U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

Marc Lawrence a/k/a
Terrell C.,[1]
Complainant,

v.

Rob Shriver,
Acting Director,
Office of Personnel Management,
Agency.

Appeal No. 0120162065

Agency No. 2014022

DECISION

On June 8, 2016, Complainant filed an appeal from the Agency's June 1, 2016, final decision concerning his 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. The Commission accepts the appeal pursuant to 29 C.F.R. § 1614.405(a). For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether the Agency subjected Complainant to disparate treatment on the basis of sex (gender identity/transgender status) when, for the 2013 and 2014 plan years, it contracted with Blue Cross Blue Shield (BCBS) for a health insurance plan in the Federal Employees Health Benefits (FEHB) Program that contained a general exclusion of coverage for "[s]ervices, drugs, or supplies related to sex transformations . . . ," resulting in denial of coverage for certain medical treatment.

BACKGROUND

Complainant is a retired Federal employee. For the 2013 and 2014 plan years, Complainant was enrolled in the BCBS Service Benefit Plan in the FEHB Program and was receiving hormone therapy treatment for gender dysphoria–treatments that were excluded from coverage under the plan terms. Complainant challenges the denial of coverage for this treatment.

[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.

The Exclusion under the Federal Employees Health Benefits Program

The Agency administers the FEHB Program, which provides health insurance to millions of federal employees and their family members by entering into annual contracts for services with health insurance carriers. Each spring, the Agency issues a call letter inviting carriers to submit benefits packages and pricing for the following plan year. Report of Investigation (ROI), Exhibit (Ex.) H, at 3. The call letter informs carriers of important benefits issues they must consider in formulating their benefits packages and pricing structures. Id. After receiving the benefits proposals, the Agency begins negotiating with carriers for health benefit plans that will be acceptable to both parties. For the 2013 and 2014 plan years, the Agency contracted with BCBS to provide the BCBS Service Benefit Plan.

Beginning no later than the 1985 plan year,[2] the Agency required FEHB plan brochures[3] to contain a general exclusion of coverage for "[s]ervices, drugs, or supplies related to sex transformations . . ." (hereinafter, "Exclusion"). For the 2013 and 2014 plan years, the BCBS Service Benefit Plan brochure contained the Exclusion. As a result of the Exclusion, Complainant, who had been diagnosed with gender dysphoria in 2011, was denied coverage for medical care related to his gender dysphoria. Specifically, in March and August 2014, Complainant was denied coverage for three office visits (on October 3, 2013, February 19, 2014, and August 1, 2014) with his endocrinologist to monitor his hormone therapy treatment. In December 2014, Complainant was informed that his hormone therapy prescription also would not be covered.

Complainant's EEO Complaint

Complainant filed an EEO complaint alleging that the Agency subjected him to disparate treatment on the basis of sex (gender identity/transgender status) when, for the 2013 and 2014 plan years, it contracted with BCBS for a health insurance plan that contained a general exclusion of coverage for "[s]ervices, drugs, or supplies related to sex transformations . . . ." As a result of the Exclusion, Complainant was denied coverage for medical care related to gender dysphoria.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge. Complainant timely requested a hearing, but subsequently withdrew his request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant did not prove that the Agency subjected him to disparate treatment on the basis of sex.

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[2] The Agency states that the Exclusion was in place by 1985, but that it is uncertain when the Exclusion was first adopted.

[3] The plan brochure is a document that establishes the benefits that are covered for individuals participating in the plan.

The Agency found that Complainant did not prove disparate treatment, either through direct evidence or by applying the analytical framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). The Agency further found that it had legitimate, nondiscriminatory reasons for its actions; namely, it acted in a reasonable manner regarding the Exclusion as the views of the medical community evolved.[4] Finally, the Agency found that Complainant did not show pretext.

CONTENTIONS ON APPEAL

On appeal, Complainant contends, in pertinent part, that the Exclusion is direct evidence of sex discrimination. Specifically, Complainant argues that the Exclusion is facially discriminatory because it both targets a class of individuals based on their transgender status and, in his words, penalizes individuals for undergoing or having undergone gender transition. In addition, Complainant argues that the Exclusion is not solely an action that the Agency took in 1985, but instead one that the Agency took every subsequent year between 1986 and 2015 (the year in which the Agency no longer required the Exclusion) each time it entered into an annual contract for services with carriers that retained the Exclusion.

In opposition, the Agency contends, in pertinent part, that the Exclusion is not direct evidence of sex discrimination. Specifically, the Agency argues that "[a]n action taken prior to when the discrimination laws were applicable, regarding a treatment regimen that was not yet considered medically necessary, clearly does not rise to the level of [direct] evidence . . . ."[5]

STANDARD OF REVIEW

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); Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-16 (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 the 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").

[4] Effective with the 2015 plan year, the Agency no longer required FEHB plan brochures to contain the Exclusion. Effective with the 2016 plan year, the Agency no longer allowed FEHB plan brochures to contain the Exclusion. As a result, the decision in this case is unlikely to affect the current administration of federal health insurance through the FEHB.

[5] As the Agency is a federal government employer, it does not raise—and this decision does not address—any defense that a religious entity might raise under Section 702(a) of Title VII, the Free Exercise Clause of the First Amendment, or the Religious Freedom Restoration Act. Nothing in this decision is intended to foreclose appropriate consideration of such defenses in any other case.

ANALYSIS AND FINDINGS

Title VII prohibits discrimination on the basis of sex in compensation and in the terms, conditions, or privileges of employment. Although Title VII's express prohibition of discrimination in "terms, conditions, or privileges of employment" is found in Section 2000e-2(a), governing non-federal employment, the prohibition is also within the scope of Section 2000e-16(a), governing federal sector employment. See 42 U.S.C. § § 2000e-2(a), 2000e-16(a). "In general, it may be said that the substantive anti-discrimination law embraced in Title VII was carried over and applied to the Federal Government." Morton v. Mancari, 417 U.S. 535, 547 (1974); Figueroa v. Pompeo, 923 F.3d 1078, 1083 (D.C. Cir. 2019) (federal sector provisions of Title VII, like the private-sector provisions, apply to "the provision of 'compensation, terms, conditions, or privileges of employment'" (quoting 42 U.S.C. § 2000e-2(a))); Czekalski v. Peters, 475 F.3d 360, 363 (D.C. Cir. 2007) (despite their different language, 42 U.S.C. §§ 2000e-2(a) and 2000e-16(a) "contain identical prohibitions").

"Health insurance and other fringe benefits are 'compensation, terms, conditions, or privileges of employment.'" Newport News Shipbuilding & Dry Dock Co. v. EEOC, 462 U.S. 669, 682 (1983) (quoting 42 U.S.C. § 2000e-2(a)). "A benefit that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion, even if the employer would be free . . . simply not to provide the benefit at all." Hishon v. King & Spalding, 467 U.S. 69, 75 (1984). Accordingly, if an employer provides a health insurance benefit plan as compensation to its employees, that plan must provide coverage of medical treatments and services in a nondiscriminatory fashion.

In Macy v. Department of Justice, EEOC Appeal No. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012), the Commission made clear that discrimination against a transgender individual because he or she is transgender is, by definition, discrimination "based on . . . sex," within the meaning of Title VII. In 2020, the U.S. Supreme Court issued its landmark decision in Bostock v. Clayton County, 590 U.S. 644 (2020), which explained, "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." Bostock, 590 U.S at 660. Both Macy—which the Commission decided in 2012, well before the 2013 and 2014 plan years at issue in this case—and Bostock are controlling law for purposes of this federal sector appeal.[6]

[6] "When [the Supreme Court] applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule." Harper v. Virginia Dep't of Tax'n, 509 U.S. 86, 97 (1993); see also Rivers v. Roadway Exp., Inc., 511 U.S. 298, 312-13 (1994) ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.").

Under the facts of this case, we find that the Agency's explicit exclusion of health benefits coverage for "[s]ervices, drugs, or supplies related to sex transformations . . ." is direct evidence of discrimination on the basis of sex, in violation of Title VII. This is so for several independent but mutually reinforcing reasons.

First, a benefits exclusion that specifically targets gender-affirming care for disfavorable treatment plainly discriminates against transgender employees. That the Exclusion does not expressly use the word "transgender" does not make the discrimination any less clear. See, e.g., Kadel v. Folwell, 100 F.4th 122, 149 (4th Cir. 2024) (en banc) ("[C]overage exclusions that bar treatments for gender dysphoria bar treatments on the basis of transgender identity by proxy."). A policy that singles out people because of the "very acts that define transgender people as transgender," Glenn v. Brumby, 663 F.3d 1312, 1316 (11th Cir. 2011), is a policy that targets transgender people. See, e.g., Lange v. Houston County, -- F.4th --, 2024 WL 2126748, at *4 (11th Cir. May 13, 2024) ("Because transgender persons are the only plan participants who qualify for gender-affirming surgery, the [challenged] plan [exclusion] denies health care coverage based on transgender status."). Indeed, a policy disfavoring some conduct or attribute that is a close proxy for a particular group is a policy disfavoring that group. See, e.g., Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez, 561 U.S. 661, 689 (2010) (declining to distinguish between the status of being gay and the conduct of engaging in a same-sex relationship); see also Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 270 (1993) ("A tax on wearing yarmulkes is a tax on Jews."); McWright v. Alexander, 982 F.2d 222, 228 (7th Cir. 1992) (classification based on having gray hair may be treated as classification based on age). By excluding medical services because they are related to "sex transformations," the plan unambiguously targets transgender employees, whose gender identity is different from the sex they were assigned at birth.[7]

Second, as we explained in Macy, discriminating against a transgender individual includes discriminating based on "the fact that the person has transitioned or is in the process of transitioning." Macy, EEOC Appeal No. 0120120821, 2012 WL 1435995, at *7; see also EEOC v. R.G. &. G.R. Harris Funeral Homes, 884 F.3d 560, 577 (6th Cir. 2018) ("Title VII protects transgender persons because of their . . . transitioning status."); Glenn, 663 F.3d at 1321 (discrimination based on the "sheer fact of [plaintiff's] transition"). To withhold a benefit because an employee needs it in connection with a gender transition is to discriminate on the basis of transgender status, and therefore sex, in violation of Title VII. The plan's Exclusion for care related to "sex transformations" does just that.

Finally, and perhaps most fundamentally, the Exclusion is discriminatory because it is an impermissible, sex-based rule for allocating employment benefits. "Title VII's message is 'simple but momentous': An individual employee's sex is 'not relevant to the . . . compensation of employees.'" Bostock, 590 U.S. at 660 (quoting Price Waterhouse, 490 U.S. at 239). The Supreme

[7] Moreover, that the Exclusion applies equally to transgender men and transgender women does not render it nondiscriminatory. To the contrary, it "doubles rather than eliminates Title VII liability." Bostock, 590 U.S. at 662. "[T]he law makes each instance of discriminating against an individual employee because of that individual's sex an independent violation of Title VII." Id.

Court has held that Title VII does not permit employment decisions to be premised on "sex-based rules," see Bostock, 590 U.S. at 667, or "sex-based considerations," see Price Waterhouse, 490 U.S. at 242. On its face, the Exclusion is "inextricably bound up with sex." Bostock, 590 U.S. at 660-61. Indeed, as the Supreme Court reasoned in Bostock, imagine that someone responsible for applying the Exclusion did not know what "sex transformations" meant, and "try writing out instructions" for how to apply the Exclusion "without using the words man, woman, or sex (or some synonym)." See id. at 668-69. "It can't be done." Id. at 669; see also Kadel, 2024 WL 1846802 at *17 (challenged coverage exclusions "cannot be applied without referencing sex") (internal quotation omitted). Indeed, the Exclusion is a "policy [that] cannot be stated without referencing sex," and so is "inherently based upon a sex-classification." Whitaker, 858 F.3d at 1051. The Exclusion denies Complainant coverage for medical care because his need for it arises out of a difference between his gender identity (male) and his sex assigned at birth (female). "Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." Bostock, 590 U.S. at 652.[8]

Accordingly, for each of the reasons stated above, we find that the Agency's Exclusion is direct evidence of disparate treatment on the basis of sex.[9]

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[8] We note that the Exclusion also might be considered to discriminate against transgender employees based on stereotypes. See, e.g., Kadel, 100 F.4th at 154 ("[A] policy that conditions access to gender-affirming surgery on whether the surgery will better align the patient's gender presentation with their sex assigned at birth is a policy based on gender stereotypes."); see also Brief for the United States as Amicus Curiae, p. 14 n.3, Lange v. Houston County, No. 22-13626 (11th Cir. 2023) ("Exclusions of health insurance coverage for medically necessary gender-affirming care also discriminate based on sex under a sex-stereotyping theory of liability."). In Price Waterhouse v. Hopkins, the Supreme Court held that sex stereotyping is discrimination because of sex. See 490 U.S. 228, 235, 351 (1989); see also Bostock, 590 U.S. at 1742-43 (employer would be liable for firing employees "for failing to fulfill traditional sex stereotypes"). Sex stereotypes "presume that men and women's appearance and behavior will be determined by their sex." Glenn, 663 F.3d at 1320. For this reason, discrimination against transgender employees often will reflect sex stereotyping, and one court explained in connection with a similar health benefits exclusion of gender-affirming care, that "the [e]xclusion implicates sex stereotyping by limiting the availability of medical transitioning, if not rendering it economically infeasible, thus requiring transgender individuals to maintain the physical characteristics of their natal sex." Boyden v. Conlin, 341 F. Supp. 3d 979, 997 (W.D. Wis. 2018) ("In other words, the [e]xclusion entrenches the belief that transgender individuals must preserve the genitalia and other physical attributes of their natal sex[.]"). Because, as set forth above, the Exclusion clearly discriminates based on sex for several other reasons, we find it unnecessary to explore the precise contours of this basis for liability.

[9] This makes it unnecessary to analyze Complainant's claim under the McDonnell Douglas framework. However, we note that the outcome under that framework would be the same. The Agency's burden under the second step of that framework is to "produc[e] evidence" that the employment decision in question was made "for a legitimate, nondiscriminatory reason." Reeves

The Agency argues that it is nevertheless not liable because it acted reasonably and without animus against transgender individuals in establishing and maintaining the Exclusion and in later removing it effective with the 2016 plan year. As a preliminary matter, the establishment of a policy limiting the insurance benefits that transgender employees might be able to obtain in a competitive marketplace likely is evidence of animus towards transgender employees, cf. Romer v. Evans, 517 U.S. 620, 632 (1996), and the rescission of the Exclusion after the Title VII violation that Complainant alleges does not cast light on any animus at the time the Exclusion was adopted or applied to Complainant. Such considerations are, in any event, beside the point, since disparate treatment liability does not depend on a finding of animus. See Int'l Union, UAW v. Johnson Controls, 499 U.S. 187, 199 (1991) ("absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect"). The Agency's "reasonableness" likewise does not excuse a discriminatory policy. The law is clear that where, as here, a policy is facially discriminatory, no additional evidence of motive or intent is required. See id. ("Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination."); see also, e.g., Frank v. United Airlines, 216 F.3d 845, 854 (9th Cir. 2000); Bangerter v. Orem City Corp., 46 F.3d 1491, 1500 (10th Cir. 1995); Everts v. Sushi Brokers LLC, 247 F. Supp. 3d 1075, 1079 (D. Ariz. 2017).

The Agency also contends that the Exclusion cannot be evidence of "discriminatory intent to violate Title VII" because the Exclusion was first adopted in or prior to 1985, and at that time "no court . . . had ruled that Title VII was applicable to claims of sex discrimination by transgender

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v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 142 (2000). The Agency has not produced any evidence showing that anything other than application of the Exclusion was the reason for the denials of benefits in 2014. As the discussion above makes clear, the Exclusion is not a nondiscriminatory reason for those denials. The Agency also points to the fact that various medical associations did not consider gender-affirming care to be medically necessary when the Exclusion was adopted in or before 1985. At best, that is an explanation for why the Exclusion was first adopted, but it also begs the question of why the Agency singled out one form of medical care for an across-the-board exclusion and left other benefit design decisions (beyond a minimum baseline of benefits) to individual carriers who compete for FEHB enrollees. In any event, the Agency's medical necessity argument from nearly 30 years earlier is not an explanation or reason for the denials of benefits to Complainant in 2014. The denials of benefits in 2014 are the employment actions at issue in this case, and so it is those employment actions that the Agency must explain to satisfy its burden under the second step of McDonnell Douglas. The Agency does not contend (much less provide evidence) that coverage for Complainant's medical treatment was denied due to a lack of medical necessity. Indeed, the Agency cites evidence that treatment for gender identity disorder was deemed medically necessary by multiple organizations long before Complainant's claims were denied in 2014. Accordingly, the Agency would not prevail under the McDonnell Douglas framework.

individuals." The factual premise of this argument is not quite correct.[10] But more importantly, the argument misapprehends Title VII's standard for disparate treatment discrimination, which simply asks whether the employer took the challenged employment action intentionally based, at least in part, on sex. See Bostock, 590 U.S. at 659 ("An employer violates Title VII when it intentionally fires an individual employee based in part on sex."); Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977) ("'Disparate treatment' . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or national origin."). By contrast, the standard the Agency invokes, which asks whether an employer discriminates with the knowledge that it is violating an employee's rights under Title VII, is the standard for punitive damages for private sector employers. See Kolstad v. American Dental Ass'n, 527 U.S. 526, 536 (1999) ("[A]n employer must at least discriminate in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages."). A federal sector complainant is not required to satisfy the standard for punitive damages to prove a disparate treatment violation under Title VII.[11] Complainant timely challenged discrete denials of benefits that occurred in 2014, and so the question here is whether those employment actions were taken, at least in part, because of sex.[12] The Exclusion, whenever adopted, is direct evidence that they were, since it makes clear that sex played a role in the employment actions that Complainant challenges.

We find that the Agency subjected Complainant to disparate treatment on the basis of sex (gender identity/transgender status) when, for the 2013 and 2014 plan years, it contracted with BCBS for a health insurance plan in the FEHB Program that contained a general exclusion of coverage for "[s]ervices, drugs, or supplies related to sex transformations . . . ," resulting in the denials of coverage for medical treatment in 2014.

In summary, the health insurance plans in the FEHB Program are an employment benefit, and so must allocate benefits in a nondiscriminatory fashion in order to comply with Title VII. Discrimination against an individual on the basis of gender identity or transgender status is sex

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[10] See Ulane v. Eastern Airlines, Inc., 581 F.Supp. 821, 825 (N.D. Ill. 1984) ("I find by the greater weight of the evidence that sex is not a cut-and-dried matter of chromosomes. . . . the term, 'sex,' as used in any scientific sense and as used in the statute can be and should be reasonably interpreted to include among its denotations the question of sexual identity and that, therefore, transsexuals are protected by Title VII."), rev'd 742 F.2d 1081 (7th Cir. 1984).

[11] The Agency also draws an analogy to a safe harbor provision in the Americans with Disabilities Act (ADA), which provides, among other things, that the ADA does not prohibit an insurer "from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law," as long as that safe harbor is not "used as a subterfuge to evade the purposes of" Titles I and III of the ADA. 42 U.S.C. § 12201(c). The Agency's analogy to these provisions of the ADA is misplaced, however. Title VII does not contain a safe harbor provision for a discriminatory health insurance plan, and so even if a discriminatory plan is not a subterfuge to violate Title VII, that does not offer the employer a defense.

[12] See Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002) ("Each discrete discriminatory act starts a new clock for filing charges alleging that act.").

discrimination under Title VII. Treatment of gender dysphoria or other gender-affirming care is, by definition, sought by individuals whose gender identity does not match their sex assigned at birth. Accordingly, it is sex discrimination under Title VII for an employee health benefits plan to deny coverage for medical care simply because it is needed by transgender individuals. Moreover, as a corollary, in an employee health benefit plan, the mere fact that medical care is needed to treat gender dysphoria or provide other gender-affirming care may not, under Title VII, be a motivating factor in any decision to deny coverage for such care.

To be clear, this does not mean that Title VII necessarily requires coverage of all gender-affirming care in an employee health benefits plan. But Title VII does require that coverage decisions for such care be made using standards and criteria that are nondiscriminatory. Departing from the standards and criteria generally used by the health insurance plan to make coverage decisions and instead targeting particular types of medical care and services for lesser coverage because of the protected characteristics of the employees receiving it is not permitted by Title VII.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed here, we REVERSE the Agency's final decision finding no sex discrimination, and REMAND the matter for further action consistent with this decision and the Order of the Commission, below.

ORDER

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

1. **Before the open season for the 2025 plan year**, the Agency shall submit an affidavit from the Agency's Director of Healthcare and Insurance (or whichever administrator or official is best qualified to make this assessment), certifying that

    a. Consistent with Carrier Letter No. 2015-1, each of the FEHB Program's health insurance plans, as of the 2025 plan year, is required not to categorically exclude treatments or services (including, but not limited to, office visits and treatments for gender dysphoria) for transgender individuals; and

    b. Each of the FEHB Program's health insurance plans, effective with the 2025 plan year, is required to include in its plan brochure a non-discrimination provision stating, in plain language, that all coverage decisions will be made using nondiscriminatory standards and criteria, and that a plan member's gender identity and the fact that a service or benefit is needed in connection with gender-affirming care will not be factors in the denial of any service or benefit under the plan.

2. **Within one hundred and twenty (120) calendar days of the date this decision is issued**, the Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages as a result of the Agency's discrimination and shall afford Complainant an opportunity to establish a causal relationship between the discrimination and any pecuniary or non-pecuniary losses. Complainant shall cooperate in the Agency's efforts to compute the amount of compensatory damages he may be entitled to as a result of the discrimination and shall provide all relevant information requested by the Agency. The Agency shall issue a new Agency decision addressing the issue of compensatory damages. The final decision shall contain appeal rights to the Commission. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.

3. **Within one hundred and twenty (120) calendar days of the date this decision is issued**, the Agency shall provide a minimum of four hours of in-person or virtual interactive EEO training to the FEHB administrators regarding their responsibilities under EEO laws, particularly with respect to Title VII and transgender individuals.

POSTING ORDER (G0617)

The Agency is ordered to post at all of its office locations 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 (H0124)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), they are 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 (M0124.1)

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 their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at

https://publicportal.eeoc.gov/Portal/Login.aspx

Alternatively, Complainant can submit their 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 their 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 (R0124)

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 their 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:

RAYMOND WINDMILLER Digitally signed by RAYMOND WINDMILLER Date: 2024.05.30 10:25:49 -04'00'

Raymond Windmiller
Executive Officer
Executive Secretariat

May 30, 2024
Date