsible for missing the plane on July 20, 2020, but on July 21, 2020, 24-hours later, they asserted Contractor Supervisor was responsible for Complainant missing the plane. The Agency, itself, concluded that it could be one or the other, but not both.

Furthermore, the Agency acknowledged Complainant's request for a delay of his return flight was a request for a reasonable accommodation due to his narcolepsy disability. Special Contracts COR affirmed that, but for Complainant's termination, the Agency would have been required to determine if Complainant's request was for a reasonable accommodation and would have been required to initiate the reasonable accommodation process.

In this situation, based upon the statements, numerous inconsistencies in those statements, and evidence in the record, we are skeptical of the Agency officials' assertions regarding the legitimacy of their asserted reason. We find that these inconsistencies make the Agency's articulated nondiscriminatory reason unworthy of credence. The Supreme Court has held, "[p]roof that the defendant's explanation is unworthy of credence is...one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive." Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 14 (2000) (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 517 (1993) ("[P]roving the employer's reason false becomes part of (and often considerably assists) the greater enterprise of proving that the real reason was intentional discrimination").

We find that, based upon the evidence of record, this case is just such a case as that anticipated by the Supreme Court in Reeves. The Agency's numerous inconsistencies lead the Commission, to conclude that the employer's asserted justification is false. Therefore, we find that the Agency retaliated against Complainant in violation of the Rehabilitation Act when it asked that Complainant be removed from his post with the Agency following his request for reasonable accommodation.

Harassment – Claim 2

To establish a claim of harassment, Complainant must show that: (1) he is a member of a statutorily protected class or engaged in prior protected activity; (2) he was subjected to unwelcome verbal or physical conduct; (3) the harassment complained of was based on the protected class or prior protected activity; (4) the harassment 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 Flowers v. S. Reg'l Physician Serv. Inc., 247 F.3d 229 (5th Cir. 2001); see also Fox v. General Motors Corp., 247 F.3d 169 (4th Cir. 2001); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998); 29 C.F.R. § 1604.11. With respect to element (5), an agency 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 Indus. Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enf't Guidance on Harris v. Forklift Sys., Inc., EEOC Notice No. 915.002 (Mar. 8, 1994). The evaluation "requires careful consideration of the social context in which particular behavior occurs and is experienced by its target." Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998).

As outlined above, we find that Complainant is a person with a disability, the Agency was aware of the disability, and Complainant engaged in protected EEO activity. Therefore, we find that Complainant met the first elements of a claim of harassment. Further, it is clear that Complainant was subject to unwelcome conduct.

As to the third element, we note that, beginning in 2018, the Agency attempted to recommend removal of him based upon Agency Supervisor's indication that Complainant was sleeping on the job and saw him away from the office when Complainant was taking naps. In other words, we find that the Agency attempted to remove Complainant as early as 2018, and subjected him to heightened scrutiny, for his disability and utilization of his reasonable accommodation. After the Agency transferred him, Agency officials were to be on the "look out" to document any "performance issues," despite an acknowledgment he was performing as expected.

The Agency argues that, even if we find that their actions were due to Complainant's protected class, which we have, they do not rise to the level of severe or pervasive. We disagree. As indicated above, Complainant was, ultimately, terminated due to his request for a reasonable accommodation. In this case, there were tangible employment actions of a transfer and a termination. The Commission has long held that transfer and termination are actions sufficiently severe and pervasive to create a hostile work environment. Cruz v. U.S. Postal Serv., EEOC Appeal No. 0120080411 (Mar. 18, 2010).

Finally, as to whether liability may be imputed to the Agency, the individuals overseeing the contract recommended his removal and Complainant was transferred because the Agency Supervisor lost confidence in him. As such, individuals with immediate (or successively higher) authority over Complainant were responsible for the actions and we find that the element of vicarious liability to the Agency is met. Considering the above, we find that the Agency harassed Complainant based upon his disability and protected EEO activity of requesting reasonable accommodation.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's decision. The matter is REMANDED for the Agency to take action in accordance with our ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

- I. The Agency shall within thirty (30) calendar days from the date of receipt of this decision expunge from Complainant's employment personnel files any and all documents related to his termination.
- II. The Agency shall conduct and complete a supplemental investigation on the issue of Complainant's entitlement to compensatory damages and will afford him an opportunity to establish a causal relationship between the Agency's discriminatory action and his pecuniary or non-pecuniary losses, if any. Effective the date that this decision is issued, the Agency shall give Complainant notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) in support of his claim for compensatory damages. Complainant shall have thirty (30) calendar days from the date the Complainant receives the Agency's notice to submit his compensatory damages evidence. Complainant has a duty to cooperate in determining compensatory damages, including providing evidence/input/documents (including responding to agency requests for documentation or completing agency forms). Within sixty (60) calendar days of the receipt of this decision, the Agency shall determine the appropriate amount of compensatory damages. Within sixty (60) calendar days of determining the amount of compensatory damages due Complainant, the Agency shall issue a final decision, with appeal rights to the Commission, on the issue of compensatory damages, and payment of any undisputed funds. 29 C.F.R. § 1614.110. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.

- III. Within ninety (90) days from the date the decision is issued, the Agency is directed to conduct eight (8) hours of in-person or interactive training for Agency Supervisor, IPO, IMO 1, IMO 2, and Special Contracts COR. The Agency shall address management's responsibilities with respect to the reasonable accommodation process and eliminating discrimination in the workplace, with particular attention paid to preventing and remedying harassment. Within thirty (30) calendar days of the date the training is completed; the Agency shall submit to the Compliance Officer appropriate documentation evidencing completion of such training. If any of the named management officials is no longer employed by the Agency, the Agency shall furnish proof of the date(s) of separation.
- IV. Within sixty (60) days from the date the decision is issued, the Agency shall consider disciplining Agency Supervisor, IPO, IMO 1, IMO 2, and Special Contracts COR. The Commission does not consider training to constitute disciplinary action. Within one-hundred and twenty (120) calendar days, the Agency shall issue a report to the Compliance officer, providing whether it proposed discipline. If the Agency decides not to issue any disciplinary action, it shall set forth the reason(s) for its decision. If any of the named management officials is no longer employed by the Agency, the Agency shall furnish proof of the date(s) of separation.

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

POSTING ORDER (G0617)

The Agency is ordered to post at its Agency's facilities in Basra and Baghdad, Iraq 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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

May 15, 2023

Date