



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Washington, DC 20507**

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Brigette L., et al.,<sup>1</sup>  
Class Agent,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Headquarters),  
Agency.

Appeal No. 0120180859

Hearing No. 480-2014-00575X

Agency No. 6H-000-0006-08

**DECISION**

The Class Agent timely 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 December 5, 2017, final order 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. For the following reasons, the Commission AFFIRMS the Agency's final order.

**ISSUES PRESENTED**

The issues presented herein are whether the AJ correctly issued a decision without a hearing finding that the Class Agent failed to establish that the class was subjected to disparate impact based on race/national origin, and whether the AJ correctly found that the Class Agent also failed to establish discrimination with respect to her individual claim.

**BACKGROUND**

At the time of events giving rise to this complaint, the Class Agent worked as a Postal Police Officer (PPO) at the Agency's Pasadena, California Post Office.

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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.

In an EEO complaint dated June 22, 2008, the Class Agent maintained that she was subjected to discrimination on the basis of race when, on April 15, 2008, she became aware that Postal Inspectors (PI) are provided access to the Self-Referral Counseling Program (SRCP), which is paid for by the Agency, while Postal Police Officers do not. The Class Agent explained that she experienced post-traumatic stress disorder (PTSD) after a near fatal job-related car accident and had sought treatment for the condition on her own, using her own health insurance coverage. The Class Agent indicated that she wished to file a class complaint concerning this issue, alleging the failure to provide SRCP as a benefit to PPOs, while providing it to PIs, has a discriminatory disparate impact because the Officers are predominantly Black and Hispanic, while the majority of Postal Inspectors are Caucasian.

The Agency initially dismissed the complaint for failure to state a claim, characterizing it as a collateral attack on the negotiated collective bargaining agreement. The Class Agent appealed the dismissal to the Commission. In EEOC Appeal No. 0120083615 (April 25, 2011), we found that the Agency could not dismiss the class complaint and remanded the matter back to the Agency to have the class complaint processed properly before an EEOC AJ. In our remand decision, we also clarified the claim raised in the complaint:

[W]hether the Agency, based on race, is providing a [nationwide] benefit to Postal Inspectors, who are predominately white, that is denied Postal Police officers, who are predominately Black and Hispanic . . .

On remand, the matter was forwarded to the AJ for a determination regarding class certification. In the Notice and Order issued May 12, 2011, the potential class was defined as “all non-white Postal Police employed by the Agency at any time since March 24, 2008.”

The Order also asked the Agency to provide:

1. The benefits provided to Postal Police;
2. A list of Postal Police as of March 24 for the years 2008 – 2011, including name, race, location, supervisory status or not, grade levels, department, and benefits provided to each person;
3. The benefits provided to the Postal Inspectors;
4. A list of Postal Inspectors as of March 24 for the years 2008 – 2011, including name, race, location, supervisory status or not, grade levels, department, and benefits provided to each person;
5. The differences between items 1 and 3;
6. The reasons for these differences;
7. State whether the Agency disputes that the Postal Police have/is predominately over 50% non-White and the Postal Inspectors are predominately White;
8. State the representation rates of White employees in both categories of employees during that same March 2008 – 2011 time-frame;
9. Submit evidence that questions of law or fact are not common between the Class Agent’s individual claims and the claims of the class she seeks to represent;

10. Explain the Agency's assertion that the policies do not create a discriminatory impact on the Class Agent or the class as a whole;
11. Provide supporting evidence to request 10;
12. Explain if the Agency denies that the adoption of benefits policies was done with a discriminatory intent as to the class;
13. Identify any supporting evidence to request 12.
14. State whether the Agency disputes the qualifications and experience of the Class Agent to litigate the class case;
15. Provide any other information regarding the prerequisites of a class complaint; and
16. Address the basis for rejection of the class complaint pursuant to 29 C.F.R. § 1614.107.

In its response to the AJ's Order, the Agency asserted that the class size was overstated because not all Postal Police Officers have sought SRCP. Further, the Agency argued that the matter is not appropriate for an EEO class complaint because it contests a benefit of employment set by the relevant collective bargaining agreements.

The Agency also argued that the class failed to meet the requisites for class certification. Specifically, the Agency argued that the Class Agent failed to meet the requirements of typicality and commonality because not all Postal Police Officers are similarly situated based on their supervisory level, wages, grade levels, location, medical and treatment issues, or their bargaining status. The Agency noted that the Postal Police Officers' benefits program is administered by the Agency, while the SRCP is administered by the Postal Inspection Service. In addition, the Agency argued that the Class Agent was not an adequate representative because she was not represented by legal counsel. Finally, the Agency asserted that claims for compensatory damages will predominate and therefore, certification was not appropriate.

The AJ assigned to the case issued a decision on February 1, 2012. The AJ found that the Class Agent's claim did meet the prerequisites for "conditional" certification as a class complaint. The AJ noted that there was no dispute that the Postal Inspectors and the Postal Police Officers were receiving different benefits; the Postal Inspectors being provided participation in the SRCP, while the Postal Police Officers were not. The AJ also indicated that there is no dispute that Postal Inspectors are predominately White and Postal Police Officers are predominately non-White.

Data provided by the Agency to the AJ established that Postal Inspectors (PIs) are over 70% White, while Postal Police Officers (PPOs) are over 60% non-White. Specifically, for each year, the Agency indicated:

- For 2008
  - Total number of PPOs: 739 (282 White, 457 non-White, ratio of 38% to 62%)
  - Total number of PIs: 1688 (1240 White, 448 non-White, ratio of 73% to 27%)
- For 2009

- Total number of PPOs: 676 (254 White, 422 non-White, ratio of 38% to 62%)
- Total number of PIs: 1568 (1148 White, 420 non-White, ratio of 73% to 27%)
- For 2010
  - Total number of PPOs: 648 (243 White, 405 non-White, ratio of 38% to 62%)
  - Total number of PIs: 1413 (1027 White, 386 non-White, ratio of 73% to 27%)
- For 2011
  - Total number of PPOs: 627 (230 White, 397 non-White, ratio of 38% to 62%)
  - Total number of PIs: 1294 (932 White, 362 non-White, ratio of 72% to 28%)

The Agency also argued to the AJ that the matter should be dismissed for failure to state a claim because it involves benefits and services which were negotiated under its relevant collective bargaining agreement (CBA) and that the PIs and PPOs are represented by two separate unions. However, the AJ noted that the Agency failed to provide a copy of the CBA to support its assertions. Therefore, the AJ determined that the Agency did not show that the matter failed to state a claim. The AJ concluded that the Class Agent met the prerequisites of numerosity, commonality, and typicality. The AJ noted that the Class Agent was not represented by legal counsel, as asserted by the Agency. However, the AJ decided to conditionally certify the class and provide the Class Agent with the opportunity to retain counsel and present evidence that the selected counsel could meet this prerequisite. As such, the AJ determined that conditional certification of the class was appropriate.

The Agency subsequently issued a final order summarily rejecting the AJ's finding of class certification and filing an appeal with the Commission. On appeal, the Commission reversed the Agency's final order and affirmed the AJ's decision to conditionally certify the class. EEOC Appeal No. 0720120022 (Apr. 23, 2013), req. for recon. den'd, EEOC Request No. 0520130479 (Feb. 21, 2014). The matter was remanded to the AJ for further processing of the class complaint. On reconsideration, the Commission noted that the AJ retains the authority to redefine a class, subdivide a class, or recommend dismissal of a class if it becomes apparent that there is no longer a basis to proceed with the class complaint as initially defined. EEOC Request No. 0520130479; see Cyncar v. U.S. Postal Serv., EEOC Appeal No. 0720030111 (Feb. 1, 2007), req. for recon. den'd, EEOC Request No. 0520070348 (May 1, 2007) citing Hines, et al. v. Dep't of the Air Force, EEOC Request No. 05940917 (Jan. 29, 1996).

The matter was remanded for further processing to the same AJ, who set the matter for discovery. On March 19, 2014, Complainant filed a designation of representatives listing the Class Counsel. On November 14, 2014, the Agency filed a motion to dismiss the class complaint. The Agency argued that the Class Agent lacked standing because she has not shown that she was harmed. The Agency indicated that the Class Agent had stated that she never sought SRCP and was not denied access to SRCP. Therefore, the Agency moved to dismiss the class complaint and the Class Agent's individual complaint. On December 12, 2014, the Class Agent responded to the Agency's motion, asserting that the Commission had rejected the Agency's argument on appeal. The Agency responded, noting that the fact that the Class Agent was not denied SRCP was new and had not been presented to the Commission.

On February 6, 2015, the AJ denied the Agency's motion. The AJ found that the Agency's arguments involved the degree of the harm from whether the PPOs had access to anonymous referral to SRCP or whether they had to pay medical premiums in order to receive SRCP. The AJ held that the difference was still in the obtaining of the benefit between the PPOs and the PIs. The AJ noted that the Class Agent did not seek a waiver from the difference in benefit and the Agency did not show that the PPOs would receive better benefits from a waiver. As such, the AJ concluded, the Agency's motion should fail.

Subsequently, the Agency filed a motion for summary judgment on July 20, 2015. The Agency argued that the Class Agent failed to establish a prima facie case of disparate impact. In addition, the Agency argued that PPOs and PIs are not similarly situated. On February 12, 2016, the AJ issued a decision denying the Agency's motions. The AJ found that the gist of the Agency's motion for summary judgment was that the Class had not shown any harm as a result of the allegedly discriminatory policy. The AJ found that there had been no discovery. Further, as the case had not been investigated by the Agency, the record needed to be developed before the AJ could issue a decision on summary judgment. The AJ also allowed the Agency to renew its motion after discovery. The AJ ordered the Class Representative to develop a discovery plan no later than February 29, 2016, to obtain evidence as follows:

- identify Postal Police who were involved in any job-related trauma, such as gun violence, assault and battery, or other incidents falling within the policy allowing Postal Inspectors to self-refer for counseling;
- identify any Postal Police who requested supervisory approval for such counseling, and the results of that request; and
- otherwise conduct sufficient discovery to protect the interests of the members of the certified class.

On November 15, 2016, the Class moved for summary judgment. The Class Counsel argued that the Class Agent had established a prima facie case of disparate treatment, without providing specific analysis. The Class Counsel claimed that the Agency had failed to show that the matter should be found in the Agency's favor on summary judgment. As such, the Class Counsel argued that the AJ should grant the Class Agent's motion for a decision without a hearing.

On the same day, the Agency renewed its motion for summary judgment. The Agency argued that, despite the years of the processing of the class complaint and the orders by the AJ and the Commission regarding the development of the record regarding the Class Agent's claim of disparate treatment, neither the Class Agent nor the Class Counsel had provided any evidence to support her claim. The Agency argued that the Class Agent did not have standing to bring the claim. Further, the Agency contended that the matter should be dismissed because the claim constitutes a collateral attack: the PIs are provided the benefit and are not bargaining-unit employees. The Agency noted that the PPOs' Union has not requested the same benefit for its

union members. Finally, the Agency noted that neither the Class Agent nor the Class Counsel had provided any statistical evidence to support their prima facie claim of disparate treatment.

The Agency reiterated its arguments regarding the Class Agent's standing. The Agency also asserted that the Class Agent had failed to show causation between the benefit and the class's protected bases. The Agency argued that the reason for the difference in benefit was that the PPOs' Union did not obtain the benefit provided to the PIs, nor did the PPOs' Union attempt to bargain for such a benefit. The Agency also restated its claim that the matter is not within the jurisdiction of the Commission because the matter involves the Collective Bargaining Agreement. The Agency also filed a motion for summary judgment regarding the Class Agent's individual claim as well.

On September 29, 2017,<sup>2</sup> the AJ denied the Class Agent's motion and granted the Agency's motion for summary judgment. The AJ found that the Class Agent failed to show that a claim of disparate treatment might be raised where Congress has mandated a level of compensation and benefits for one job category but not another. The AJ held that the Class Agent did not show that Title VII mandates equal benefits for two different job categories, namely, PIs and PPOs. These positions have different selection criteria, duties, and collective bargaining status. The AJ held that, as such, the Class Agent had not shown that a claim for disparate impact had been raised therein.

The AJ noted that she was not entertaining the Agency's prior arguments regarding an impermissible collateral attack on the collective bargaining process. She indicated that this argument had failed in the past and that she was rejecting the dismissal again. The AJ noted that the Agency's motion for summary judgment should be granted on the grounds that the distinction in benefits provided to PPOs and PIs is "job-related for the positions in question [and] are consistent with business necessity" within the meaning of Title VII. 42 U.S.C. § 2000e-2(k)(1)(A)(i). The AJ found that the Agency had established that the two categories of positions have different selection criteria and that the PI position is substantially more demanding, with different job duties. As such, the PI position demands a greater compensation than the job of PPO. The AJ noted that the Class Agent offered no argument to the contrary regarding the nature of the two positions.

The AJ then took administrative notice that the PI position's benefits and compensations have a Congressional mandate that they "shall be maintained on a standard of comparability to and the compensation and benefits paid for comparable levels of work in the executive branch of the government outside of the Postal Service." 39 U.S.C. § 1003(c) as part of the Omnibus Consolidated Appropriations Act of FY 1997, Pub. L. No. 104-208, 110 Stat. 3009-380 (1006). The AJ noted that there is no such requirement for the PPO position and that the PPO funding was approved in its capacity as security guards. The AJ acknowledged that the mandate did not directly address the SRCP but found that the intent of the regulation recognized the specific job

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<sup>2</sup> The AJ's decision stated that it was issued on September 29, 2107. However, the decision was not mailed out until November 21, 2017.

requirements of the PI position in contrast to the security guard functions of the PPO position. Continuing that logic, the AJ noted that the Class Agent did not challenge the difference in the salary levels or any other benefit for the PIs beyond the automatic participation in the SRCP versus the PPOs requirement of a supervisor's agreement for SRCP.

The AJ observed that there were undisputed differences in the job requirements and duties of the positions based on statute, limiting authorization of PPOs to enforce Agency regulations on Agency property, and vesting responsibility for investigation of violation of Agency laws in PIs only. The AJ stated that these undisputed facts are substantial evidence of business necessity of compensating the PIs differently from the PPOs. This includes the minor benefit of automatic participation in the SRCP. The AJ then noted that the Class Agent did not attempt to show that the Agency had a narrower means to recognize the differences between the two positions. As such, the AJ concluded that the Class Agent did not meet her burden. The AJ noted that the Congressional mandate requires the Agency to compensate the PIs at a particular level but does not do so for the PPOs. Therefore, it was counterintuitive to then prohibit a distinction in a minor benefit program. The AJ held that, as business necessity, the Agency can compensate PIs at a higher level than PPOs based on different qualifications, job duties, and working conditions. The AJ found that the Class Agent could not demonstrate that there was a narrower means to achieve the same goal with less disparate impact than the SRCP program would have. Further, as to the Class Agent's individual claim of disparate treatment, the AJ determined that her individual claim must similarly be dismissed. Accordingly, the AJ issued a judgment in the Agency's favor.

The Agency implemented the AJ's finding of no discrimination on both the class complaint and the individual complaint raised by the Class Agent. This appeal followed.

### CONTENTIONS ON APPEAL

The Class Agent appealed without specific argument.

The Agency requested that the Commission affirm its final order implementing the AJ's decision. The Agency submitted a brief raising the same arguments raised before the AJ.

### ANALYSIS AND FINDINGS

We first determine whether the AJ appropriately issued the decision without a hearing. The Commission's regulations allow an AJ to issue a decision without a hearing upon finding that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). EEOC's decision without a hearing regulation follows the summary judgment procedure from federal court. Fed. R. Civ. P. 56. The U.S. Supreme Court held summary judgment is appropriate where a judge determines no genuine issue of material fact exists under the legal and evidentiary standards. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a summary judgment motion, the judge is to determine whether there are genuine issues for trial, as opposed to weighing the evidence. Id. at 249. At the summary judgment stage, the judge must believe the non-moving

party's evidence and must draw justifiable inferences in the non-moving party's favor. *Id.* at 255. A "genuine issue of fact" is one that a reasonable judge could find in favor for the non-moving party. *Celotex v. Catrett*, 477 U.S. 317, 322-23 (1986); *Oliver v. Digital Equip. Corp.*, 846 F.2d 103, 105 (1st Cir. 1988). A "material" fact has the potential to affect the outcome of a case. An AJ may issue a decision without a hearing only after determining that the record has been adequately developed. *See Petty v. Dep't of Def.*, EEOC Appeal No. 01A24206 (July 11, 2003).

We have carefully reviewed the record and find that it is adequately developed. To successfully oppose a decision without a hearing, the Class Agent must identify material facts of record that are in dispute or present further material evidence establishing facts in dispute. Here, the Class Agent failed to show that there were material facts in dispute. Ultimately, the AJ correctly determined there were no genuine issues of material fact or credibility that merited a hearing. Therefore, the AJ's issuance of a decision without a hearing was appropriate.

### *Class Complaint*

Claims of disparate impact involve employment practices that are facially neutral in their treatment of different groups but that, in fact, fall more harshly on one group than another and cannot be justified by business necessity.<sup>3</sup> *Int'l Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 335 n. 15 (1977). Proof of discriminatory motive is not required under a disparate-impact theory. *Id.* To establish a prima facie case of disparate impact, a class must show that an agency practice or policy, while neutral on its face, disproportionately impacted members of the protected Class. This is demonstrated through the presentation of statistical evidence which establishes a statistical disparity that is linked to the challenged practice or policy. *See Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994 (1988) (complainant must present "statistical evidence of a kind and degree sufficient to show that the practice in question has caused the exclusion").

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<sup>3</sup> Section 717 of Title VII states that "all personnel actions affecting [federal] employees or applicants for employment . . . shall be made free from any discrimination based on . . . race." 42 U.S.C. § 2000e-16(a). In addition, the Commission's regulations state that federal agencies have an obligation "to promote equal opportunity and to identify and eliminate discriminatory practices and policies." See 29 C.F.R. § 1614.102(a). Title VII, as amended in 1991, 42 U.S.C. § 2000e-2(k)(1)(A), further states:

An unlawful employment practice based on disparate impact is established only if . . . a complaining party demonstrates that an employer uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or . . . the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.



Specifically, the class must: (1) identify the specific practice or practices challenged; (2) show statistical disparities; and (3) show that the disparity is linked to the challenged practice or policy. Id.; Obas v. Dep't of Justice, EEOC Appeal No. 01A04389 (May 16, 2002). The burden is on the class to show that “the facially neutral standard in question affects those individuals [within the protected group] in a significantly discriminatory pattern.” Dothard v. Rawlinson, 433 U.S. 321, 329 (1977); see also Gaines v. Dep't of the Navy, EEOC Petition No. 03990119 (Aug. 31, 2000). In order to establish adverse impact, an employee must show that the employment practice in question is associated with some unfavorable effect on the members of a protected class as a group. Equal Emp. Opp. Comm'n v. Steamship Clerks Union, Local 1066, 48 F.3d 594, 601 (1st Cir. 1995), cert. denied, 516 U.S. 814, 116 S.Ct. 65, 133 L.Ed.2d 27 (1995). In order to establish that the adverse impact is disparate, the employee must show that the unfavorable consequences are borne disproportionately by the members of the class in comparison to non-members who are similarly situated. Id.

Once a class establishes a prima facie case, the burden shifts to the agency to establish that the employment practice that causes the disparate impact on the protected class is “job related for the position in question and consistent with business necessity.” 42 U.S.C. § 2000e-2(k)(1)(A)(i); see also Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971). To show the practice at issue is related to the job, the agency must typically establish that the practice correlates with ability to do a specific job or to successful performance of the job. See, e.g., Griggs, at 436 (job-related requirement measures the person for the job); Caviale v. Wis. Dep't of Health & Soc. Servs., 744 F.2d 1289, 1294 (7th Cir. 1984) (policy limiting consideration of candidates to those who were in career executive program was not job-related). To establish that a policy is consistent with business necessity, the agency must demonstrate that its policy significantly serves its business interests. See Anderson v. Zubieta, 180 F.3d 329, 80 FEP 765 (D.C. Cir. 1999) (no evidence that policy was necessary to retain employees who received enhanced benefits); Bradley v. Pizzaco of Neb., Inc., 7 F.3d 795, 797 (8th Cir. 1993) (defense requires employer to prove a “compelling need” for the challenged policy).

If the agency is able to establish “job-related and consistent with business necessity,” the burden shifts back to the class to establish that there is a less-restrictive means for the agency to achieve the ends sought. Watson v. Fort Worth Bank and Trust, 487 U.S. 977, 998 (1988) (when plaintiff has made out prima facie case of disparate treatment and when defendant has met its burden of producing evidence that its employment practices are based on legitimate business reasons, plaintiff must show that other tests or selection devices, without a similar undesirable effect would also serve the employer’s legitimate interests), citing Albemarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975).

Here, we find that the class has established a prima facie case. The specific practice challenged is that the Agency provides SRCP to the PIs, but not to the PPOs. The Class Agent produced statistical evidence showing that the PIs are predominantly White but that the PPOs are predominantly Black and Hispanic. The disparity in treatment is plainly linked to the Agency’s facially-neutral policy of providing SRCP to PIs but not to PPOs.

The burden now shifts to the Agency to establish that the difference in the benefit provided – SRCP versus EAP – is job-related for the position in question and consistent with business necessity. The record reflects that the SRCP benefit provided to the PIs meets both requirements. Congress has mandated the compensation and benefits provided to the PIs. See 39 U.S.C. § 1003(c) as part of the Omnibus Consolidated Appropriations Act of FY 1997, Pub. L. No. 104-208, 110 Stat. 3009-380 (1006). This mandate is evidence that the SRCP benefit provided to the PIs is job-related and consistent with business necessity.

Because the Agency has established that the challenged practice is job-related and consistent with business necessity, the class must now show that there is a less-restrictive means for the Agency to achieve the goal of providing the Congressionally-mandated benefit to the PIs. This, the class has not done and, under the limited circumstances of this case, cannot do. The Agency has no discretion with regard to the provision of this benefit to PIs. By definition, there is no alternative, less-restrictive means. Accordingly, the class's claim of disparate treatment fails.

#### *The Individual Complaint*

We note that the AJ's determination that the class has not established its disparate impact claim does not foreclose Complainant's individual claim of disparate treatment. See 29 C.F.R. § 1614.204(1)(2). Therefore, we remand her individual complaint for further processing in accordance with our Order below.

### 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 order adopting the AJ's decision. The individual complaint is **REMANDED** for further processing in accordance with our Order, below.

### ORDER

To the extent it has not already done so, the Agency is directed to process Complainant's individual complaint in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to Complainant that it has received the remanded claims within thirty (30) calendar days of the date this decision is issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights within one hundred fifty (150) calendar days of the date this decision is issued, unless the matter is otherwise resolved prior to that time. If Complainant requests a final decision without a hearing, the Agency shall issue a final decision within sixty (60) calendar days of receipt of Complainant's request.

A copy of the Agency's letter of acknowledgment to Complainant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

### 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)

<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:

/s/ Raymond D. Windmiller

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Raymond D. Windmiller  
Executive Officer  
Executive Secretariat

October 26, 2023

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Date