



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Natacha M.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Appeal No. 2023002342

Hearing No. 430-2019-00326X

Agency No. BOP-2018-0609

DECISION

Pursuant to 29 C.F.R. § 1614.403(a), the Agency timely filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) following its March 10, 2023 final order. On appeal, the Agency requests that the Commission affirm its rejection of a portion of the attorney's fees and costs awarded by an EEOC Administrative Judge (AJ). The Agency's final order accepted the AJ's finding of 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 other ordered relief. For the following reasons, the Commission MODIFIES the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a GS-0007-7 Correctional Officer at the Agency's Federal Medical Center, part of the Federal Correctional Complex in Butner, North Carolina.

On May 29, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female) and reprisal for prior protected EEO activity under Title VII when:

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.

1. On March 3, 2018, management failed to follow policy when they failed to conduct a threat assessment and apprise her of her rights concerning inmate threats. She also alleges management's failure to appropriately handle threats subjected her to a March 3, 2018, assault by an inmate (Inmate-1);
2. On April 18, 2018, a member of management refused to submit her request for leave without pay (LWOP); and
3. Complainant was subjected to disparate treatment and a hostile work environment when she was placed on absent without leave (AWOL) status and required to return to work following the assault by Inmate-1.

Complainant subsequently amended her complaint, alleging that the Agency discriminated against her on the bases of sex (female), disability, and reprisal for prior protected EEO activity under Title VII and the Rehabilitation Act when:

4. In or about March 2019, the Agency assigned a Captain (Captain-1) to oversee Complainant's return to work and light duty assignment;
5. When the Agency agreed to allow Complainant to return to work with restrictions in late February 2019, it required her to work the Day Watch shift (8 a.m. to 4 p.m.) even though she was working the Evening Watch shift (4 p.m. to 12 a.m.) prior to the assault;
6. On February 22, 2019, the Agency sent Complainant home from work, even though she agreed to work the Day Watch shift while they discussed returning her to her original schedule. The Agency did not allow Complainant to return to work until February 26, 2019, and the assignment to the Day Watch remained the same;
7. On April 9, 2019, a Manager (Manager-1) responded to Complainant's email inquiry about her request for a reasonable accommodation and advised that she had been out of the office and would "review and be back in touch very soon" but, to date, Manager-1 never responded again;
8. On July 1, 2019, the Agency stated that it would permit Complainant to work Morning Watch (12 a.m. to 8 a.m.), but only if she used Family and Medical Leave Act (FMLA) to care for her mother, even though working that shift would negate the need for FMLA. The Agency has refused to explain when or for how many hours it would require Complainant to use FMLA leave that she did not need and refused to put this "offer" in writing; and
9. On July 10, 2020, the Agency denied Complainant's request for a reasonable accommodation.²

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 AJ. Complainant timely requested a hearing. The AJ held a hearing from March 7-11, 2022.

² Complainant withdrew two additional issues at the start of the hearing.

The AJ issued a decision on January 31, 2023. The AJ found that the Agency subjected Complainant to a hostile work environment based on sex when they did not take appropriate steps to address Inmate-1's threats and conduct towards Complainant after a December 2017 incident, which resulted in the March 4, 2018, sexual assault on Complainant, and when Inmate-1 continued to intimidate and threaten Complainant after the attack. The AJ did not find that Complainant established discrimination with respect to her remaining claims. The AJ awarded Complainant \$192,000 in nonpecuniary compensatory damages and ordered the Agency to calculate and pay Complainant back pay from March 4, 2018, through November 10, 2020, provide training to the responsible management officials, and post a notice.

Complainant was represented by seven attorneys from a law firm in Washington, D.C. and requested \$544,607.90 in attorney's fees³ and \$10,352.98 in costs. The AJ awarded Complainant \$251,878.20 in attorney's fees and \$10,352.98 in costs. The AJ found that the Agency failed to show that it was unreasonable for Complainant to seek representation in D.C. and that the hourly rate for her attorneys would be based on their location, D.C., and not the prevailing market rate in North Carolina. The AJ determined that the fees for three attorneys who did not file a Designation of Representation or otherwise make an appearance in the case should be excluded. After deducting the fees for these three attorneys, the remaining attorney's fees were \$503,756.40. The AJ found that the petition for attorney's fees was well supported and reasonable, reflecting the amount of research and preparation required for the case and the five-day hearing. While Complainant was only successful on her hostile work environment claim as it related to the sexual assault by Inmate-1, the AJ noted that the remaining claims upon which Complainant was unsuccessful arose from that claim. Accordingly, the AJ found that a fifty percent reduction in attorney's fees was appropriate and awarded \$251,878.20 in attorney's fees. The AJ also found that the request for expenses was supported and reasonable and awarded \$10,352.98 in costs.

The Agency subsequently issued a final order accepting the AJ's decision on liability, the compensatory damages award, and the equitable and other relief. The Agency rejected in part the AJ's award of attorney's fees and costs. The Agency found that substantial evidence in the record supported an award of \$176,314.60 in attorney's fees and \$8,039.11 in costs. The Agency agreed with the AJ that it was not unreasonable for Complainant to retain counsel in D.C. and that the attorneys' hourly rates were reasonable. According to the Agency, the AJ correctly disallowed \$40,850.80 in fees for the three attorneys who never entered an appearance in the case. The Agency found that the use of the remaining four attorneys was reasonable based on the complexity of the case and size the record, personnel changes at the law firm, and an effort to keep the fees lower by assigning work to more junior attorneys.

³ In the decision, the AJ stated that Complainant requested \$544,607.00, which appears to be a typo.

While the Agency found that the fee petition included billing records that annotated the date of services, the individual performing services, a specific description of the services rendered, and the amount of time expended, the Agency determined that the billing records revealed numerous instances of redundant billing. The Agency cited February 15, 2022, August 31, 2021, and August 16, 2021, as examples of dates with redundant billing. The Agency found that the evidence did not support the AJ's finding that Complainant's attorneys made a good faith effort to exclude hours that were excessive, unnecessary, or redundant and concluded that a thirty percent across-the-board reduction of total fees was appropriate. The Agency determined that the AJ's reduction of fees by fifty percent because Complainant only succeeded on one claim was appropriate. The Agency concluded that an award of \$176,314.60 in attorney's fees was supported by substantial evidence in the record.

Regarding costs, the Agency found that Complainant's request for \$480.76 for her attorneys' meals, gas, and coffee creamer during the week of the hearing was not reasonable because the hearing was virtual and Complainant's attorneys appeared virtually from their office in Washington, D.C. Complainant requested \$1,833.11 for her own travel expenses for travel to D.C. for the hearing. The Agency found that, while Complainant may have wanted to be in the same location as her attorneys during the hearing, she did not establish that it was reasonable to travel to D.C. for the virtual hearing. The Agency therefore found that \$8,039.11 in costs was supported by the record.

ANALYSIS AND FINDINGS

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chapter 9, at § VI.B. (Aug. 5, 2015).

At the outset, we note that the Agency does not challenge the AJ's finding of discrimination, the compensatory damages award, or the other ordered remedies and only disputes the AJ's award of \$251,878.20 in attorney's fees and \$10,352.98 in costs. Accordingly, we AFFIRM the finding of discrimination and will restate the uncontested portions of the AJ's order, as modified to include consideration of discipline for the responsible management officials. We will now address the issue of attorney's fees and costs.

The Commission's regulations require federal agencies to award attorney's fees and costs for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(ii). As a general matter, we note that there is a "presumption of entitlement to an award of attorney's fees" where a complainant prevails on his or her claim(s) of discrimination. 29 C.F.R. § 1614.501(e)(1)(i). Attorney's fees are calculated by determining the lodestar, which consists of the number of hours reasonably expended multiplied by a reasonable hourly rate. 29 C.F.R. § 1614.501(e)(2)(ii)(B). All hours reasonably spent to process the complaint are compensable, but the number of hours should not include excessive, redundant, or otherwise unnecessary expenditures of time. EEO MD-110, Chap. 11, at § VI.F.1.

Complainant was represented by seven attorneys from the same law firm, and the law firm's only office is located in Washington, D.C. The Agency does not dispute the hourly rates for Complainant's attorneys, which were based on the firm's location in D.C. The Agency also does not dispute the use of multiple attorneys and noted in its final order Complainant's assertion that, had one partner (Partner-1) performed all of the work in the case, the total fees would have been more than \$90,000 higher.

The AJ excluded attorney's fees in the amount of \$40,850.80 for three attorneys who did not individually file a Designation of Representation or make an appearance in this case. The Agency found in its final order that these fees were appropriately excluded. However, neither the AJ nor the Agency cited any precedent for excluding the work performed by these attorneys, who were part of the same law firm as the other four attorneys. EEOC Regulation 29 C.F.R. § 1614.501(e)(1)(iv) provides that "Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the agency, administrative judge or Commission."

In Elsa O. v. U.S. Postal Serv., EEOC Appeal No. 2022003509 (Aug. 4, 2023), we disallowed attorney's fees for complainant's co-counsel prior to the date of the hearing where no notice was provided that co-counsel was represented complainant prior to being introduced by complainant's lead counsel at the first day at the hearing and where lead counsel and co-counsel were not at the same law firm and provided separate invoices with different addresses. See also Mike G. v. Dep't of Agriculture, EEOC Appeal No. 0120170789 (Aug. 10, 2018) (complainant did not provide agency with reasonable notice of representation by second attorney who never provided an entry of appearance and relationship with first attorney "appears to be that of co-counsel from a separate, unrelated firm rather than that of an associate attorney from the same law firm"); Lampkin v. U.S. Postal Serv., EEOC Appeal No. 0120121420 (July 17, 2013) (complainant not entitled to attorney's fees for consultation with a named law firm where there was no evidence in the record that the law firm represented complainant at any point in the proceedings).

Here, all seven attorneys representing Complainant worked for the same law firm, and Complainant informed the Agency and the AJ that she was represented by the law firm.

On April 18, 2018, an associate (Associate-1) notified the Agency that Complainant had retained their law firm to represent her in the EEO process. After requesting a hearing, Complainant designated Partner-1 and Associate-1 as her representatives on May 6, 2019. In a September 18, 2020, Designation of Representative, Complainant provided notice that she was represented by another associate (Associate-2) and continued to be represented by Partner-1 and by the law firm. Accordingly, we find that the Agency had reasonable notice of representation by the law firm's attorneys and that the \$40,850.80 in fees from these three attorneys were improperly excluded.

The AJ reduced the requested fees by fifty percent based on Complainant only prevailing on her hostile work environment claim. The fact that a complainant did not prevail on every aspect of his or her complaint does not, in itself, justify a reduction in the hours expended where the claims are intertwined, and it would be impossible to segregate the hours involved in each claim. It is true that attorney's fees may not be recovered for work on unsuccessful claims. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Courts have held that fee applicants should exclude time expended on "truly fractionable" claims or issues on which they did not prevail. See Nat'l Ass'n of Concerned Veterans (NACV) v. Sec'y of Def., 675 F.2d 1319, 1337 n. 13 (D.C. Cir. 1982). Claims are fractionable or unrelated when they involve "distinctly different claims for relief that are based on different facts and legal theories." Hensley, 461 U.S. at 434-35. Here, we find that the AJ's decision to reduce the requested fees by 50 percent is supported by substantial evidence in the record. Fifty percent of \$544,607.90 in attorney's fees is \$272,303.95.

The Agency further reduced the attorney's fees across-the-board by thirty percent based on its determination that there were numerous instances of redundant billing. As examples, the Agency cited February 15, 2022, and August 31, 2021, as dates when more than one attorney or support staff member billed for conferring with each other and noted that two associate attorneys billed for the same depositions on August 16, 2021. While the presence of multiple counsel at a hearing or deposition may be considered duplicative in certain situations, such as where one or more counsel had little or no participation or where the presence of multiple counsel served to delay or prolong the hearing or deposition, the presence of multiple counsel is not necessarily duplicative, and is often justifiable. EEO MD-110, Chap. 11 at § VI.F. Here, we find it was reasonable for Complainant to have two attorneys present at the deposition because both attorneys were very involved in discovery and both focused their time and attention on different witnesses. See Complainant v. Dep't of Homeland Sec., EEOC Appeal No. 0720130035 (Oct. 20, 2015). Moreover, a fair review of the attorney's fee petition demonstrates that the time expended by Complainant's attorneys was not duplicative, but rather complementary of each other's efforts. See Carol P. v. Small Business Admin., EEOC Appeal No. 2021004687 (Mar. 9, 2022). Accordingly, we do not find that the Agency's further across-the-board reduction of 30 percent was supported by substantial evidence in the record. See Colene M. v. Dep't of Veterans Affs., EEOC Appeal No. 2019005810 (July 19, 2021) (reversing agency's application of across-the-board five percent reduction for unnecessary duplication of work where it was not unreasonable for both attorneys to review records so they could effectively represent complainant); Maxine C. v. U.S. Postal Serv., EEOC Appeal No. 2019001571 (July 7, 2020) (rejecting agency's across-the-board 30 percent reduction based on lack of specificity and duplicative entries where agency

only cited a few examples of problematic entries but the Commission disagreed that the law firm's entries were insufficiently specific, duplicative, and/or excessive). Accordingly, we MODIFY the attorney's fee award to \$272,303.95.

The AJ found that Complainant's request for \$10,352.98 in costs was reasonable and well supported. The Agency found that Complainant was not entitled to \$480.76 for her attorneys' meals, gas, and coffee creamer during the week of the hearing or to \$1,833.11 for her own travel to Washington, D.C. for the hearing. A complainant can be reimbursed for their attorney's travel expenses, as well as the complainant's own travel expenses, related to an EEO proceeding. See Williams v. Dep't of Veterans Affs., EEOC Petition No. 04A40047 (June 30, 2005) (ordering the agency to reimburse petitioner for room and board and travel expenses for petitioner and his attorney to attend the hearing). Noting that the hearing was held virtually and that her attorneys did not need to travel to attend it, the Agency found that Complainant was not entitled to expenses related to her attorney's meals or gas during the hearing. The Agency also found that Complainant did not establish that it was reasonable for Complainant to travel from North Carolina to Washington, D.C. for the virtual hearing.

Regarding Complainant's travel expenses, we find that Complainant's travel expenses were reasonable. The hearing in this case took place over the course of five days. Moreover, Complainant testified during the hearing about the sexual assault by Inmate-1, about being diagnosed with post traumatic stress disorder (PTSD) and generalized anxiety disorder after the assault, and about ongoing intimidation and threats by Inmate-1. The AJ and the Agency found that it was reasonable for Complainant to be represented by counsel in Washington, D.C. We also find that it was reasonable for Complainant to travel so she could be co-located with her counsel for the extended hearing at which she provided emotional testimony. Complainant provided documentation for her travel expenses, which included mileage, parking, hotels, and local transportation between the hotel and her attorneys' office. Accordingly, substantial evidence supports the AJ's award of \$1,833.11 for Complainant's travel expenses.

Of the \$480.76 in costs excluded by the Agency, \$2.99 was for gas for Partner-1 during the hearing and \$6.03 was for coffee creamer for the week of the hearing. The remaining \$471.74 represented meals for Complainant, Partner-1, and an associate (Associate-3) during the hearing. Reimbursement of costs is not limited to those set forth in regulations, but may include other reasonable, out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying private client in the normal course of providing representation. See Gerber v. Dep't of Homeland Sec., EEOC Appeal No. 07A30062 (May 25, 2004) (finding meal reimbursements to be neither unreasonable nor exorbitant). We find that \$471.74 for meals for Complainant and her attorneys during the hearing was reasonable and supported by receipts. However, we find that the Agency appropriately excluded \$2.99 for gas and \$6.03 for coffee creamer. The gas for \$2.99 for Partner-1 during the hearing appears to represent Partner-1's ordinary commuting costs from home to the office, while the coffee creamer appears to constitute office supplies, which are ordinarily considered as overhead. We therefore find that Complainant is entitled to \$10,343.96 in costs.

Accordingly, Complainant we MODIFY the award of attorney's fee and costs to \$282,647.91, \$272,303.95 in attorney's fees and \$10,343.96 in costs. We note that Complainant may also be entitled to attorney's fees incurred in responding to the Agency's appeal. Any petition for attorney's fees should be submitted to the Agency in accordance with the statement below entitled "Attorney's Fees."

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final order and REMAND the matter to the Agency for further action in accordance with this decision and the ORDER below.

ORDER

To the extent that it has not already done so, the Agency is ORDERED to take the following actions:

1. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$282,647.91 in attorney's fees and costs (\$272,303.95 in attorney's fees and \$10,343.96 in costs), less any amount(s) previously paid to Complainant as attorney's fees and costs.
2. Within 120 calendar days of the date this decision is issued, the Agency shall report whether it proposed discipline against the responsible management officials. The Commission does not consider training to constitute disciplinary action. 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 any of the responsible management officials have left the Agency's employment, then the Agency shall furnish documentation of their departure date(s).
3. To the extent that it has not already done so, within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$192,000.00 in nonpecuniary compensatory damages.
4. To the extent that it has not already done so, the Agency shall calculate the appropriate amount of back pay, pay Complainant that amount, and compensate her for any demonstrated adverse tax consequences:
 - a. Within 60 calendar days of the date this decision is issued, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due Complainant pursuant to 29 C.F.R. § 1614.501. The back pay period will be March 4, 2018, through November 10, 2020. The Agency's back pay calculation shall include all forms of compensation and reflect fluctuations in working time, overtime rates, Sunday premium and night work, changing rate of pay, transfers,

promotions, and privileges of employment. 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 within 30 calendar days of receiving any Agency request for information.

- b. Within 60 calendar days of the date the Agency determines the amount of back pay due Complainant, the Agency shall pay Complainant that amount. The Agency shall provide Complainant with a clear and concise plain language statement explaining the formulas and methods it used to calculate back pay. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount. Complainant may file a petition for enforcement or clarification regarding the amount in dispute. The petition for enforcement or clarification must be filed with the Compliance Officer at the address referenced in the statement entitled "Implementation of the Commission's Decision."
 - c. 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. Within 90 calendar days of the end of the tax year in which the Agency completes payment of the backpay due to Complainant, Complainant shall provide the Agency with her calculation of the additional taxes she incurs as a result of receiving the one-time lump sum backpay award. Within 90 calendar days of receiving such information from Complainant, the Agency shall compensate her for the established adverse tax consequences of her lump sum backpay award.
5. To the extent that it has not already done so, within 90 calendar days of the date this decision is issued, the Agency shall provide a minimum of four hours of in-person or interactive EEO training to the responsible management officials. The required training shall address unlawful discrimination under federal EEO laws, with a special emphasis on the anti-discrimination provisions of Title VII and workplace harassment, including sex-based harassment, and this training shall be in addition to any mandatory EEO training that the Agency may require. For assistance in obtaining the necessary training, the Agency may contact the Commission's Training and Outreach Division via email at FederalTrainingandOutreach@eeoc.gov.
6. To the extent that it has not already done so, within 30 calendar days of the date this decision is issued, the Agency shall post a notice in accordance with the statement 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 Federal Correctional Complex in Butner, North Carolina 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

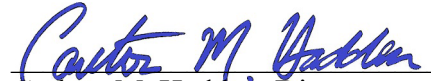
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, **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