



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

[REDACTED]  
Complainant,

v.

Mike Donley,  
Secretary,  
Department of the Air Force,  
Agency.

2/13/12

Appeal No. [REDACTED]

Hearing Nos. [REDACTED]  
[REDACTED]

Agency Nos. [REDACTED]

DECISION

Following its March 9, 2011, final order, the Agency filed a timely appeal which the Commission accepts pursuant to 29 C.F.R. § 1614.405(a). On appeal, the Agency requests that the Commission affirm its partial rejection of the relief ordered by an EEOC Administrative Judge (AJ) following a finding of discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. Specifically, the Agency challenges the amount awarded for compensatory damages, the award of out-of-pocket expenses related to Complainant's non-attorney representative, and restoration of sick leave and leave without pay. 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 an Inventory Management Specialist at the Agency's Supply Chain Management Squadron at [REDACTED] [REDACTED]. Complainant has impairments in both her arms after suffering a work-related injury. In December 2007, Complainant was out on workers' compensation leave. On September 16, 2008, Complainant returned to work, but sat at a cubicle with no work. Complainant took online training classes, but was not tasked with the work she had performed before her injury.

Shortly after returning to work, Complainant requested to be transferred to another building with better disability-related accessibility. The building she worked in had a heavy, wrought

iron gate at every entrance. Complainant had to push or pull the gate when she entered and exited the building, which caused further injury to her arm. Despite the availability of at least two other accessible buildings where Complainant could perform her duties, the Agency denied her request to transfer to another building. Complainant informed her supervisor (S1) about her difficulties with the door, and S1 told her that she would have to go through the Agency's Civilian Announcement Nomination System (CANS) to apply for a different position in a different building. CANS rejected Complainant's attempts to apply for a lateral position. S1 referred Complainant to the Human Resources Office, and officials there informed her that she could only request a transfer through CANS or her supervisor.

Complainant's impairments also caused her difficulties in accessing the Agency's computer system. Complainant experienced pain when typing and gripping a computer mouse. In early 2009, Complainant requested voice activation technology and a touch pad for her computer to assist her in performing her inventory management specialist duties. However, from February 2009 through May 2009, Complainant's computer was taken away. Complainant was so humiliated that she took leave on the day scheduled for her computer removal.

The Agency ordered voice-activated software in March 2009, but it was not received by Complainant until June 2009. Complainant received no assistance in installing the software and received no training on its use. Once it was installed, the software failed to work with most of the systems on Complainant's computer. Complainant informed management of its incompatibility; however, she received no assistance. In addition, Complainant requested a keyboard with a touchpad. The Agency made no attempts to explore other options to address Complainant's inability to type with a conventional keyboard.

On multiple occasions in January and February 2009, Complainant requested a transfer and priority placement as a reasonable accommodation. Management told Complainant that there was nothing they could do. Complainant requested to speak to someone in the Human Resources Office and was told that the request would have to be approved by her supervisor. S1 and Complainant's second level supervisor (S2) told her to apply through CANS. In April 2009, Complainant was offered a position following around the custodians who cleaned the bathrooms with chemicals. Complainant had sensitivities to chemicals which made the job an unsuitable accommodation.

In May 2009, S1 stated that she wanted to give Complainant a total score of 78 for her performance rating. S2 vetoed that rating and S1 lowered the rating over 20 points to 54. No one else under S1's supervision had their rating lowered.

On September 1, 2009, Complainant specifically presented a printout of at least ten vacant positions within the Agency that she was qualified and able to perform to S2. S2 responded that she did not have the capability to reassign Complainant and that Complainant should apply on her own through CANS. The Agency had no reasonable accommodation committee or anyone in the Human Resources Office with the responsibility of addressing employees'

accommodation concerns. As a result, Complainant sat at her desk for approximately two years with virtually no work aside from attending an occasional training class.

Complainant filed multiple EEO complaints alleging that the Agency discriminated against her on the bases of disability and in reprisal for prior protected EEO activity when: her civilian rating record was lowered; her progress review worksheet was lowered; she was not allowed to perform her core duties with or without an accommodation; her requests for reassignment were denied; the Agency removed her computer; she was not accommodated in regard to her physical disabilities when she had to use a wrought iron door to enter and exit the building; she was offered the accommodation of supervising janitors; and, she was not provided with a keyboard or other assistive device to allow her to perform the essential functions of her position.

At the conclusion of the investigations, the Agency provided Complainant with copies of the reports of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing. The AJ consolidated all of Complainant's complaints and held a hearing on liability and issued a bench decision.

Initially, the AJ determined that Complainant is a qualified individual with a disability as defined under the Rehabilitation Act and that the Agency had failed to accommodate her in her position. The AJ found that Complainant established that there were vacant, funded positions into which she could have been transferred at the time that she requested an accommodation. The AJ noted that it was a simple solution to transfer Complainant; however, the Agency failed to do so. Further, the Agency made no attempt to provide Complainant alternative accommodations after the provided software proved ineffective. The AJ determined that Complainant began requesting accommodations, at the latest, in the Spring of 2009 and management failed to engage in the interactive process with Complainant. The AJ found that the Agency did not act in good faith in offering Complainant an accommodation, appeared to thwart Complainant's ability to seek accommodation, and failed to produce any evidence that accommodating Complainant would have created an undue hardship. Thus, the AJ found that the Agency violated the Rehabilitation Act by failing to accommodate Complainant.

Additionally, the AJ concluded that the Agency retaliated against Complainant after she requested accommodations. Notably, the AJ found that Complainant's supervisor demonstrated in her hearing testimony her hostility towards Complainant's accommodation request and having to participate in the hearing proceedings. The AJ determined that the Agency's reasons for its actions were pretext to hide the retaliatory animus evidenced in both the investigations and in the hearing testimony. Thus, the AJ found that the Agency had unlawfully discriminated and retaliated against Complainant.

Finally, the AJ found that the Agency's actions of isolating and ostracizing Complainant, ignoring her accommodation requests, lowering her performance evaluation, and stripping away her duties created a hostile work environment. The AJ concluded that management was aware of Complainant's disability and protected EEO activity and took these actions against

Complainant for engaging in protected EEO activity and for requesting an accommodation. As a result, the AJ found that the Agency subjected Complainant to a discriminatory and retaliatory hostile work environment.

With regard to the remedy, the AJ held a separate hearing. As to non-pecuniary damages, Complainant testified that she has been diagnosed with depression and anxiety which could continue for years. Complainant further testified that she was humiliated and suffered physical pain to her wrist because of the Agency's failure to accommodate her. Complainant added that she suffered nightmares and sleeplessness and takes multiple medications. Complainant's doctor attributed Complainant's emotional distress to her treatment at work and asserted that her symptoms and treatment will be ongoing. Further, Complainant's doctor stated that her elbow has increased symptoms due to overuse. Multiple other witnesses testified regarding Complainant's mental and emotional distress. As a result, the AJ determined that the evidence submitted established that Complainant was entitled to \$125,000 in non-pecuniary damages.

Next, the AJ awarded Complainant restoration of 210 hours of sick leave and 400 hours used as leave without pay (LWOP) which equated to 420 "service hours." The AJ granted Complainant 100 hours of sick leave restoration immediately as interim relief. Further, the AJ awarded Complainant a within-grade step increase as her need to take leave interfered with the timing of her scheduled step increase.

In addition, the AJ ordered the Agency to change Complainant's 2008-2009 performance rating from 58 to 76 and awarded her \$4,000 in out-of-pocket expenses for her retention of a non-attorney representative to assist in her case. The AJ ordered the Agency to either accommodate Complainant so that she could perform the essential functions of her position or find a vacant funded position for which Complainant is qualified and reassign her into that position. Additionally, the AJ ordered the Agency to conduct EEO training for all members of its Human Resources department as well as all managers and supervisors as to their responsibilities under the Rehabilitation Act and to post a notice. Finally, the AJ ordered the Agency to amend its regulations to comply with the Rehabilitation Act.

The Agency subsequently issued a final order accepting the AJ's finding that Complainant had been discriminated against and subjected to a hostile work environment, but rejecting some of the AJ's relief ordered. Specifically, the Agency rejected the AJ's order granting Complainant \$4,000 in out-of-pocket expenses for retention of a non-attorney representative, the number of hours of sick leave and LWOP to be restored, the order of interim relief, and the \$125,000 awarded in non-pecuniary damages.

#### CONTENTIONS ON APPEAL

The Agency does not challenge the AJ's finding of discrimination; rather, it rejects part of the corrective action. The Agency argues that the AJ's award of \$125,000 is excessive when compared to awards in similar cases. Thus, the Agency requests that the Commission reduce the award to \$50,000. Further, the Agency contends that the AJ erred in awarding

Complainant \$4,000 for expenses related to her non-attorney representative. The Agency argues that Commission precedent is clear that non-attorney representatives are not entitled to attorneys' fees. Therefore, the Agency argues that the Commission is without authority to order the Agency to pay for the services of Complainant's non-attorney representative. Finally, the Agency contends that Complainant has not proven that she is entitled to 210 hours of sick leave and 400 hours of LWOP. The Agency further states that the AJ did not clearly specify what is meant by 420 "service hours" and the basis of the 100 hours of sick leave ordered as interim relief. Accordingly, the Agency requests that the Commission modify the AJ's award.

Complainant requests that the Commission uphold the AJ's order of relief and increase the compensatory damages award to \$300,000.

### ANALYSIS AND FINDINGS

#### *Non-Pecuniary Compensatory Damages*

When discrimination is found, the Agency must provide Complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). 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). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

In a claim for compensatory damages, a Complainant must demonstrate, through appropriate evidence and documentation, the harm suffered as a result of the Agency's discriminatory action; the extent, nature, and severity of the harm suffered; and the duration or expected duration of the harm. Rivera v. Dep't of the Navy, EEOC Appeal No. 01934156 (July 22, 1994); Notice at 11-12, 14; Carpenter v. Dep't of Agric., EEOC Appeal No. 01945652 (July 17, 1995). Objective evidence in support of a claim for non-pecuniary damages claims includes statements from the Complainant and others, including family members, co-workers, and medical professionals. See Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. N915.002 (July 14, 1992) (hereafter referred to as "Notice"); Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993).

Non-pecuniary damages must be limited to compensation for the actual harm suffered as a result of the Agency's discriminatory actions. See Carter v. Duncan-Higgans, Ltd., 727 F.2d 1225 (D.C. Cir. 1994); Notice at 13. A proper award should take into account the severity of the harm and the length of time that the injured party suffered the harm. See Carpenter v. Dep't of Agric., *supra*. Finally, the amount of the award should not be “monstrously excessive” standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. See Jackson v. U.S. Postal Serv., EEOC Appeal No. 01972555 (April 15, 1999), citing Cygnar v. City of Chicago, 865 F. 2d 827. 848 (7th Cir. 1989).

The Commission has reviewed the entire record, including all submissions from Complainant's counsel. Taking into account the evidence submitted by Complainant, including her testimony and statements from her doctor, family members, and co-workers regarding her humiliation, severe emotional distress, physical pain, and sleeplessness, the Commission finds the AJ's award of \$125,000 to be appropriate. This amount takes into account the severity of the harm suffered, and is consistent with prior Commission precedent. See Champion v. U.S. Postal Serv., EEOC Appeal No. 0720090037 (Mar. 10, 2010) (\$125,000 awarded in non-pecuniary damages where complainant suffered depression, anxiety, sleeplessness, and required psychiatric treatment as a result of ongoing harassment for two years); Brown-Fleming v. Dep't of Justice, EEOC Appeal No. 0120082667 (Oct. 28, 2010) (\$150,000 in non-pecuniary damages where complainant experienced anxiety, stress, insomnia, difficulty concentrating, disassociation, social isolation, damage to her professional reputation, withdrawal from relationships, and nightmares because of retaliation).

#### *Restoration of Sick Leave*

The Commission has held that a successful complainant is entitled to reimbursement of sick leave taken as a direct result of unlawful discrimination. Harris v. Dep't of the Air Force, EEOC Request No. 05901142 (Jan. 11, 1991). The AJ awarded Complainant restoration of 210 hours of sick leave. The Commission notes that although the Agency challenges the amount of leave awarded by the AJ, it failed to submit any evidence indicating that Complainant was not entitled to the sick leave awarded. The Agency argued that the AJ conceded that there was “documentation from the Agency showing otherwise.” However, a review of the decision reveals that the AJ simply stated that the sick leave award was subject to the Agency providing evidence showing that Complainant was not entitled to the amount of sick leave awarded. The Agency failed to contradict Complainant's submitted evidence of the 210 hours of sick leave used as a result of the Agency's discrimination. Accordingly, the Commission finds the AJ's order of restoration of 210 hours of sick leave was appropriate.

#### *LWOP/Back Pay*

The Commission finds that the AJ's award of restoration of 400 hours of LWOP is more appropriately regarded as an award for back pay. The purpose of a back pay award is to restore Complainant the income she would have otherwise earned but for the discrimination.

See Albemarle Paper Co. v. Moody, 442 U.S. 405, 418-19 (1975); Davis v. U.S. Postal Serv., EEOC Petition No. 04900010 (Nov. 29, 1990). A back pay claimant generally has a duty to mitigate damages. But the Agency has the burden to establish, by a preponderance of the evidence that a complainant has failed to mitigate her damages. See 29 C.F.R. § 1614.501(d); McNeil v. U.S. Postal Serv., EEOC Request No. 05960436 (Dec. 9, 1999). The Commission recognizes that precise measurement cannot always be used to remedy the wrong inflicted, and therefore, the computation of back pay awards inherently involves some speculation. Hanns v. U.S. Postal Serv., EEOC Petition No. 04960030 (Sept. 18, 1997). However, uncertainties involved in a back pay determination should be resolved against the Agency which has already been found to have committed the acts of discrimination. Id.; see also Klook v. U.S. Postal Serv., EEOC Petition No. 04A40012 (June 16, 2004).

Complainant was charged LWOP for leave she took as a result of the Agency's failure to accommodate her. Thus, to make Complainant whole, she is entitled to back pay and benefits from the date in February 2009 the Agency ignored and denied her requests for accommodation for any days that she was in LWOP status as a result of the Agency's failure to accommodate her. Further, the Agency must expunge the LWOP that Complainant was required to take as a result of the Agency's discrimination. The Agency has presented no evidence showing that Complainant is not entitled to this award. As a result, the Commission finds that Complainant is entitled to an award of back pay, including all pay and benefits she would have received had she been accommodated.

#### *Reimbursement for Non-Attorney Representative*

Pursuant to 29 C.F.R. § 1614.501(e), a prevailing federal employee is entitled to an award for reasonable attorney's fees incurred in the successful prosecution of a Title VII or Rehabilitation Act claim. The Commission's regulations also allows the attorney's fees award to include an award for services rendered by law clerks, paralegals or law students if any such person provides professional services under the supervision of an attorney. Id. See also, Thomas v. Dep't of Veterans Affairs, EEOC Appeal No. 01932900 (Nov. 22, 1994); Patterson v. Dep't of the Navy, EEOC Appeal No. 01940792 (Oct. 27, 1994); Lombardo v. U.S. Postal Service, EEOC Appeal No. 01944782 (Aug. 22, 1995). In essence, a prevailing complainant must be represented by an attorney for an attorney's fee award, and the fee award may include compensation for the time spent by such non-attorneys as the legal assistants and law clerks who provided any legal assistance in the matter under the supervision of the attorney. However, where the complainant is not in fact represented by an attorney, no such fee award can be made for the services of the non-attorney representative even if the latter occasionally consulted an attorney in connection with such representation.

Applying the above principles to the instant matter, the Commission finds that Complainant is not entitled to fees for services rendered by her non-legal representative, since he is not an attorney and Complainant was not otherwise represented by an attorney. See Davis v. Dep't of Transp., EEOC Appeal No. 01971633 (Feb. 14, 2000); Kallauner v. Dep't of Energy, EEOC Appeal No. 01A40943 (Oct. 19, 2005). Even assuming that Complainant's non-attorney

representative fees constituted out-of-pocket expenses, Complainant has still failed to establish any entitlement to those costs. Aside from her hearing testimony, the record is devoid of any documentation of costs incurred by Complainant or her non-attorney representative, such as receipts, statement of bills or cancelled checks, to corroborate the requested amount. Accordingly, the Commission finds that Complainant failed to demonstrate an entitlement to costs associated with her non-attorney representative.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, the Commission **MODIFIES** the final order and **REMANDS** this matter to the Agency to take remedial action in accordance with this decision and the **ORDER** below.

### ORDER

The Agency, to the extent that it has not already done so, is ordered to take the following remedial action:

1. Within 60 days of the date this decision becomes final, pay Complainant \$125,000 in non-pecuniary compensatory damages;
2. Within 60 days of the date this decision becomes final, provide Complainant reasonable accommodation so that she may perform the essential functions of her position or find a vacant, funded position for which Complainant is qualified and reassign her into that position. Complainant has fifteen (15) days to accept or decline the Agency's offer of reassignment;
3. Within 60 days of the date this decision becomes final, the Agency shall pay Complainant back pay for any days she was in LWOP status due to the denial of reasonable accommodation beginning in February 2009. 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. 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 Complainant for the undisputed amount within 60 calendar days of the date the Agency determines the amount it believes to be due. Complainant may petition for enforcement or clarification of the amount in dispute. 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 60 days of the date this decision becomes final, expunge 400 hours of LWOP from Complainant's leave records;
5. Within 60 days of the date this decision becomes final, restore 210 hours of sick leave to Complainant's sick leave balance;
6. Within 30 days of the date this decision becomes final, change Complainant's May 2009 performance review rating from a 58 to 76;
7. Within 180 days of the date this decision becomes final, provide 8 hours of EEO training to all members of its Office of Human Resources and all managers and supervisors regarding their obligations under the Rehabilitation Act, emphasizing the Agency's responsibilities regarding reasonable accommodation; and
8. Consider taking appropriate disciplinary action against the responsible management officials. The Commission does not consider training to be disciplinary action. Within 30 days of the date this decision becomes final, the Agency shall report its decision to the Compliance Officer referenced herein. 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).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

#### POSTING ORDER (G0610)

The Agency is ordered to post at its Robbins Air Force Base copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted by the Agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (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 at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

#### ATTORNEY'S FEES (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she 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 this decision becoming final. 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 (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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.

#### STATEMENT OF RIGHTS - ON APPEAL

##### RECONSIDERATION (M0610)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. See

29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (Nov. 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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 (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 (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and

the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

Handwritten signature of Carlton M. Hadden in cursive script.

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Carlton M. Hadden, Director  
Office of Federal Operations

FEB 1 0 2012

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Date



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, D.C. 20507

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
An Agency of the United States Government**

This Notice is posted pursuant to an Order by the United States Equal Employment Opportunity Commission dated \_\_\_\_\_ which found that a violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. has occurred at the Robins Air Force Base in Georgia (hereinafter facility).

Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, or DISABILITY with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

The facility supports and will comply with such Federal law and will not take action against individuals because they have exercised their rights under law.

The facility was found to have unlawfully discriminated against an employee based on disability and in reprisal for her protected EEO activity when it failed to provide the employee a reasonable accommodation, retaliated against the employee based on her request for accommodation, and subjected her to a hostile work environment. The Agency has been ordered to remedy the discrimination by: providing back pay and all benefits due; paying proven compensatory damages; granting the employee reasonable accommodation; restoring leave used because of the discrimination; changing a performance review that was lowered based on discrimination; providing EEO training to the human resources office and all managers and supervisors; considering taking disciplinary action against the responsible management officials; and posting this notice. The facility will ensure that officials responsible for personnel actions and terms and conditions of employment will abide by the requirements of the Federal equal employment opportunity laws.

The facility will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

\_\_\_\_\_  
Name and Title

Date Posted: \_\_\_\_\_

Posting Expires: \_\_\_\_\_