



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Stella K.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2022002059

Agency No. 63-2020-00910D

DECISION

On January 31, 2022, 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 December 31, 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. For the following reasons, the Commission REVERSES the Agency's final decision.

BACKGROUND

Complainant worked as Administrative Manager II at the Area Census Office (ACO) in Shreveport, Louisiana. On September 11, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of race (African-American) and prior protected EEO activity when:

1. On February 7, 2020, the Regional Technician rearranged Complainant's seating and made disparaging remarks about her that included spreading a rumor that she was dating a Census Field Manager (CFM1).

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

2. On March 12, 2020, the ACO Manager reprimanded Complainant for leaving the office early without authorization although she had given the ACO Manager prior notice of her early departure.
3. On March 13, 2020, the ACO Manager dismissed Complainant's reports of bullying, characterizing them as a misunderstanding.
4. On July 19, 2020, the ACO Manager reprimanded Complainant for tardiness, but never reprimanded Administrative Manager I (African-American), who was frequently late to work.
5. On July 30, 2020, Complainant was reprimanded for canceling training classes even though she did so at the direction of management.
6. On August 8, 2020, the ACO Manager did not speak to Complainant but continuously passed her desk singing Administrative Manager I's name as a way to intimidate her.
7. On August 10, 2020, management terminated Complainant's employment.

At the conclusion of the ensuing investigation², the Agency provided Complainant with a copy of the investigative report (IR) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). On June 23, 2021, Complainant requested a final decision from the Agency without a hearing. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). In the decision, the Agency concluded that Complainant failed to prove that she was subjected to discrimination or reprisal as alleged. This appeal followed.

Protected EEO Activity: When asked what EEO activity she engaged in prior to filing her complaint, Complainant averred that she made an Administrative Specialist aware that she was being treated differently by the ACO Manager and the Regional Technician on the days she was called into the ACO Manager's office about leaving early and being tardy. Complainant admitted that she did not have an EEO case number or dates of activity that she could provide. IR 112-13. When asked about his involvement in Complainant's EEO activity, the Administrative Specialist averred that he did not become aware of that activity until right before Complainant's termination, and that he advised the Area Manager against the action and was told by the Area Manager to "stay out of it." In response to Complainant's affidavit testimony that she informed him about her conflicts with the ACO Manager in March and July 2020, the Administrative Specialist stated that he advised Complainant to "keep proper documentation and ask to speak to her boss." IR 160-61.

² The ACO Manager and the Regional Technician were no longer employed by the Agency at the time of the investigation. The Investigator tried to reach both individuals on multiple occasions without success. Investigative Report (IR) 247, 249-59.

The Area Manager denied being aware of Complainant's EEO activity and claimed that he could not recall having a conversation with the Administrative Manager about it. IR 170. The Information Technology (IT) Manager (Caucasian) asserted that she had witnessed a conversation between the ACO Manager and Complainant that took place in the ACO Manager's office on March 13, 2020. The IT Manager also averred that in her assessment, the purpose of that meeting was to avoid a formal EEO complaint. IR 147-48, 150.

Incident (1): Complainant alleged that on February 7, 2020, the Regional Technician and the ACO Manager made Complainant move her office while allowing other employees to remain in their places. Complainant also stated that the ACO Manager and the Regional Technician called her out on alleged dress code violations while not doing the same to other employees, that she was forced to sign a non-Agency form documenting her agreement to the dress code, and that the ACO Manager and the Regional Technician had been spreading false rumors about her dating CFM1. IR 113-14. Complainant admitted that she was not harmed by her seat being moved but maintained that the rumors of her dating a colleague caused her to suffer emotional as well as reputational harm. IR 115. The IT Manager averred that the ACO Manager and the Regional Technician had bullied Complainant to such an extent that she began to cry and had to go to a private office to compose herself. She also stated that when Complainant returned to her workstation, the ACO Manager and the Regional Technician told her that the time she spent away from her desk would be considered her lunch break. IR 149, 218. Two African-American female CFMs (CFM2 and CFM3) reported that they too had observed the bullying. CFM2 alleged that the ACO Manager and the Regional Technician were "on the warpath" and had addressed Complainant with "great disrespect." IR 194-95, 199-200, 205.

Incident (2): Complainant claimed that on March 12, 2020, the ACO Manager reprimanded her for leaving the office early despite her having given the ACO Manager notice of her early departure. She also averred that Administrative Manager I was not reprimanded even though she often came to work late and took extended lunch breaks. IR 118. The IT Manager witnessed Complainant telling the ACO Manager that she would have to leave to pick up her daughter and that she witnessed the ACO Manager informing Complainant several hours later that she could not leave early because Administrative Manager I needed assistance. The IT Manager further stated that the ACO Manager told Complainant that she would not be written up or disciplined for leaving early because the situation came about because of a misunderstanding. IR 151, 156. That same day, however, the ACO Manager did issue Complainant a memorandum for disciplinary action for leaving the office early. IR 228. CFM3, who saw the occurrence, stated, "I witnessed [the ACO Manager] give [Complainant] permission [to leave] then lie about after [Complainant] left to manufacture a write-up against [Complainant]." CFM3 also stated, "Honestly, [the ACO Manager] lied so much that it was her way of getting [the Regional Technician] to do her work so she could go home at 5:00 p.m." IR 206-07.

Incident (3): Complainant alleged that on March 13, 2020, that she met with the ACO Manager to discuss the seating rearrangement, the dress code, and the rumors being spread around the office about her. She stated that the ACO Manager dismissed Complainant's concerns, saying that they arose from a misunderstanding.

When asked about her reaction to the ACO Manager's response to her reports of bullying, Complainant stated that she decided not to file an EEO complaint. IR 115. As noted above, the IT Manager, who witnessed the meeting, characterized it as an attempt to convince Complainant not to file an EEO complaint against the ACO Manager and the Regional Technician. She described the encounter as follows:

[Complainant] expressed her concerns to [the ACO Manager] about the bullying incidents including: the office meeting where [Complainant's] bra strap being exposed was announced; the moving [of] the seats; [the ACO Manager] constantly putting [Administrative Manager I's] work onto Complainant because [Administrative Manager I] did not know how to do it and wasn't willing to learn; [Complainant] being reprimanded anytime she was even a minute late, but [Administrative Manager I] was constantly late (even one time taking a 3-hour lunch break). [Complainant] mentioned a time that I [the IT Manager] was teaching her and [Administrative Manager I] how to do something at a workstation (specifically employee exit tickets). [The Regional Technician] passed by us and seen what we were doing and went into [the ACO Manager's] office. Moments later, [the ACO Manager] stormed out of her office and loudly demanded [that Complainant] get back to her work area. [The ACO Manager] said nothing to myself or [Administrative Manager I].

IR 150. The Administrative Specialist averred that he heard about the situation directly from the ACO Manager. He stated that he explained to the ACO Manager that she could not nonchalantly dismiss Complainant's allegation, and that her response was that she had to roll with whatever the Regional Technician and the Area Manager said. IR 162. He also averred that the Area Manager told him to "stay out of it." IR 162. CFM3 stated that the ACO Manager intentionally omitted the truth and ignored Complainant's concerns because Administrative Manager I was willing to work endless hours whereas Complainant had a small child to care for, and that the ACO Manager needed Administrative Manager I to cover for her own workplace inadequacies. Further, CFM3 averred that the Regional Technician, the ACO Manager, and Administrative Manager I all "ganged up" on Complainant privately in the ACO Manager's office, to the point where Complainant cried openly. IR 205-06, 210.

Incident (4): Complainant claimed that on July 19, 2020, the ACO Manager reprimanded Complainant for tardiness but did not reprimand Administrative Manager 1, who was frequently late. IR 119-20. In particular, she reported that on an unspecified date, Administrative Manager I came to work late and the ACO Manager told her just to not take a lunch break and put in her time as usual, which was against Agency policy. IR 218. Administrative Manager I stated that she was late on several occasions but had prior approval, and that she had volunteered to stay late to make up the time. In her rebuttal affidavit, Complainant averred that she had never known Administrative Manager I to receive prior approval, and that if one misses work during his or her tour, he or she must take leave because all work outside the normal tour of duty is considered overtime. IR 218. CFM3 witnessed the incident. She stated that the ACO Manager openly targeted and retaliated against Complainant whenever Complainant told the truth. IR 207.

Incident (5): Complainant claimed that on July 30, 2020, Complainant was reprimanded for canceling training classes even though she had done so at the direction of the ACO Manager. IR 121, 215. A disciplinary memorandum dated July 30, 2020, issued by the ACO Manager and addressed to Complainant reads as follows:

This memo serves as documentation of a verbal warning on July 30, 2020, concerning your behavior as a manager. This is regarding the decision to remove the individuals from the training class for NRFU Enumerator training. Proper procedures and protocol were not followed. The proper way of performing this task was explained in a weekly Admin call which was verified the Area Manager * * * and the ARCM * * *. This behavior is not tolerated and will not be overlooked. This is your final warning for this kind of behavior. If this continues there will be further actions taken and could lead to termination. Again, this letter serves as a warning and verbal counseling.

IR 230. The IT Manager, the Administrative Specialist, CFM3, and Administrative Manager I had all confirmed that the training classes had been cancelled upon instruction from and with approval of the ACO Manager. IR 138, 153-54, 164-65, 206, 208, 219, 287. The IT Manager averred that she made the recommendation to cancel the training classes. IR 153. Administrative Manager I affirmed that the decision to reprimand Complainant was made by the Regional Technician. IR 187.

Incident (6): Complainant averred that on August 10, 2020 (not August 8), the ACO Manager continuously passed her desk singing Administrative Manager I's name in order to intimidate her. Ten days earlier, she had come back from out-of-town training and was feeling sick. She let Administrative Manager I, who was on duty at the time, know that she wished to work from home. Two days later, she received an email and three calls from the ACO Manager asking why she was not going to be at work. She responded that she had taken a COVID-19 test and was waiting until the results came back negative before returning to work. She claimed that the ACO Manager told her that she would have to take leave. IR 116-17. Complainant further alleged that when she returned to work, she observed the ACO Manager pacing back and forth, and speaking to Administrative Manager I but ignoring her, as a way to bully her. IR 117. Administrative Manager I averred that she did not remember ACO singing her name but did recall the ACO Manager coming out of her office and calling her name frequently. IR 184-85. The Administrative Specialist stated that CFM1, and the IT Manager had all informed him of what he called the "childish" antics of the ACO Manager and the Regional Technician toward Complainant. He described how they would wait to give her a lot of work 15-30 minutes before her shift ended, which forced her to stay and "work with a job threat." IR 162-63.

Incident (7): On August 10, 2020, Complainant received a memorandum from the Area Manager notifying her that she would be terminated effective at the close of business that day. The reasons for the termination were as follows:

[O]n March 12, 2020, you received counseling and a written warning from [the ACO Manager], because on March 9, 2020, you left the office for the day without requesting leave or telling anyone you were leaving for the day. You were considered away without leave (AWOL) for the time you were absent from the office.

On June 10, 2020, you received verbal counseling and a written warning from [the ACO Manager] because you left your Census Identification Card in your computer when you left the building for lunch. This is a security violation. * * *

On June 30, 2020,³ you received a third verbal counseling and a written warning from [the ACO Manager] regarding your behavior as a manager. When you removed individuals from the Non-Response Follow-up (NRFU) training class you did not follow proper procedures and protocol even though the proper procedures had been explained to you in a weekly conference call. * * *

IR 232. However, when asked to explain his decision to fire Complainant, the Area Manager gave an entirely different reason: insubordination. The Area Manager also averred that he explained this reason to Complainant. He did not reply to the Investigator's question about what Complainant's response to being fired was. IR 175. Complainant responded in her rebuttal affidavit that she never refused to obey the rules and that the Area Manager never spoke to her about any of the charges that led to her termination. IR 215. In her initial affidavit, Complainant reiterated that on March 12, 2020, in front of the IT Manager, the ACO Manager assured her that she would not be written up for leaving work on March 9, 2020, and that she was following the ACO Manager's instructions when she cancelled the training classes on June 30, 2020. IR 123. The Administrative Specialist stated that when he found out about Complainant's firing, he advised management against it and asked them to reconsider what he characterized as a "haste" decision. IR 165.

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 (EEO MD-110), 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").

³ A discrepancy exists with respect to the class-cancellation allegation. The letter of acceptance states that the incident occurred on July 30, 2020 while the termination notice indicates that it took place on June 30, 2020. IR 99, 232.

Hostile Work Environment

Harassment is actionable if it is sufficiently severe or pervasive so as to alter the conditions of a complainant's employment. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 81 (1998); Harris v. Forklift Systems Inc., 510 U.S. 17, 21 (1993); Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986). The Commission's Enforcement Guidance entitled: Vicarious Employer Liability for Unlawful Harassment by Supervisors (Enforcement Guidance on Vicarious Liability) EEOC Notice No. 915.002 (June 18, 1999) identifies two types of harassment: (1) harassment that results in a tangible employment action; and (2) harassment that creates a hostile work environment. An alteration to an employee's working conditions exists if a tangible, discrete employment action is taken, e.g., hiring, firing, transfer, promotion, non-selection, or the Agency's actions were sufficiently severe and/or pervasive to create a hostile work environment. Jay C. v. Dep't of Veterans Affairs, EEOC Appeal No. 2022003169 (May 25, 2023). In this regard, the Commission considers all the circumstances, including the frequency of the discriminatory conduct; its severity, whether it is physically threatening or humiliating or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Id. An abusive or hostile working environment exists "[w]hen the workplace is permeated with discriminatory intimidation, ridicule and insult" that is sufficiently severe or pervasive to alter the condition of the victim's employment." Id., citing Meritor, 477 U.S. at 65, 67.

Here the record clearly demonstrates that the conditions of Complainant's employment were altered, not only as a result of her termination, but also as a result of the actions that occurred between February and August of 2020 which led to her being fired. In February 2020, the ACO Manager and the Regional Technician had publicly humiliated Complainant to such an extent that it brought her to tears in the presence of her colleagues, three of whom attested to having witnessed the bullying. On March 12, 2020, the ACO Manager issued Complainant a disciplinary memorandum for leaving work after assuring Complainant that she would not, and this was witnessed by both the IT Manager and CFM3. CFM3 characterized the ACO Manager as a chronic liar. The next day, the ACO Manager casually dismissed Complainant's concerns in order to persuade her not to file an EEO complaint which she, Complainant, ultimately did. On July 19, 2020, the ACO Manager reprimanded Complainant for arriving late but let Administrative Manager I slide despite her frequent tardiness. On July 30, 2020, the ACO Manager at the direction of the Regional Technician issued Complainant a written reprimand for essentially carrying out instructions from the ACO Manager to cancel the training classes in question, an act that would make any reasonable person feel harassed. On August 10, 2020, Complainant was bullied by the ACO Manager and given a notice of termination, effective immediately. Two of the charges cited in support of the termination were the March written reprimand for leaving work, which the ACO Manager promised she would not issue, and the July written reprimand for cancelling training classes which, as bears repeating, Complainant had done on the order of the ACO Manager. Contrary to the Area Manager's affidavit testimony, there is no evidence of any act of insubordination by Complainant.

On the basis of the foregoing, we find that Complainant's firing in August 2020 was a tangible employment action, and that the conduct against Complainant by the ACO Manager and the Regional Technician which led to the termination, as witnessed by the Administrative Specialist, the IT Manager, CFM2 and CFM3, was severe and pervasive enough to alter the conditions of her employment.

Complainant must also prove that those who acted against her were motivated by unlawful considerations of her race or her EEO activity. Angela Y. v. Dep't of Defense, EEOC Appeal No. 2022000413 (Aug. 31, 2023). As to race, when asked whether she knew of any other similarly situated employees who were treated differently than her, Complainant identified Administration Manager I as the sole comparator. IR 118-21, 123. But Administration Manager I also identified herself as African-American. IR 181-82. Therefore, Complainant cannot rely on direct comparisons with Administrative Manager I as a way to establish the existence of a discriminatory motivation on the part of the ACO Manager or the Regional Technician based on race.⁴ Nevertheless, this does not prevent Complainant from establishing the existence of a discriminatory or retaliatory motive on the part of any of the officials she named in her complaint.

In the first place, an investigation of an EEO complaint must include a thorough review of the circumstances under which the alleged discrimination occurred; the treatment of members of the complainant's group as compared with the treatment of other similarly situated employees, if any; and any policies and/or practices that may constitute or appear to constitute discrimination, *even though they have not been expressly cited by the complainant*. (Emphasis supplied.) EEO MD-110, Chapt. 6, § (IV)(C). Second, it is not even necessary for Complainant to rely on comparative evidence to establish the motive element. Mary R. v. U.S. Postal Serv., EEOC Appeal No. 2020004032 (Sept. 30, 2020) citing O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312-13 (1996). See also Enforcement Guidance on O'Connor v. Consolidated Coin Caterers Corp., EEOC Notice No. 915.002, n. 4 (Sept. 18, 1996). In the absence of comparative evidence, all Complainant need do is present some other evidentiary link between membership in her protected class and the adverse actions to which she was subjected. Sadie M. v. Dep't of the Treasury, EEOC Appeal No. 2022002454 (July 20, 2023). Indicators of a discriminatory or retaliatory motive include discriminatory statements or past personal treatment attributable to those responsible for the personnel action that led to the filing of the complaint, unequal application of Agency policy, deviations from standard procedures without explanation or justification and inadequately explained inconsistencies in the evidentiary record. Tammy S. v. Dep't of the Army, EEOC Appeal No. 2021000578 (May 5, 2022). Such indicators are rife throughout the record.

⁴ We note that the Investigator never used the words "outside of your protected group," or words to that effect when asking Complainant if she was aware of similarly situated employees who were treated differently. Thus, because of the way in which the Investigator framed the question, Complainant was never prompted to compare herself to those outside of her protected race category.

As to the existence of protected EEO activity, we note at the outset that there is insufficient evidence to establish that the Administrative Specialist ever made the ACO Manager or the Regional Technician aware of his EEO-related conversations with Complainant in March and July of 2020. However, the conversation between Complainant and the ACO Manager that occurred on March 13, 2020 clearly was related to Complainant's EEO concerns and therefore constitutes protected activity. Complainant herself averred that the ACO Manager and the Regional Technician did not get along with any of the African American staff in the office, with the exception of Administrative Manager I and repeatedly emphasized that she was bullied because she was African American and because she had expressed an intent or desire to file an EEO complaint naming the ACO Manager and the Regional Technician. IR 115-17, 119-20, 122, 137. The Administrative Specialist stated that he believed that her race and EEO activity, as well as her relative youth, played a role in the various incidents, particularly the termination. IR 162, 164-66, 174. The IT Manager, herself Caucasian, averred that Complainant's race and EEO activity were factors in all of the incidents. IR 147, 150-52, 154. CFM2 and CFM3 averred that the ACO Manager and the Regional Technician had problems with young black female managers and were only targeting those individuals. IR 195, 205-08, 210, 212. In particular, CFM 3 averred that the ACO Manager gave the most advantages to the white males in the office and found ways to punish the Black female managers through constant reprimands, and that the ACO Manager never wrote up any White males and overlooked all their mistakes while openly reprimanding Black females. IR 206. As to why the ACO Manager treated Administrative Manager I more favorably than Complainant, CFM3 averred, in essence, that Administrative Manager I made herself useful to the ACO Manager. IR 207-08. We also find that the Area Manager's assertions that Complainant was fired for insubordination and that he could not recall discussing the incident with the Administrative Specialist were inconsistent with other evidence, leading us to conclude that he was less than truthful in his affidavit testimony.

When harassment culminates in a tangible employment action, as it clearly did here, and it is determined that the tangible action was based on a discriminatory or retaliatory reason linked to the preceding harassment, relief could be sought for the entire pattern of misconduct culminating in the tangible employment action, and no affirmative defense is available.⁵ Enforcement Guidance on Vicarious Liability, § IV(C). Since neither the ACO Manager nor the Regional Technician had provided a statement to the Investigator, the Commission can only evaluate the facts based on the weight of the evidentiary record before us. Nancy S. v. Evt'l Prot. Agency, EEOC Appeal No. 2022002014 (Aug. 15, 2023).

⁵ Where 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 that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (b) that Complainant unreasonably failed to take advantage of any preventative or corrective opportunities provided by the Agency or to avoid harm otherwise. Karen C. v. U.S. Postal Serv., EEOC Appeal No. 2022001739 (Aug. 14, 2023) citing Burlington Industries, Inc. v. Ellerth, 524 U.S.742, 765 (1998) & Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998).

And after reviewing that record in its entirety, we find that Complainant has established both of the elements needed to sustain a finding of discriminatory harassment, and consequently, that the question of Agency liability for creating a hostile work environment because of Complainant's race and EEO activity has presented itself. Sana I. v. U.S. Postal Serv., EEOC Appeal No. 2022003208 (Aug 17, 2023). The Agency is liable for all of the incidents comprising Complainant's hostile work environment claim, up to and including her termination on August 10, 2020.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we REVERSE the Agency's final decision and direct the Agency to comply with the Order below.

ORDER (D0617)

The Agency is ordered to take the following remedial action:

1. Within 30 days of the date this decision is issued, the Agency shall offer to reinstate Complainant to the position of Administrative Manager II at its Area Census Office in Shreveport, Louisiana, or a substantially equivalent position in that facility or another facility in the nearby geographic area, retroactive to August 10, 2020, the date on which Complainant was terminated. Complainant may decline the offered position, and her entitlement to back pay shall cease as of the date she declines the position.
2. The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due the Complainant, pursuant to 29 C.F.R. § 1614.501, no later than sixty (60) calendar days after the date this decision was issued. The 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 a check to the Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. The 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."
3. The Agency shall also pay compensation for the adverse tax consequences of receiving back pay as a lump sum. Complainant has the burden of establishing the amount of increased tax liability, if any. Once the Agency has calculated the proper amount of back pay, Complainant shall be given the opportunity to present the Agency with evidence regarding the adverse tax consequences, if any, for which Complainant shall then be compensated.

4. The Agency shall conduct and complete a supplemental investigation on the issue of Complainant's entitlement to compensatory damages and will afford him an opportunity to establish a causal relationship between the Agency's discriminatory denial of reasonable accommodation and his pecuniary or nonpecuniary losses, if any. Effective the date that this decision is issued, the Agency shall give Complainant notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) in support of his claim for compensatory damages. Complainant shall have 30 days from the date Complainant receives the Agency's notice to submit his compensatory damages evidence. Complainant has a duty to cooperate in determining compensatory damages, including providing evidence/input/documents (including responding to Agency requests for documentation or completing agency forms). Within 60 days of the receipt of this decision, the Agency shall determine the appropriate amount of compensatory damages. Within 60 days of determining the amount of compensatory damages due Complainant, the Agency shall issue a final decision, with appeal rights to the Commission, on the issue of compensatory damages, and payment of any undisputed funds. 29 C.F.R. § 1614.110. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth herein.
5. Within 90 calendar days of the date this decision is issued, the Agency shall provide a minimum of eight hours of in-person or interactive training EEO training to the management official identified as the Area Manager, with an emphasis on preventing and correcting workplace harassment. If this individual has left the Agency's employ, the Agency shall furnish documentation of his departure dates. The Agency may contact the Commission's Training and Outreach Division via email at FederalTrainingandOutreach@eeoc.gov for assistance in obtaining the necessary training.⁶
6. The Agency shall consider taking disciplinary action against the responsible management official identified as the Area Manager. The Commission does not consider training to be disciplinary action. Within 120 calendar days from the date this decision is issued, the Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the Area Manager has left the Agency's employ, the Agency shall furnish documentation of his departure dates.

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).

⁶ We will not order training or consideration of disciplinary action with respect to the ACO Manager and the Regional Technician because those officials are no longer employed by the Agency.

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 Area Census Office in Shreveport, Louisiana 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

October 30, 2023

Date