



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

[REDACTED]
Alena C.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2023001110

Agency No. 200I-702C-2022-142864

DECISION

On December 8, 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 November 8, 2022 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Social Science Specialist (Crisis Responder [Trainee]), GS-0101-11 at the Agency's Veterans Health Administration (VHA), Veterans Crisis Line (VCL), Office of Suicide Prevention, at the Atlanta VAMC in Decatur, Georgia. Complainant started in the position on August 29, 2021, with her appointment subject to successful completion of a one-year initial probationary period. Report of Investigation (ROI) at 175-77.

Complainant is Black. She stated that she had an "unspecified learning disability," borderline personality disorder, and generalized anxiety disorder. ROI at 53-4.

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.

Complainant's first-line supervisor (Supervisor 1) was the Supervisory Social Science Specialist (Crisis Responder). Complainant's second-line supervisor (Supervisor 2) was the Program Manager, Training. Complainant's third-line supervisor (Supervisor 3) was the VCL Team Operations Coordinator. Complainant's fourth-line supervisor (Supervisor 4) was the VCL Director. These management officials and the Agency's Reasonable Accommodation Coordinator (RAC) all acknowledged that Complainant had stated she had an "unspecified learning disability." ROI at 102, 130-31, and 150. Because Complainant was a trainee, her supervisory chain and the training managers shared supervisory responsibilities over Complainant. ROI at 143. Complainant stated that she informed her training supervisors that she has "testing anxiety."

Being able to daily manage crisis calls and implement life-saving efforts when speaking to suicidal/homicidal veterans is an essential function of Complainant's position. ROI at 127. Complainant began new employee orientation (NEO) on August 29, 2021, along with several other new hires. On September 7, 2021, Complainant and the other trainees signed a form titled "New Employee Orientation Expectations," acknowledging that failure to obtain an 80% or better on an exam referred to as the "Final Knowledge Check" could result in immediate discharge. The form also contained a note that employees with "specific learning needs should contact a trainer to discuss further before taking the final knowledge check." ROI at 60, 161, and 179-80. See also ROI at 175-76 referencing the memoranda to trainees.

On September 8, 2021, Complainant sent an email to the Agency's Human Resources Operations Office (HROO), Reasonable Accommodation unit, stating that she wanted to disclose the learning challenges that she had been experiencing. Complainant's email stated she had been evaluated around the beginning of the year and the results of the assessment showed that she had an unspecified learning disability. Complainant stated that she was advised to do further assessment but could not because her insurance did not cover any additional testing. Complainant asserted that the assessment stated that she processed information a little slower than others and it took her a long time comprehending what she was reading. Complainant wanted to know if there were any options for her to have an accommodation because it would take her longer to complete the final knowledge check test. ROI at 171-74.

Complainant also sent the same email, on the same date, to Supervisor 1, who provided to Complainant the organizational email for reasonable accommodation requests. Supervisor 1 directed Complainant to make that contact, which she did. ROI at 56. In response to Complainant's email, the Reasonable Accommodation Coordinator (RAC) replied to Complainant the same day, asking how far along Complainant was in training, what date the exam was scheduled for, and "what challenges she was experiencing with training specifically and what accommodations Complainant thought would help." ROI at 171-74.

In response to the RAC's email, Complainant requested reasonable accommodations in the form of extra time to take the "Final Knowledge Check," the ability to ask specific questions during the test, and to be informed what would be on the test beforehand. ROI at 57, 152-53, and 173.

Complainant explained to the RAC that being given more time to take the exam would allow her not to feel rushed and would allow her to review her work several times, decreasing her anxiety and improving her productivity. ROI at 57.

The RAC then contacted the Supervisory Management Analyst, who served as the Designated Management Official (DMO) for VCL employees and assisted with all reasonable accommodation requests. ROI at 120-21. See also ROI at 171 for the RAC's email to the DMO.

According to the RAC, she spoke to the DMO regarding Complainant's request and the DMO indicated that all of Complainant's requested accommodations were available, or already provided, through workplace adjustments (i.e., the trainees were provided with extensive training material, received pre-tests, had two chances to take the Final Knowledge Checks, were informed they could consult their one-on-one instructor, and were told they could receive extra time if needed). The RAC also stated that, "all employees are given an opportunity to get workplace adjustments and it is known to all employees." ROI at 152-53. See ROI at 161 for information provided to the trainees prior to taking the exam.

Complainant attempted the "Final Knowledge Check" twice. The first attempt was on October 4, 2021, and Complainant scored 60 percent. After two weeks of additional training, Complainant took the test again on October 20, 2021, scoring 71 percent. ROI at 161 and 167. Complainant stated that she was not able to pass the "Final Knowledge Exam" because the training supervisors did not permit the trainees to "seek support or study together to prepare for the knowledge exams." She also stated that, during the course of the training program, the training supervisors learned that the trainees were studying together and subsequently modified the test, which resulted in 95 percent of the class failing the October 4, 2021 exam. ROI at 55. According to Complainant, the second "Final Knowledge Check" was administered on October 20, 2021, "without any accommodation support." Complainant asserted that no extra time was given for the exam, the training class was "forced to be on camera while taking the test" which caused anxiety and emotional stress, and 96 percent of the class failed the second exam. ROI at 4.

On November 23, 2021, Supervisor 3 terminated Complainant's employment. ROI at 126. The termination notice, titled "Termination During Trial Period," stated that Supervisor 4 had recommended Complainant's termination for failure to qualify during her probationary period; specifically, failure to pass the "Final Knowledge Check." Complainant's termination was effective November 23, 2021. ROI at 60, 126-27, and 175-76. According to management, the other new-hire employees who had failed the "Final Knowledge Check" were also terminated on or about that date. ROI at 146-47.

On February 15, 2022, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American) and disability when:

1. Beginning September 8, 2021, and ongoing, the Agency denied and failed to respond to Complainant's request for reasonable accommodation; and
2. On November 22, 2021, Complainant was terminated during her probationary period.

The Agency conducted an investigation into the complaint. 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 EEOC Administrative Judge (AJ). In accordance with Complainant's request, on November 8, 2022, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

This appeal followed.

CONTENTIONS ON APPEAL

On appeal, among other things, Complainant contests the FAD, reiterating her allegations. According to Complainant, there was disagreement among leadership on how the trainees were studying with each other. As such, Complainant asserts, she was unsure what accommodations to request on September 8, so she requested accommodations she had requested in her previous employment. Complainant added that she reached out to management so she could obtain the proper documents to provide to her physician regarding her requested accommodation.

Complainant also states that she was on the list of the ten trainees who were terminated (all minorities, including African Americans) who were fired. She also asserts that all ten fired employees, including Complainant, were in the extended training class of 23 trainees. According to Complainant, only five trainees in the class passed. However, the others who did not get terminated were white, and able to maintain their jobs. According to Complainant, she possessed evidence of messages and text from some of the people with whom she communicated admitting that they failed their exams either once or twice. They also confirmed that they were still employed with the VCL.

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”).

Failure to Accommodate – Claim 1

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 (2012) (as amended) requires that an Agency make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the Agency can demonstrate that doing so would impose an undue hardship. 29 C.F.R. § 1630.9(a) (2017); EEOC Enforcement

Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance) (revised Oct. 17, 2002). Once an employer becomes aware of the need for an accommodation of an employee's disability, the employer may engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. See 29 C.F.R. § 1630.2(o)(3) (2019). An Agency may choose among reasonable accommodations as long as the chosen accommodation is effective, and while the preference of the individual with a disability should be given primary consideration, an Agency has the ultimate discretion to choose between effective accommodations. See Enforcement Guidance, supra, at Q. 9.

To establish that she was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a "qualified" individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See, e.g., Bill A. v. Dep't of the Army, EEOC Appeal No. 0120131989 (Oct. 26, 2016).

Here, the Agency concedes Complainant is an individual with a disability entitled to the protections of the Rehabilitation Act.

There is no evidence that any of the trainers raised any concerns about Complainant's ability to comprehend the material being taught to her in preparation to perform in the position she had applied for, was offered, and had accepted. The record also supports a finding that Complainant requested from the Agency accommodations she had requested in her previous employment. As such, the evidence suggests that Complainant was otherwise qualified for permanent assignment to the Social Insurance Specialist position but for the agency's failure to provide a reasonable accommodation for her to take the "Final Knowledge Check" exam.

We note that in the FAD, the Agency asserted that Complainant provided to the EEO Investigator a 13-page medical document containing detailed medical information and diagnoses. ROI at 69-81. The Agency also asserted that the document was not provided to management when Complainant requested reasonable accommodation. In that regard, we note Complainant's appeal statement indicating that she needed to obtain from the Agency information she would need to provide to her physician for her requested accommodation.

The record shows that Complainant informed the Agency that she had "learning challenges" due to an "unspecified learning disability." See ROI at 56, 102, 150, and 174. She also requested reasonable accommodation in the form of extra time to take the "Final Knowledge Check," the ability to ask specific questions during the test, and to be informed what would be on the test before she took it.

The record also shows that Supervisor 1 referred Complainant back to the RAC and the RAC contacted the DMO. ROI at 171-74. However, Complainant asserted, and the record corroborates her assertion, that she did not hear back further on her request.

The RAC and the DMO discussed Complainant's accommodation request, concluding that the accommodation was already provided to all trainees through workplace adjustments. The RAC had told Complainant that the DMO would contact Complainant to discuss whether an accommodation would be needed.

Nothing in the record indicates that the DMO contacted Complainant to discuss her requested accommodation or any other effective alternative. Nor did anyone at the Agency engage in the interactive process with Complainant or inform her that her request for reasonable accommodation was denied. Therefore, it appears the Agency acted in bad faith when it failed to engage in the interactive process with Complainant or communicate with Complainant to provide feedback regarding her requested accommodation.

As the Agency correctly argued in its FAD, failure to engage in the interactive process, standing alone, is not a violation of the Rehabilitation Act. See Pitts v. U.S. Postal Serv., EEOC Appeal No. 0120130039 (Mar. 13, 2013) (citing Doe v. Soc. Sec. Admin. Appeal No. 01A14791 (Feb. 21, 2003)).

The Agency also argued that there is no evidence to support a conclusion that the lack of an interactive process deprived Complainant of a reasonable accommodation. However, liability depends on a finding that, had a good faith interactive process occurred, the parties could have found a reasonable accommodation. Id. Here, the Agency took no step to explain to Complainant that her requested accommodation was either approved or denied. Nor did the Agency explain to Complainant that her needs were addressed through workplace adjustments. As such, the Agency failed to demonstrate that it made a good faith effort to provide Complainant with a reasonable accommodation for her disability. See 42 U.S.C. § 1981a(a)(3)

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this "make whole" relief. 42 U.S.C. § 1981a(b)(3).

The Agency concluded that based on Commission precedent, denying Complainant's requested accommodation would have been proper because informing Complainant what would be on the test beforehand and allowing Complainant to ask questions during the test would have undermined the Agency's ability to assess her ability to perform the essential functions of the job. In that regard, Commission regulations hold that an employer can require an applicant to complete a test within established time frames if speed is one of the skills which is being tested. See 29 C.F.R. § 1630.11; Appendix to Part 1630 - Interpretive Guidance on Title I of the Americans with Disabilities Act, § 1630.11.

It is undisputed that the employment test at issue is intended to measure an ability to quickly respond to high-stress calls, a critical skill for the Complainant's position. Yet, the Agency failed to provide any evidence to show that it would not have been able to assess Complainant's ability to perform the essential functions of the job had she taken the test with the requested reasonable accommodations or some other effective accommodation. Complainant also expressed concern regarding changes to the test that the training supervisors had made during training. Specifically, Complainant alleged that the test was modified at one point, which did not afford Complainant ample time to prepare due to her disability. ROI at 163. The Agency did not respond to these statements.

In sum, the Agency failed to demonstrate that the accommodations requested by Complainant would have imposed an undue hardship on its operation. Therefore, we find that the Agency violated the Rehabilitation Act, and acted in bad faith when it failed to communicate with Complainant regarding her requested accommodation; failed to engage in the interactive process with Complainant; and failed to provide her requested accommodation or discuss effective alternative accommodations with Complainant.

Disparate Treatment Based on Race and Disability – Claim 2

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

This established order of analysis in discrimination cases, in which the first step normally consists of determining the existence of a prima facie case, need not be followed in all cases. Where the Agency has articulated a legitimate, nondiscriminatory reason for the personnel action at issue, the factual inquiry can proceed directly to the third step of the McDonnell Douglas analysis, the ultimate issue of whether Complainant has shown by a preponderance of the evidence that the Agency's actions were motivated by discrimination. U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-714 (1983); Hernandez v. Dep't of Transp., EEOC Request No. 05900159 (June 28, 1990); Peterson v. Dep't of Health and Human Serv., EEOC Request No. 05900467 (June 8, 1990); Washington v. Dep't of the Navy, EEOC Petition No. 03900056 (May 31, 1990).

Here, we find that the Agency has articulated a legitimate nondiscriminatory explanation for terminating Complainant's employment during the trial period.

Management stated, and the record shows, that Complainant was terminated during her probationary period because she did not meet competency standards when Complainant twice failed the “Final Knowledge Check” with a score of less than 80 percent. Supervisor 3 also asserted that any probationary employee who fails the “Final Knowledge Check” twice is terminated. See ROI at 115 and 127.

Complainant argued that she was unfairly terminated because, based on how the NEO class was treated, “it was difficult to see or determine the next training steps or to know what to expect.” Complainant also asserted that she thought her job was secure because all the new hires were moved to the next phase of training. ROI at 60. However, Complainant failed to establish a nexus between her termination and her protected bases. Nor does she dispute record evidence reflecting that Complainant was only one of nine new hires who were terminated in the probationary period for twice failing the “Final Knowledge Check” exam. See ROI at 179-80.

We note that Complainant identified seven trainees who, according to Complainant, were permitted to keep their jobs despite failing the “Final Knowledge Check.” Three of those identified had been previous government employees and were not probationary employees. Two were Caucasian; four were African American, and one was Hispanic. Complainant was unaware if any of the comparators had disabilities. ROI at 59. However, management asserted that the seven identified comparators (who were within and outside of Complainant’s race category) were not terminated because they had passed the “Final Knowledge Check” with the requisite score of 80 percent or higher. ROI at 128 and 147. Complainant contested management’s assertions on appeal, stating that she possessed supporting evidence. She however failed to present any of the direct messages and text she received from people who failed the test once or twice but retained their jobs.

We note that we are precluded from finding harassment with respect to Claim 2 based on the findings above. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000).

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 findings of no discrimination, in part. We, therefore, REMAND the matter to the Agency for compliance with the remedies specified in the ORDER herein.

ORDER

The Agency shall take the following remedial actions:

1. Within ninety (90) calendar days of the date this decision is issued, the Agency shall offer to reinstate Complainant to the Social Science Specialist (Crisis Responder [Trainee]), GS-0101-11, for the purpose of allowing her another training period with an opportunity to redo the training and retake the "Final Knowledge Check" test with effective reasonable accommodations.
2. 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 based on the finding of discrimination with respect to claim 1 to 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.
3. 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."
4. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide eight hours of interactive EEO training to the RAC and the DMO. The required training shall address management's responsibilities to provide reasonable accommodations in the workplace in accordance with the Rehabilitation Act. If the RAC and the DMO have left the Agency's employ, the Agency shall furnish documentation of the departure date.
5. Within ninety (90) calendar days of the date this decision is issued, the Agency shall consider taking disciplinary action against the RAC and the DMO with respect to our finding that they failed to take steps to engage in the interactive process with Complainant or provided needed accommodation for her to take the "final check" exam. 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 the RAC and the DMO has left the Agency's employ, the Agency shall furnish documentation of the departure date.

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 any other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Veterans Health Administration (VHA), Veterans Crisis Line (VCL), Office of Suicide Prevention, at the Atlanta VAMC 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 1, 2023

Date