



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington Field Office**

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Thomas Schildgen,
Class Agent,

v.

Pete Hegseth,
Secretary,
Department of Defense,
Office of the Secretary/
Washington Headquarters Services,
Agency.

) EEOC No. 570-2025-00473X

) Agency No. 2020-CONF-070

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Date: February 4, 2025

ORDER TO SHOW CAUSE

Background

On January 28, 2025, Class Agent filed a Motion for Sanctions Due to Agency Non-Compliance with EEOC Orders. Upon receipt of Class Agent’s Motion, notwithstanding the Agency’s apparent failure to forward the complaint file, the Equal Employment Opportunity Commission (EEOC or Commission) Washington Field Office docketed this class complaint for adjudication on the merits.

In the Motion, Class Agent asserts that in an appellate decision dated September 26, 2024, the Commission ordered the Agency to send notice to class members within 15 days of the order and forward the complaint file to the appropriate field office. Class Agent asserts that notwithstanding Class Counsel’s repeated requests for the Agency to comply with the Commission’s directive, the Agency has failed to do so.

Legal Standard

EEOC regulations provide that where a party fails to respond to Commission Order, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witnesses, the administrative judge may, as appropriate, levy sanctions on the non-complying party pursuant to 29 C.F.R. § 1614.109(f)(3)(2023). Specifically, an

administrative judge may: draw an adverse inference that the requested information would have reflected unfavorably on the non-complying party; consider the matters to which the requested information pertains to be established in favor of the opposing party; exclude other evidence offered by the non-complying party; issue a decision fully or partially in favor of the opposing party; or take other such actions as appropriate. *Id.* at § 1614.109(f)(3)(i) to (v).

Sanctions must be tailored to appropriately address the underlying conduct of the party being sanctioned. *Chere S. v. Gen. Serv. Admin.*, EEOC Appeal No. 0720180012 (Nov. 30, 2018). Factors pertinent to identifying the appropriate sanction, and to determining whether a sanction is even warranted, include the nature and extent of the noncompliance; the justification presented by the non-complying party; the prejudicial effect of the non-compliance on the opposing party; the consequences resulting from the delay, if any; the number of times the party has engaged in such conduct; and the effect on the integrity of the EEO process as a whole. *Id.*

Prior to issuance of a sanction, the Commission requires that an Administrative Judge provide notice and the opportunity to respond. This is typically accomplished through an order to show cause explaining the potential sanctions the party may face, and giving the party the opportunity to respond. *Miguelina S. v. Dep't of Justice*, EEOC Request No. 2019002953 (Jan. 27, 2020).

Order

The Agency is hereby **ORDERED** to, no later than **February 20, 2025**, show cause why the Commission should not impose sanctions against the Agency for its failure to comply with the Commission's instructions. Class Agent may reply to the Agency's submission no later than **March 3, 2025**. Failure to respond to this Order, or to show good cause for noncompliance with the Commission's directives, may result in the imposition of sanctions up to and including the possibility of default judgment in favor of the class. 29 C.F.R. §1614.109(f)(3).

It is so ORDERED.



For the Commission:

Sharon E. Debbage Alexander
Supervisory Administrative Judge
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By Electronic Mail via EEOC Public Portal/FedSEP:

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