



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]

Stephany K.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Commissary Agency),
Agency.

Appeal No. 2021003668

Agency No. DeCA-00007-2020

DECISION

On June 17, 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 April 30, 2021 final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Store Worker at the Agency's Fort Campbell Commissary in Fort Campbell, Kentucky.

On November 27, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and disability (PTSD) when:

1. Between Spring 2016 and October 2019, Complainant was subjected to sexual harassment by the Assistant Commissary Officer (Assistant CO). Actions

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.

included, but are not limited to, sexual propositions, physical contact, comments of a sexual nature and comments focused on the Complainant's body.

2. On or about October 25, 2019, the Complainant resigned from her position as a store worker as a result of what she was experiencing and the work environment (constructive discharge).

During the investigation into her complaint, Complainant stated that she was diagnosed as having post-traumatic stress disorder (PTSD) during her military service for which she takes medication. See Report of Investigation (ROI) at 228. She stated that the Assistant CO seemed concerned about how she got out of the military and in her treatment for PTSD, constantly referring to her medication as "experimental" drugs until she was manipulated by him to think that her medication was not needed anymore if she just had someone to listen to her problems, so she stopped taking her medication. See ROI at 228. Complainant said she was much more anxious and vulnerable after stopping her medication.

Complainant alleged that throughout her time as a store worker, the Assistant CO subjected her to sexual remarks such as making remarks like "I'm getting thick," and inquiring about if she had a sweetheart because "[her] bottom was growing." See ROI at 228. She stated that he would ask "what'll it take?" every time he passed her in the hallway and tell her that he was watching her. See ROI at 228. She stated that once while they were having a discussion about her needing to take some leave, he hit her on the buttocks as they were leaving his office and when she told him that she was uncomfortable, he said he wouldn't do it again, but he just had an urge to feel her bottom. See ROI at 228. Other sexual comments included him telling her that she wasn't getting pleased right and if she wanted "him to kiss [her] down below just let him know," and telling her she was beautiful and not to flirt with the drivers. See ROI at 229. She further stated that he would ask her when was the last time she was "pleased," and that he could please her because his wife was moving to Georgia. See ROI at 228. In another incident, Complainant also stated that the Assistant CO called her into his office to discuss the bread vendor and during their conversation he commented on her buttocks and, as she was leaving the office, hit her buttocks and cupped it, and when she told him she didn't like what he had done, he said he wouldn't do it again and made her promise not to report his actions. She said she was scared that he would fire her. See ROI at 232.

Complainant stated that after the second incident of the Assistant CO touching her buttocks, she was scared and told the Grocery Manager (female), her second-level supervisor, that she wanted to change her schedule. See ROI at 229. She stated that the Grocery Manager said she would ask another employee if she could work Complainant's schedule instead and said she would text Complainant if the other employee could, but Complainant never received a text, so she continued working her regular schedule. See ROI at 229.

Complainant stated that the following Saturday, September 7, 2019, she asked to leave early, and the Assistant CO called her on the store line and asked her if she was thinking about coming over as his wife was gone and "now was the time." See ROI at 229.

She stated that she had a breakdown afterwards and her doctors placed her back on medication and placed her on 72-hour observation. See ROI at 229.

Complainant said she then told the Assistant Grocery Manager (female), her first level supervisor, about the harassment. Complainant averred that after she finally reported the Assistant CO's actions in September 2019, she felt like the whole store was treating her differently. See ROI at 235. She stated that people were giving her weird looks and other employees that she didn't work with were calling her to ask her if she got caught in the produce freezer with the Assistant CO and that the cashier women who usually spoke to her every morning stopped speaking to her and whispered to each other when she passed by. See ROI at 235. She stated that the Assistant Grocery Manager called the Commissary Officer several times to tell him that Complainant was distraught because of everyone treating her differently because of the rumors and the Commissary Officer told her to continue to do her job. See ROI at 235. Complainant stated that she was terrified to walk in the commissary by herself and felt anxious and afraid every time she heard the Assistant CO's name. Due to her continuing distress, she submitted her resignation effective October 25, 2019. See ROI at 167; 235-36.

The Assistant Grocery Manager corroborated that Complainant told her in early September 2019 that she was being sexually harassed by a manager and that she noticed that Complainant became hysterical and started wearing layers of clothes. See ROI at 292-95. She stated that she noticed that Complainant had become afraid of people and afraid for her safety. See ROI at 297. A contemporaneous statement made by the Assistant Grocery Manager indicated that Complainant called her to tell her that she would not be coming into work and explained that she was being harassed but did not tell her who the harasser was. See ROI at 302. The statement says that the Assistant Grocery Manager told Complainant that she would like for Complainant to come back when Complainant was feeling better because the Assistant Grocery Manager "didn't want [Complainant] to mess up her job as a government employee." See ROI at 302. The Assistant Grocery Manager stated that she called the Commissary Officer to tell him of the situation. See ROI at 302.

The Grocery Manager stated that Complainant only told her that the Assistant CO had asked her if she was one of the people who filed sexual harassment cases against him and Complainant stated that if she wanted to get the Assistant CO in trouble, she would have done so a long time ago. See ROI at 319. The Grocery Manager further stated that Complainant mentioned that the Assistant CO told her that he was going through a divorce and his house was empty and she should come over. See ROI at 319. The Grocery Manager stated that she did not report it or take any action because Complainant did not ask her to initiate an inquiry. See ROI at 319.

The record indicates that at least one other female employee filed a sexual harassment claim against the Assistant CO, which included allegations about the Assistant CO making inappropriate sexual comments, attempting to kiss the employee in the elevator and grabbing her buttocks. See ROI at 271. The Agency acknowledges that the Assistant CO was later terminated due to these complaints and his removal was upheld by the Merit Systems Protection Board.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision found that Complainant did not establish that she was subjected to sexual harassment because the Assistant CO denied her allegations and that Complainant also did not establish a prima facie case of constructive discharge. The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Complainant appealed.²

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency's decision is contradicted by its own actions because the Agency later terminated the Assistant CO for his sexual harassment and then at the same time, the decision relied entirely on the Assistant CO's denials to find that Complainant did not establish sexual harassment.

The Agency acknowledged that the Assistant CO was terminated by the Agency for the sexual harassment complaints and argued that because the Agency took action, it should not be held liable.

ANALYSIS AND FINDINGS

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

² The record indicates that Complainant's counsel received the Agency's final decision on May 6, 2021, and Complainant's appeal is postmarked on June 2, 2021, making Complainant's appeal timely.

Sexual Harassment

To establish a case of sexual harassment creating a hostile work environment, Complainant must show, by a preponderance of the evidence, that: (1) she belongs to a protected class; (2) she was subjected to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; (3) the harassment complained of was based on sex; (4) the harassment affected a term or condition of employment, either unreasonably interfering with the work environment or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998); 29 C.F.R. § 1604.11. The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. See Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993); Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Enforcement Guidance on Harris v. Forklift Systems, Inc., EEOC Notice No. 915.002 (Mar. 8, 1994).

The Commission's guidelines on sexual harassment provide that "unwelcome" sexual conduct constitutes sexual harassment when "submission to such conduct is made either explicitly or implicitly a term of condition of an individual's employment." 29 C.F.R. 1604.11(a). "In determining whether unwelcome sexual conduct rises to the level of a 'hostile environment' in violation of Title VII, the central inquiry is whether the conduct "unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment." EEOC Policy Guidance on Current Issues of Sexual Harassment (March 19, 1990), p. 14; 29 C.F.R. 1604.11(a)(3); see also Harris v. Forklift Systems, Inc., 114 S. Ct. 367 (1993).

Sexual flirtation, innuendo, or vulgar language that is merely trivial or annoying will not establish a hostile environment. EEOC Policy Guidance, *supra*, p. 14. The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person. Id. The Commission's Policy Guidance indicates that the following factors are pertinent to the inquiry: (1) whether the conduct was verbal or physical, or both; (2) how frequently the conduct was repeated; (3) whether the conduct was hostile and patently offensive; (4) whether the alleged harasser was a coworker or a supervisor; (5) whether others joined in perpetrating the harassment; and (6) whether the harassment was directed at more than one individual. EEOC Policy Guidance, *supra*, p. 14.

As an initial matter, we find that the Agency's final decision was deficient in its analysis of the issues, providing little more than conclusory statements. We further note that the investigation in this case was deficient, although we find that there is sufficient evidence in the record for us to make a finding as to whether discrimination occurred.³

³ The investigation acknowledged that Complainant added reprisal as a basis during the investigation but made no attempt to investigate the claim of reprisal further nor did the investigation include any statements from Complainant's coworkers as potential witnesses. We

We find that the Agency's decision erred in concluding that Complainant did not establish that she was subjected to sexual harassment by the Assistant CO. The record indicates that during the course of Complainant's employment at the Agency, the Assistant CO subjected Complainant to repeated and frequent sexual innuendos and statements, which included unwanted physical touching as Complainant alleged there were at least two different incidents where the Assistant CO touched her buttocks. See Terrie M. v. Dep't of Defense, EEOC Appeal No. 0120181358 (Aug. 14, 2019) (stating that the Commission presumes that the unwelcome, intentional touching of Complainant's intimate body areas is sufficiently offensive to alter the condition of her working environment and constitute a violation of Title VII). The record further supports that the Assistant CO made inappropriate comments to Complainant which included calling her on the store phone and telling her to come over to his house because his wife was gone. We find that these actions were sufficiently severe and pervasive to constitute an abusive work environment. See Camie B. v. Dep't of Veterans Affs., EEOC Appeal No. 2021002506 (July 21, 2022). In doing so, we emphasize that the Assistant CO was the second-in-command at the Commissary store and was Complainant's fourth-line supervisor. We also note that Complainant stated that the Assistant CO told her more than once not to report his actions and even after she made the report, he attempted to intimidate her by asking if she was the one who had filed a sexual harassment complaint against him, which is corroborated by the Assistant Grocery Manager's statement.

While we acknowledge that the Assistant CO denied the allegations, we find that the preponderance of the record supports Complainant's allegations that she was subjected to sexual harassment by the Assistant CO. Complainant's allegations are supported by the Assistant Grocery Manager's contemporaneous observations of Complainant's increasingly distressed demeanor as well as the Assistant Grocery Manager's statement that Complainant told her that she was being harassed by a manager, although Complainant did not identify who the harasser was. We also note that the Grocery Manager confirmed that Complainant told her in early September that the Assistant CO told Complainant that his house was empty and she should come over. In addition, the record indicates that the Commissary Officer was informed by the Union Representative in July 2019 that another female employee had raised sexual harassment allegations concerning the Assistant CO and another male employee. See ROI at 271-72. At that time, the Union Representative also informed the Commissary Officer that a number of other employees, including Complainant, had informed her that they had experienced inappropriate sexual conduct from the Assistant CO. See ROI at 273. We therefore find that Complainant established that she was subjected to harassment by the Assistant CO which was sufficiently severe and pervasive so as to alter the conditions of Complainant's employment.⁴

strongly remind the Agency of its obligation to conduct a thorough and impartial investigation into complaints of discrimination, including all bases and claims.

⁴ Because we find that Complainant established that she was subjected to harassment based on her sex, we will not discuss her claim that she was also subjected to harassment based on her disability as the additional basis would not alter the remedies available to Complainant. See Watts v. Dep't of Agric., EEOC Appeal No. 0120093410 (June 11, 2012).

Liability of the Agency

An employer is subject to vicarious liability for unlawful harassment if the harassment was “created by a supervisor with immediate . . . authority over the [Complainant].” Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999) (Vicarious Liability Guidance), at 4 (citing Burlington Industries, Inc., v. Ellerth, 524 U.S. 742, 118 S.Ct. 2257, 2270 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 2292-93 (1998)). However, where, as here, the harassment does not result in a tangible employment action being taken against the employee, the Agency can make out an affirmative defense by demonstrating: (a) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (b) that Complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the Agency or to avoid harm otherwise. See Burlington Industries, supra; Faragher, supra; Vicarious Liability Guidance, at 12.

In this case, it is undisputed that the Assistant CO was a supervisor with higher-level authority over the Complainant. The Agency argues, however, that it should not be held liable because it terminated the Assistant CO’s employment after it learned of the sexual harassment complaints against him.

We reject the Agency’s argument. The record indicates that the Assistant CO was terminated in November of 2020. The Agency insists in its statement that it placed the Assistant CO on administrative leave once they were informed of the sexual harassment complaints made against the Assistant CO and therefore took reasonable care to prevent the harassment. This argument, however, is not supported by the record.⁵ We emphasize that the Union Representative stated that there was a meeting on July 25, 2019, at which she informed the Commissary Officer of the sexual harassment allegations against the Assistant CO made by another female employee. The Agency was therefore on notice of the Assistant CO’s inappropriate behavior as of at least that date but there is no evidence that the Agency took any action. Indeed, the record is clear that the Assistant CO continued in his position through September 2019, two months after the Agency was put on notice of the Assistant CO’s behavior. The record includes a statement by the Assistant Grocery Manager which states that on September 18, 2019, the Assistant CO called both her and Complainant several times to ask about the sexual harassment allegations made against him, making her feel uncomfortable. See ROI at 302-303.

We also note that the record does not indicate that either the Assistant Grocery Manager or the Grocery Manager took any immediate action after Complainant informed them of the Assistant CO’s behavior.

⁵ It is not clear when the Assistant CO was placed on administrative leave, but it does not appear from the record that it occurred prior to Complainant’s resignation.

We emphasize that the Grocery Manager acknowledged that she did not take any action to initiate an inquiry after Complainant told her that the Assistant CO asked her to come over to his house because Complainant did not ask her to do so, which is an abdication of her responsibility as a supervisor to investigate allegations of harassment.⁶ See Deandrea M. v. U.S. Postal Serv., EEOC Appeal No. 20021000216 (Feb. 9, 2022) (ordering training for a supervisor regarding “management’s responsibility to promptly and effectively investigate and correct illegal sexual harassment once made known”); Turner v. Dep’t of the Interior, EEOC Appeal No. 01956390 (April 27, 1998) (affirming an AJ’s order reminding Agency managers that they have a responsibility to investigate and take prompt effective remedial action for allegations of sexual harassment). While we acknowledge that the Agency took belated action in placing the Assistant CO on administrative leave and ultimately removing him, we find that the Agency’s actions were too late for it to avoid liability in this case. See Gray v. Dep’t of the Interior, EEOC Appeal No. 01A53424 (May 5, 2006) (finding the agency liable for sexual harassment because management waited six weeks before conducting investigation into sexual harassment complaint).

Constructive Discharge

The central question in a constructive discharge claim is whether the employer, through its unlawful discriminatory behavior, made the employee’s working conditions so difficult that any reasonable person in the employee’s position would feel compelled to resign. See Complainant v. Dep’t of Def., EEOC Appeal No. 07A00003 (Apr. 17, 2002). The Commission has established three elements which a complainant must prove to substantiate a claim of constructive discharge: (1) a reasonable person in the complainant’s position would have found the working conditions intolerable; (2) conduct that constituted discrimination against the complainant created the intolerable working conditions; and (3) the complainant’s involuntary resignation resulted from the intolerable working conditions. See Complainant v. Dep’t of Justice, EEOC Request No. 05940688 (Apr. 13, 1995).

In this case, Complainant alleges that she was forced to resign because the Assistant CO’s harassment exacerbated her PTSD and management’s failure to take any corrective action subjected her to increasing and ongoing emotional distress, which led to panic attacks and depression. See ROI at 235-37.

⁶ We do not find the Grocery Manager’s statement that she did not think Complainant was being harassed to be credible. The Assistant CO’s statement asking Complainant to come over to his house was clearly inappropriate under the circumstances and should have been enough for the Grocery Manager to investigate further. We are highly troubled by the fact that all of the supervisors involved in this case appear to lack understanding of their responsibilities as supervisors to investigate allegations of harassment.

We find that Complainant has established that she was subjected to constructive discharge when she resigned in October 2019. As discussed earlier, the evidence in the record establishes that the Assistant CO subjected Complainant to constant and repeated sexual comments and innuendos, which included telling her that he was watching her. The record further establishes that the Agency took no action to prevent the harassment even after it was placed on notice of the Assistant CO's inappropriate conduct in July 2019 or after Complainant herself reported the harassment to the Grocery Manager and the Assistant Grocery Manager in early September 2019. Complainant further alleges that after she reported the Assistant CO's conduct, she was subjected to reprisal and hostility from the other employees, who stared at her and subjected her to rumors. We note that, although the investigation is deficient and did not specifically investigate Complainant's allegations of reprisal, the Assistant Grocery Manager confirmed that Complainant expressed her distress over the other employees' retaliatory treatment at the time. See ROI at 298-299; 302-303. We find that Complainant's statement, which is confirmed by the Assistant Grocery Manager's statement, is sufficient to establish that Complainant was subjected to the treatment she alleged from the other employees, which contributed to her ongoing distress over the sexual harassment. Under the circumstances, we find that a reasonable person would have found these working conditions to be intolerable and therefore, Complainant has established that she was subjected to constructive discharge.

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 final decision and REMAND the claim to the Agency for further processing in accordance with this decision.

ORDER (D0617)

The Agency is ordered to take the following remedial actions:

1. Reinstatement. Within 30 days of the date this decision is issued, the Agency shall offer to reinstate Complainant to the position of Store Worker, WG 4, or a substantially equivalent position at the Fort Campbell Commissary or another Agency facility in the nearby geographic area, retroactive to the date Complainant resigned. Complainant may decline the offered position, and her entitlement to back pay shall cease as of the date she declines the position.
2. Back Pay. Complainant is entitled to a back pay award, beginning from the effective date of her resignation and continuing until she is reinstated to a position or declines an offer of one. Within 60 calendar days after the date of this Decision, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501, was issued. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue payment to Complainant for the undisputed amount within 60 calendar days of the date the Agency

determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute regardless of whether he accepts the Agency's payment. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

3. Tax consequences. The issue of Complainant's increased tax burden from the Agency's lump sum payment of back wages is remanded to the Agency. On remand, the Agency shall conduct a supplemental investigation, including providing Complainant an opportunity to submit evidence of her increased tax burden. For guidance on what evidence is necessary to prove pecuniary damages, the parties are directed to EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under § 102 of the Civil Rights Act of 1991 (July 14, 1992) (available at eeoc.gov). The Agency shall complete the investigation and issue a FAD appealable to the EEOC determining the appropriate amount of damages.
4. Compensatory Damages. Within ninety (90) calendar days of the date this decision is issued, the Agency shall complete a supplemental investigation concerning Complainant's entitlement to compensatory damages and determine the amount of compensatory damages due Complainant in a final decision with appeal rights to the Commission. The Agency shall pay this amount to Complainant within thirty (30) calendar days of the date of the determination of the amount of compensatory damages. If there is a dispute regarding the exact amount of compensatory damages, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
5. Training. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide twelve hours of interactive EEO training to all supervisors and management officials working at the Fort Campbell Commissary in Fort Campbell, Kentucky, including the Commissary Officer, the Grocery Manager, and the Assistant Grocery Manager. The required training shall address the Agency's obligations under Title VII and management's responsibilities in eliminating discrimination and reprisal in the workplace, with a particular focus on management's responsibilities in addressing any complaints of inappropriate sexual conduct. The Agency may contact our Training and Outreach Division for Assistance in obtaining the necessary training via <https://www.eeoc.gov/federal-sector/federal-training-outreach>.
6. Within ninety (90) calendar days of the date this decision is issued, the Agency shall consider taking disciplinary action against the Commissary Officer, the Grocery Manager, and the Assistant Grocery Manager. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then

it shall set forth the reasons for its decision not to impose discipline. If these officials have left the Agency's employ, the Agency shall furnish documentation of the departure date.

7. Posting Order. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

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 Fort Campbell Commissary facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored.

Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

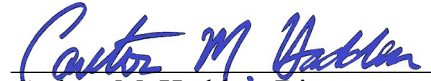
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

November 6, 2023
Date