



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

[REDACTED]  
Any F.,<sup>1</sup>  
Complainant,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Transportation Security Administration),  
Agency.

Appeal No. 2020004218

Hearing No. 420-2017-00280X

Agency No. HS-TSA-25860-2016

**DECISION**

Complainant 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 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., and 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 VACATES the Agency's final order.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Transportation Security Officer (TSO) at the Montgomery Regional Airport (MGM) in Montgomery, Alabama. Report of Investigation (ROI) at 132. Complainant's duties as a TSO required:

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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.

Conduct[ing] screening of people, property and cargo at airport or other transportation terminals, as assigned, that provides commercial service to the public. Screening may include physical interaction with passengers (e.g, pat downs, search of property, etc.), conducting bag searches and lifting/carrying bags, bins, and property up to 70 lbs.

ROI at 504.

According to Complainant, she developed Complex Regional Pain Syndrome (CRPS), a mental and physical condition related to her work-related injury of a strain to her neck and shoulder. Id. at 199. Complainant explained that her work restrictions initially included no lifting of more than 10 pounds and limitations on squatting, kneeling, bending/stooping, pushing, pulling, reaching with both hands, and grasping/manipulation with both hands. Id. She averred that she could not use her left arm at all and had limited use of the left side of her body. Id. Complainant stated that she could not work baggage or conduct pat downs and was unable to perform repetitive movements. Id.

Complainant stated that she was given a Letter of Reprimand on September 30, 2015, for allegedly using defamatory/irresponsible words towards another TSO. Id. at 219-220. Additionally, on or about December 24, 2015, Complainant stated she was called into a meeting with the Transportation Security Manager (TSM) and given a three-day Suspension for an incident that occurred on December 8, 2015, wherein she failed to locate a pocket-knife on a passenger. Id. at 249-252. Complainant believed that the Suspension was issued to her in retaliation for having reported another TSO for allowing a razor blade to get through the x-ray. Id. at 204. According to Complainant, after reporting the razor blade incident, TSOs stopped helping her at baggage check and she lost access to the Agency computer because her ID card no longer worked. Id. The TSM maintained, however, that Complainant was issued the Suspension because she failed to follow Standard Operating Procedures (SOP) when she did not recognize the knife in a carry-on bag. Id. at 317.

Complainant further averred that on January 4, 2016, she noticed that no one was standing at the walk-through metal detector (WTMD) in violation of SOP. Id. at 206-207. According to Complainant, after making a statement regarding the violation, coworkers and management officials began to subject her to retaliatory harassment. Id.

Complainant attested that she learned from a TSO that management was not pleased that she had been on restricted duty for close to a year, and that coworkers were complaining that her restrictions put undue stress on them. Id. at 206-207. Complainant believed that the TSO had seen a letter, that was being circulated among her coworkers, about her removal. Id. However, according to the TSM, a Supervisory Transportation Security Officer (STSO) presented him with a signed petition from several TSOs expressing concerns about working with Complainant. Id. at 323.

A Lead Transportation Security Officer (LTSO) recalled that the letter informed management that Complainant's restrictions and inability to perform the full duties of a TSO were causing stress at a short-staffed checkpoint. Id. at 459. The LTSO noted that he also signed the petition letter, out of concern about the staffing issue and stress on the staff. Id.

On February 3, 2016, stated Complainant, she learned that the National Resolution Center (NRC) had erroneously placed her three-day suspension letter into an earlier file of hers. Id. at 210. She stated that after the NRC was made aware of the error, there was nothing done on her behalf. Id. Complainant further recalled that, from about February 15, through February 25, 2016, an STSO refused to rotate her in the correct order and other TSOs refused to assist her with moving bags. Id. at 210-211. Complainant maintained that one TSO, in declining to assist her, said they could not see why she could not move the bags and there was nothing wrong with her. Id.

Subsequently, the TSM provided Complainant with a March 8, 2016, letter noting that Complainant's medical restrictions reflected that she could lift no more than 25 pounds. Id. at 54-56. According to the letter, Complainant's doctor stated that Complainant restrictions were permanent and, therefore, her restrictions could not be accommodated due to the nature of the TSO duties. Id.

On March 10, 2016, the TSM told Complainant that she could no longer work at the MGM and that she had been assigned to a Vocational Rehabilitation Counselor through the Department of Labor (DOL) because she could no longer perform the full duties of her TSO position. Complainant averred that she had to turn-in her ID badge and was escorted from the airport by the TSM. Id. at 212-213.

According to management, the Agency did not have a permanent position for Complainant within her restrictions, and therefore it referred her to the DOL's Vocational Rehabilitation program. A second Transportation Security Manager (TSM-2), recalling that Complainant was provided the March 8, 2014, letter, stated that the Agency could not accommodate Complainant's medical restrictions based upon her physician's report which declared that she had reached maximum medical improvement. Id. at 363-364. TSM-2 explained that Complainant was placed on LWOP because she was to receive compensation directly from DOL. Id.

Complainant subsequently applied for disability retirement, which was approved, and effective July 23, 2016. Complainant was separated from the Agency on disability retirement.

Complainant initiated contact with an EEO Counselor on March 9, 2016. On June 27, 2016, Complainant filed a formal complaint alleging that the Agency discriminated against her on the bases of race (African American), sex (female), color (Black), disability (physical and mental), and reprisal for prior protected EEO activity when:

1. On or about January 9, 2015, her medical privacy was violated by Montgomery Airport Police Department Officer(s).

2. On or about December 24, 2015, management treated her poorly after she reported Standard Operating Procedures Violations (SOP).
3. On or about January 4, 2016, her local Human Resources (HR) department failed to provide an adequate response to her concerns.
4. On or about January 7, 2016, she learned that management told her co-workers that her restrictions hampered her ability to be a team player and having an officer who had been on restricted/light duty for close to a year was putting undue stress on the staff.
5. On or about January 15, 2016, she learned that a letter for her removal was being circulated.
6. On or about January 24, 2016, she came across a letter regarding her limited capabilities, which stated that 75% of the workforce wanted her removed because of her restricted duties.
7. On or about February 3, 2016, she called to find out the status of her 3-day suspension reconsideration letter at the National Resolution Center and learned her letter was erroneously placed into another file.
8. On or about February 15, 2016, several TSO's refused to rotate with her or move a heavy bag for her that she could not lift.
9. On or about February 15, 2016, several TSO's stated, "there's nothing wrong with her."
10. On or about March 10, 2016, her meeting with the National Resolution Center was cancelled.
11. On or about March 10, 2016, she was placed on Leave Without Pay (LWOP), sent to vocational rehabilitation, and given her "walking papers" by management.
12. On September 30, 2015, she was issued a Letter of Reprimand.

Following the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Over Complainant's objections, the AJ assigned to the case granted the Agency's March 19, 2018, motion to dismiss and motion for a decision without a hearing. On May 5, 2020, the AJ issued a decision without a hearing in the Agency's favor.

Specifically, the AJ dismissed claims 1-5, and 12 for untimely EEO Counselor contact, and claim 11 for the failure to state a claim. With regard to claims 6-10, the AJ found: (1) the record contained sufficient information upon which to base a decision without a hearing; (2) there were no genuine disputes of material fact; and (3) no reasonable factfinder could conclude that Complainant was subjected to unlawful discrimination.

The Agency subsequently issued a final order adopting the AJ's decision. Complainant filed the instant appeal.

### CONTENTIONS ON APPEAL

On appeal, Complainant maintains that she was subjected to a hostile work environment and denied accommodation for her disability. Complainant also submits additional documentation in support of her claims of discrimination.

In response, the Agency requests that we affirm its final action, finding no discrimination.

### STANDARD OF REVIEW

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's, factual conclusions and legal analysis -- including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (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").

### ANALYSIS AND FINDINGS

#### *Summary Judgment*

The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure.

The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003). Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given (1) ample notice of the proposal to issue a decision without a hearing, (2) a comprehensive statement of the allegedly undisputed material facts, (3) the opportunity to respond to such a statement, and (4) the chance to engage in discovery before responding, if necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment "where the [p]arty opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition." Anderson, 477 U.S. at 250 n.5. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an administrative judge could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

After a careful review of the record, we find that the AJ's issuance of a decision without a hearing was not appropriate. As explained below, the AJ committed errors of law and the record is not sufficiently developed.

### *Threshold Matters*

As an initial matter, we find that the AJ should have ensured that the claims were properly framed. The Commission finds that a fair reading of the complaint reflects that Complainant is alleging a hostile work environment, denial of reasonable accommodation, and discriminatory termination. Based on this reframing, the enumerated claims set forth above should be viewed as events in support of the complaint. It is within this revised framework that we shall consider the AJ's decision.

*Hostile Work Environment (Claims 1-5, and 12)*

The AJ dismissed claims 1-5 and 12 for untimely counselor contact. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. An AJ is permitted to dismiss claims that were not timely raised with an EEO Counselor. See 29 C.F.R. § 1614.109(b); 29 C.F.R. § 1614.107(a)(2).

A fair reading of the complaint reflects that Complainant, an individual with a disability that the Agency was attempting to accommodate as required under the Rehab Act, is alleging that because she could not perform all her duties, her colleagues subjected her to harassment in an effort to get her to leave her job. An Agency may not allow its employees to harass an individual because they believe the accommodations are unfair or inconvenient. Here, several of the incidents comprising Complainant's hostile work environment claim occurred within the 45-day period preceding her initial contact with the EEO Counselor on March 9, 2016. The AJ erred, however, in failing to address whether the events in claims 1-5, and 12 are part of the same alleged hostile work environment. The Commission finds that "[b]ecause the incidents that make up a hostile work environment claim collectively constitute one unlawful employment practice, the entire claim is actionable, as long as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside the filing period that the [complainant] knew or should have known were actionable at the time of their occurrence." EEOC Compliance Manual, Section 2, Threshold Issues at 2-75 (revised July 21, 2005) citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 117 (2002). We find that the dismissed claims are part of the broader hostile work environment claim, and therefore are timely. In so finding, we note that an employer can be held liable for a hostile work environment based on its response to an employee's need and request for accommodation, including the conduct of coworkers. See Complainant v. Dep't of Justice, EEOC Appeal No. 0120121339 (May 8, 2015), req. for recon den'd., EEOC Request No. 0520150404 (Nov. 12, 2015) (finding a violation of the Rehabilitation Act when management subjected complainant to a hostile work environment and terminated her due to her need for accommodation).

*Denial of Reasonable Accommodation (Claims 6, 8, and 11)*

As properly reframed, the complaint challenges the Agency's decision not to provide Complainant with a reasonable accommodation (claims 6, 8, and 11). We find that the AJ erred in failing to address whether Complainant was denied a reasonable accommodation for her disability with regard to these claims.

Complainant contends that, on or about March 10, 2016, she was placed in LWOP status, removed from her position and escorted from the facility, and sent to vocational rehabilitation (claim 11). In its March 19, 2019 motion, the Agency stated that "Complainant alleges the Agency 'violated my disability by keeping me working longer than I should have' and the Agency 'held up' her paperwork so she would resign before she could go to vocational rehabilitation."

The Agency argued, and the AJ agreed, that such allegations concerned the processing of Complainant's OWCP claim, and therefore were an impermissible collateral attack on the OWCP process. We find, however, that the AJ erred in dismissing claim 11 for failure to state a claim. Claim 11 plainly alleges discrimination with respect to Complainant's placement on LWOP and removal from her TSO position. As such, Complainant has stated a cognizable claim under the EEOC regulations regarding a personal harm or loss to a term, condition, or privilege of employment for which there is a remedy. See Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Under the Commission's regulations, the Agency is required to make reasonable accommodation to the known physical and mental limitations of an otherwise qualified individual with a disability unless the Agency can show that accommodation would cause undue hardship. 29 C.F.R. § 1630.9. An individual with a disability is "qualified" if he or she meets the skills, experience, education, and other job-related requirements of the position at issue and can perform the position's essential functions with or without reasonable accommodation. 29 C.F.R. § 1630.2(m).

In this case, we note that there is no dispute that Complainant is an individual with a disability, and therefore we will not address this matter herein. However, as discussed below, we find that the AJ erred in not addressing whether Complainant was qualified for the TSO position under the medical qualification requirements mandated by the Aviation Transportation and Security Act (ATSC).

Pursuant to the ATSA, the Transportation Security Administration (TSA) has broad responsibility for airport security screening, including setting the qualifications, conditions, and standards of employment for airport security screeners. 49 U.S.C. § 114. The ATSA also mandates an annual evaluation of each security screener to ensure continued qualification for the job. 49 U.S.C. § 44935(f)(5). Moreover, the statute states that "[a]n individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual ... continues to meet all qualifications and standards required to perform a screening function, ... [and] demonstrates the ... skills necessary to ... effectively perform [such] screening functions." Id. § 44935(f)(5).

The record establishes that the ability to lift 70 pounds is a qualification standard for TSOs established by the Under Secretary pursuant to the ATSA. See Ellis v. Dep't of Homeland Sec., EEOC Appeal No. 0120050144 (Nov. 6, 2006); See Tucker v. Ridge, 322 F. Supp. 2d 738, 740-41 (E.D. Tex. 2004). While the Rehabilitation Act traditionally requires that agencies employing qualification standards that have the effect of screening out persons with disabilities show that those standards are job-related and consistent with business necessity, our precedent dictates that qualification standards developed under the ATSA are not subject to this requirement. See, e.g., Gwendolyn G. v. U.S. Postal Serv., EEOC Appeal No. 0120080613 (Dec. 23, 2013) (analyzing an agency's burden to show that a lifting standard is job-related and consistent with business necessity under the Rehabilitation Act). As such, Complainant must show that she is capable of meeting the lifting standard in order to be a "qualified individual" under the Rehabilitation Act.



We note that Complainant averred that she could not use her left arm and had limited use of the left side of her body. Complainant stated that she could not work baggage, could not perform pat downs, and was unable to perform repetitive movements. Complainant's TSO position duties included pat downs; searches of property, including bags; and lifting/carrying bags, bins, and property up to 70 lbs. However, Complainant explained that her work restrictions included lifting no more than 25 pounds and limitations in squatting, kneeling, pushing, pulling, reaching with both hands, and grasping/manipulation with both hands. Based on the forgoing, we conclude that Complainant is not a qualified individual with a disability for her position as a TSO. See Houser v. Dep't of Homeland Sec., EEOC Appeal No. 0120110386 (June 16, 2011), req. for recon. den'd, EEOC Request No. 0520110548 (Oct. 7, 2011) (complainant not qualified for TSO position because she could not meet the ATSA-mandated standard of repeatedly carrying and lifting 70 pounds). However, as discussed below, the discussion of "qualified" does not end at Complainant's TSO position.

#### *Reassignment as a Reasonable Accommodation*

The term "qualified individual with a disability," with respect to employment is defined as an individual with a disability who with, or without, a reasonable accommodation, can perform the essential functions of the position held or desired. 29 C.F.R. § 1630.2(m). The term "position" is not limited to the position held by the employee, but also includes positions that the employee could have held as a result of reassignment. See Hampton v. U.S. Postal Serv., EEOC Appeal No. 01986308 (Aug. 1, 2002). Therefore, in determining whether an employee is a qualified individual with a disability, an agency must look beyond the position which the employee presently encumbers. Id.; EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance on Reasonable Accommodation) No. 915.002 (rev. Oct. 17, 2002) at Question 28, footnote 87.

Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of the employee's current position; or (2) all other reasonable accommodations would impose an undue hardship. Enforcement Guidance on Reasonable Accommodation, at Question 24.

We note that an AJ may properly consider issuing summary judgment only upon a determination that the record has been adequately developed for summary disposition. Petty, supra. In addition, the hearing process is intended to be an extension of the investigative process, designed to ensure that the parties have a fair and reasonable opportunity to explain and supplement the record.

In the instant case, we find the record was not adequately developed regarding whether, and to what extent, the Agency conducted a search for a vacant, funded position to which it could have reassigned Complainant. See Darlene R. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120152909 (Nov. 3, 2017) (investigation did not reveal agency conducted a search for positions).

The Agency is in the best position to know which jobs are vacant, or will become vacant, within a reasonable period of time and it is obligated to inform an employee about vacant positions for which a complainant may be eligible as a reassignment. Enforcement Guidance on Reasonable Accommodation at Question 28; Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 16, 2016) (investigator must obtain relevant information about the availability of vacant, funded positions). Accordingly, we will remand this matter for a supplemental investigation regarding the availability of a vacant, funded position(s) and to provide Complainant with an opportunity to address whether she could perform the essential functions of any such vacant, funded position(s) with, or without, a reasonable accommodation. We note that the Agency's obligation under the Rehabilitation Act to offer a reassignment is not limited to vacancies within a particular department, facility, or geographical area. Bill A. v. Dep't of the Army, supra. The “extent of the agency's search for a vacant position is an issue of undue hardship.” Id.

Therefore, we conclude that summary judgment was inappropriate in this case because the record was not adequately developed for summary disposition. An appropriate factual record is one that allows a reasonable fact-finder to draw conclusions as to whether a violation of the discrimination statute occurred. Therefore, judgment as a matter of law in favor of the Agency should not have been granted. See Peggie T. v. Dep't of Homeland Sec., EEOC Appeal No. 0120182362 (July 30, 2019) (finding the record was not adequately developed regarding whether, and to what extent, the Agency conducted a search for a vacant, funded position to which it could have reassigned Complainant, and therefore judgment as a matter of law for the Agency should not have been granted).

### CONCLUSION

Based on a thorough review of the record, the Commission VACATES the final order adopting the AJ's decision and REMANDS this matter for further processing in accordance with this decision and the Order below.

### ORDER

The Agency is directed to submit a copy of the complaint file to the Hearings Unit of the EEOC Birmingham District Office within fifteen (15) calendar days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the AJ assigned to the matter shall develop the record through discovery, the hearing process, or other means within their discretion to ensure that the above matters are properly addressed. Thereafter, the AJ shall issue a decision in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

### 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

October 30, 2023

Date