



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

[REDACTED]  
Dixie K.,<sup>1</sup>  
Complainant,

v.

Jeff B. Sessions,  
Attorney General,  
Department of Justice  
(Federal Bureau of Prisons),  
Agency.

Appeal No. 0120150443

Hearing No. 570-2012-00949X

Agency No. P-2011-1138

**DECISION**

On November 5, 2014, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's October 3, 2014, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission VACATES the Agency's final order.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Management Analyst, GS-343-13, for the Bureau of Prisons (BOP), Marketing, Research, and Corporate Support Branch, Corporate Marketing Group (CMG), within the Agency's UNICOR, Federal Prison Industries, Inc., in Washington, D.C. On August 25, 2011, Complainant, proceeding pro se, initiated contact with the Agency's EEO office. She sought counseling for disparate treatment and harassment based on her gender and race (African American). She

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<sup>1</sup> 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.

specifically mentioned disparate treatment in management's extreme expectations of her as compared to her white male peers. Complainant also specified that on August 3, 2011, her Branch Chief required her to add a GS-13 non-bargaining unit employee to her Performance Work Plan (PWP). In addition, she wanted the Agency to "discontinue the harassment hostile environment" and "treat her the same as the other GS-13 staff."

On November 7, 2011, Complainant again initiated contact with the Agency's EEO office claiming "on 10/12/2011, I was issued an "Excellent" overall rating for my annual performance evaluation and this is in retaliation of my EEO complaint."

Complainant filed her first formal complaint of discrimination on November 21, 2011, noting that:

I believe I have been treated disparately and held to a higher and different standard compared to the GS-13 white males in the department. With expeditious growth in workload, technical & policy requirements in my area of responsibility, gross reductions were made to budget & staffing and management's expectations from me are much greater. Travel, training and requests for leave have been denied and/or scrutinized. While the GS-13 white males' areas of responsibility have significantly decreased, management's expectations are less, travel, training and requests for leave are authorized and/or not under the same scrutiny.

On December 22, 2011, Complainant filed her second formal complaint alleging:

Over the last several years, I've received "Outstanding" overall ratings on all my evaluations. Due to my recent EEO complaint, I believe I have been retaliated against and was issued an "Excellent" overall rating for my annual performance evaluation.

On January 3, 2012, the Agency accepted Complainant's first formal complaint, and framed her claims as follows:

You allege that the [BOP] unlawfully discriminated against you on the bases of race (African American) and sex (female) when management's expectations of you were higher than those of White males. Specifically, on August 3, 2011 your Branch Chief required you to add a GS-13 non-bargaining employee to your PWP [Claim 1].

On January 25, 2012, the Agency processed Complainant's second formal complaint as an amendment to her first complaint. The Agency framed her amended claim as:

You allege that the [BOP] unlawfully discriminated against you on the bases of race (African American), sex (female), and reprisal when on October 24, 2011,

you received “Excellent” as your overall rating on your annual performance evaluation. [Claim 2].

After the EEO investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). On July 12, 2012, Complainant requested a hearing before an EEOC AJ. Over Complainant’s objections, the AJ assigned to the case granted the Agency’s December 18, 2013, motion for a decision without a hearing and issued a decision without a hearing on August 18, 2014. The Agency subsequently issued a final order adopting the AJ’s finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

### FACTUAL BACKGROUND

During the relevant time-frame, Complainant worked within the CMG/UNICOR<sup>2</sup> Division. Complainant’s job responsibilities included management of UNICOR’s website, specifically website content and projects. At the time of the complaint, Complainant’s direct supervisor was the Chief of Corporate Marketing, GS-14, in the Marketing, Research, and Corporate Support Branch (S1). Complainant’s second-line supervisor was the Chief of the Marketing, Research, and Corporate Support Branch, GS-15 (S2). S1 supervised four managers: Complainant; the Marketing, Communications, & Trade Show Manager, GS-13 (C1); the Publications & Advertising Manager, GS-13 (C2); and the Business Development Specialist, GS-13 (C3).

At the time of the complaint, Complainant was primarily assisted by a Management Analyst, GS-13, (Black, female) (C4) who was not hired to work for Complainant’s group, but for the Research Group under S2. On August 3, 2011, S2 requested that Complainant add the responsibility of supervision of C4 to her PWP. After Complainant complained and pushed back on this request, C4 was not added to Complainant’s PWP.

In October 2011, following Complainant’s initial EEO complaint, according to management, Complainant’s performance appraisal score warranted an “Excellent” rating for the first time despite numerous accounts that she was a performance superstar and carrying, on her own, an extreme workload fit for several employees. After Complainant pushed back on the Excellent rating, S1 provided Complainant an “opportunity” to provide additional information for areas that were scored lower than anticipated. Complainant provided additional information in response to S1’s request. After receiving the additional information, Complainant’s performance appraisal score increased, moving the overall rating to the “Outstanding” level.

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<sup>2</sup> UNICOR is a trade name for the Federal Prison Industries, Inc. which is a wholly-owned government company, funded through product sales.

### CONTENTIONS ON APPEAL

Complainant asserts that the EEO investigation process failed to accurately frame her allegations. Accordingly, she argues that her claims were not properly investigated. In addition, she claims that the AJ failed to recognize this fact and failed to grant her motion to amend her complaint. Lastly, she asserts that because of the failure to properly identify and investigate her claims, the AJ's summary judgment decision is erroneous and should be reversed.

### ANALYSIS AND FINDINGS

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and Agency's factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See id. at Chapter 9, § VI.A. (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law"). We must determine whether it was appropriate for the AJ to have issued a decision without a hearing on this record.

The Commission's regulations allow an AJ to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. The U.S. Supreme Court has held that summary judgment is appropriate where a court determines that, given the substantive legal and evidentiary standards that apply to the case, there exists no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). In ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. Id. at 249. The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. Id. at 255. An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

If a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. In the context of an administrative proceeding, an AJ may properly consider issuing a decision without holding a hearing only upon a determination that the record has been adequately developed for summary disposition. See Petty v. Dep't of Def., EEOC Appeal No. 01A24206 (July 11, 2003); Murphy v. Dep't of the Army, EEOC Appeal No. 01A04099 (July 11, 2003). Finally, an AJ should not rule in favor of one party without holding a hearing unless he or she ensures that the party opposing the ruling is given: (1) ample notice of the proposal to issue a decision without a hearing; (2) a comprehensive statement of the allegedly undisputed material facts; (3) the opportunity to respond to such a statement; and (4) the chance to engage in discovery before responding, if necessary. According to the Supreme Court, Rule 56 itself precludes summary judgment “where the [party opposing summary judgment] has not had the opportunity to discover information that is essential to his opposition.” Anderson, 477 U.S. at 250. In the hearing context, this means that the administrative judge must enable the parties to engage in the amount of discovery necessary to properly respond to any motion for a decision without a hearing. Cf. 29 C.F.R. § 1614.109(g)(2) (suggesting that an administrative judge could order discovery, if necessary, after receiving an opposition to a motion for a decision without a hearing).

#### *Fragmented Claims and Inadequate Investigation*

Upon review of the record, we agree with Complainant and find that a fair reading of her assertions both during the EEO counseling stage and the EEO investigation show that she intended to assert a claim of harassment (in addition to various discrete acts) which was not properly investigated.<sup>3</sup>

The record shows that in addition to raising a claim of harassment during the EEO counseling stage, Complainant's formal complaint and investigative interview, which took place on February 1, 2013 (shortly after the filing of her formal complaint), support Complainant's assertion that her claims of discrimination encompassed more than the two individual incidents framed by the Agency. As Complainant was not represented by an attorney during the EEO investigative stage, the Agency had a greater responsibility to ensure that Complainant's claims were fully developed and investigated. The Agency should have known that there was more to Complainant's claims based upon her statements in her complaint and during the investigative interview. Complainant testified as follows, in pertinent part:

Q35. But why do you believe that there's been discrimination based on your race?  
A: ...*I didn't get to tell you all the previous historical information. You're only asking me about this one incident.*

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<sup>3</sup> Hostile work environment claims are particularly susceptible to improper fragmentation. See Drake v. Dep't of the Air Force, EEOC Request No. 05970689 (Mar. 29, 1999); Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 5 § III (Aug. 5, 2015).

Q37. When you state that there's a whole lot of incidents happened before the accepted issue *I just want you to understand that the only thing that I am authorized to investigate are the issues that were accepted...*

A: *But there's more to it. There's disparate treatment, so I'm confused. There's more than just that.* [emphasis added]

Q85: What did Management identify as the reason for requiring you to add a GS-13 non-bargaining employee to your PWP?

A: Because she was helping and providing support for the web program, that's why.

Q86. And that's why they told you that you were required to add her?

A: Right, even though [S2] has told me that he has told [S1] and I believe he even told [the Deputy Branch Chief (S2A)] that even though she was providing support - because they never back filled any web positions. Because what happened, two of them got promoted and *I'm sure we'll address that later.*<sup>4</sup> [emphasis added]

Q114: What facts do you have based on race and sex that show discriminatory intent by Management?

A: *Okay, so now I can talk about stuff outside of this now?* [emphasis added]

Q115: What facts do you have based on race and sex that shows discriminatory intent by Management [regarding] this action?

A: My responsibilities as a web program manager is to provide support, oversight, guidance, etcetera, etcetera, etcetera, okay? With six staff members. Since 2006, as folks left the department or got jobs I was not allowed to back-fill the position[s], yet the work expectations were the same or greater. In addition, ... the budget needed to support the goals and the mission of the organization through the web program was grossly decreased as well. ... Everybody is directed to the web for information. .... in the Marketing Team there's three major components, the web [section], trade shows [section], [and] publications and printing [section]. [S]ince 2007/2008 requests in the publications and trade show programs decreased significantly, marketing related needs and requirements from our internal stakeholders, general managers, [and] their customers have moved from traditional marketing (print and shows). And those marketing requests are moved to the web. .... [In addition,] our internal stakeholders are having their own staff handle their publications and printing needs and their tradeshow needs... But yet, these gentlemen, white males, were promoted to higher [grade/positions] doing the same job area with less responsibility and workload, yet in my department where the influx of workload has been diverted from those two areas to the web because of the shift of the internet, yet my positions [the

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<sup>4</sup> The EEO investigator did not investigate this issue.

vacancies in that department] were never backfilled. . . . I've asked in writing for resources. I begged for resources, staff and budget....<sup>5</sup>

Complainant further testified that she was disparately treated with a significant increase in work and decrease in resources, while other GS-13 managers in her unit who have less work received increases in resources. In addition, Complainant testified that S2 made clear to S1 that she will never get promoted to the GS-14 level or be permitted to leave her current assignment. Complainant also testified that S2 created a very "difficult work environment" for her.

Complainant further testified that despite being the subject matter expert for an initiative being presented at a trade show, S2 rejected S1's recommendation that she attend the trade show. Instead, S2 sent a white male colleague with no working knowledge of the initiative to go in her place. In addition, Complainant testified (with corroborating witness testimony) that she was micromanaged by S2 (i.e., every decision had to be approved by S2 and she was not permitted to interact verbally or by email with high level managers which placed her at a disadvantage in comprehending their web-related needs and goals) while her co-managers were not treated this way.

The record shows that in addition to not following up on Complainant's various incidents of disparate treatment beyond the two issues framed by the Agency, the EEO investigator failed to even ask Complainant about her statement during the EEO counseling stage in which she was seeking an end to the "harassment" and "hostile environment." The Agency should have provided Complainant an opportunity to elaborate on this statement.

We find that the Agency failed to properly develop and investigate Complainant's claims of harassment and disparate treatment. It has long been the policy of the courts to liberally construe pro se filings to minimize the risk of a miscarriage of justice. See Wright v. C.I.R., 571 F. 3d 215, 219 (2d Cir. 2009) (appellate submissions of pro se litigants interpreted "to raise the strongest possible arguments they suggest.") (citation omitted); see also Comer v. Peake, 552 F. 3d 1362, 1369 (Fed. Cir. 2009) (citing Hughes v. Rowe, 449 U.S. 5, 15 (1980)) (a pleading drafted by a pro se litigant is held to a lesser standard). Such a policy is appropriate in the Commission's adjudicatory process because the risk of injustice is no less real. See Complainant v. Dep't of Defense, EEOC Appeal No. 0520140248 (Aug. 7, 2015).

#### *Record Not Adequately Developed for Summary Disposition*

We also find that the AJ failed to adequately develop the record before issuing a summary decision. Specifically, the record shows that while Complainant's case was awaiting assignment of an AJ, the Agency allegedly continued to retaliate against her. Accordingly, on July 25, 2013, Complainant (newly represented by an attorney) filed a Motion to Amend Charge to include new like or related claims, and to clarify her claims at the same time. The new and/or clarified claims of race/gender discrimination and reprisal included the following: (a) denied training on March

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<sup>5</sup> The EEO investigator did not follow up on this issue.

13, 2013; (b) the assignment of a disparate workload from December 2007 to August 14, 2012; (c) a reassignment on August 14, 2012; (d) the removal of her duties and budget authority effective October 26, 2012 and July 9, 2013; (e) threatening to reclassify her as a non-law enforcement employee on October 27, 2012; (f) receipt of negative remarks and a low 2012 performance evaluation; (g) denial of a second telework day on July 18, 2013; (h) subjecting her to a hostile work environment from December 2007 through the present with respect to impeding Complainant's career, denying her training and leave opportunities, the failure to reassign her, removing her duties, making statements expressing animus, derogatory statements regarding her performance, subjecting her to heightened scrutiny, assigning her a disparate workload, and denying her adequate support.

Complainant also raised the assertion that the Agency refused to provide substantive responses during discovery, and instead relied on boilerplate objections to bypass the discovery that she was seeking. The record shows that the Agency refused to produce any documents in response to Complainant's 19 document requests mainly because the requests were not relevant to the two (incomplete and fragmented) issues in the complaint. In addition, Complainant asserts that the Agency stonewalled her from conducting depositions by objecting to all seven requested depositions, including initially S1 and S2. Although the Agency later agreed to the depositions of S1 and S2, Complainant asserts that the Agency never produced any documents or substantive answers to her interrogatories, substantially reducing the value of such depositions. Accordingly, Complainant did not move forward with such depositions, but instead filed Motion to Compel Discovery on November 25, 2013. The AJ never ruled on her Motion to Compel. Approximately one year after Complainant filed her Motion to Amend Charge, on July 1, 2014, the AJ denied it in a single sentence. We find the AJ's delay in ruling on Complainant's Motion to Amend and the failure to rule on Complainant's Motion to Compel deprived Complainant of a meaningful and fair resolution of the pending discovery dispute and that the timing of the AJ's ruling on Complainant's Motion to Amend unfairly disadvantaged Complainant from being able to demonstrate genuine issues of material fact. See Menoken v. Soc. Sec. Admin., EEOC Appeal No. 01A32052 (Jan. 3, 2005), *citing* Petty v. Dep't of Defense, EEOC Appeal No. 01A24206 (July 11, 2003); *see also*, Shimitz v. Dep't of Agriculture, EEOC Appeal 0120080675 (Apr. 12, 2012); Gryder v. Dep't of Transportation, EEOC Appeal 0720070078 (Aug. 12, 2009). *See also*, Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 7 § IV.D.4 (Aug. 5, 2015) (Following the filing of an opposition, if any, to the motion to compel discovery, the Administrative Judge will rule expeditiously on the request for discovery).

The AJ failed to acknowledge that Complainant's claims were fragmented and undeveloped. In her decision, the AJ concludes that Claims 1 and 2 failed to state a claim because the proposed employment actions never took place. In addition, the AJ concludes that the claim of retaliation with respect to Claim 2 was not reasonably likely to deter protected activity.

The AJ also notes that even though there may have been a systemic imbalance in the allocation of resources between Complainant's section and other CMG sections, such imbalance evolved over years by an increased reliance on web-based resources, and not from racial or sex-based animus. The AJ comes to this conclusion because a former subordinate of Complainant (C5)



(White, male) testified that Complainant's section was similarly overworked and not provided sufficient resources when he worked under Complainant. However, we do not agree with the AJ that C5 is a proper comparator as he was Complainant's subordinate and ultimately not responsible for the success of Complainant's section.

Complainant argues that management failed to utilize other employees from the CMG sections (whose workloads were substantially smaller than Complainant's workload) to assist Complainant. We agree with Complainant's argument that her counterparts in the other CMG sections are the appropriate comparison employees (all of whom fall outside her protected classes). While each of those managers held different position descriptions, the record shows that they were all in the CMG and directly supervised by S1 and S2.

In addition, the argument that such counterparts could not be expected to take on more web-based duties given their diverse position descriptions seems disingenuous given the fact that S2 had chosen C4 (i.e., an African-American female, who was hired to fill a position outside of Complainant's section and who lacked any background or qualifications in Complainant's field of work) to provide support to Complainant. The limited evidence in the record clearly indicates that Complainant was a superior performer who was treated differently than her co-managers (all White males) with respect to micromanagement, workload, and opportunity for training/tradeshaw participation.

Lastly, the record contains witness testimony to corroborate Complainant's assertion that S2 held a bias against women. Specifically, S1 testified that "in general [S2] has difficulty dealing with women in managerial positions." Accordingly, Complainant's claim that she was subjected to disparate treatment based on her race and sex was not appropriate for a summary judgment decision in favor of the Agency, contrary to the AJ's conclusion.

### CONCLUSION

Because the Agency failed to recognize Complainant's harassment claim and failed to fully develop her disparate treatment claims when it framed the issues of Complainant's complaint, we find the record not adequately developed for summary disposition. As such, the claims raised by Complainant must be reframed in accordance with statements and arguments in her Motions to Amend and Compel. The Agency must then conduct a supplemental investigation that is full and complete in accordance with 29 C.F.R. § 1614.108(b).

Therefore, after a careful review of the record, including arguments by both parties on appeal and evidence not specifically discussed in this decision, the Commission VACATES the Agency's final action and REMANDS the matter to the Agency for further processing in accordance with this decision and Order below.

ORDER

Within 120 days of the issuance of this decision, the Agency shall conduct a supplemental investigation, to include the following actions:

- a) Based upon the information provided in Complainant's Motion to Amend Charge dated July 25, 2013, the Agency shall reframe the claims in this complaint and provide Complainant an opportunity to review the framing of such claims for accuracy;
- b) Conduct a thorough and adequate investigation of the newly framed claims including any background evidence that may not be part of the claim(s);
- c) Obtain all documentation relevant to the newly framed claim(s);
- d) Conduct investigative interviews under oath of all relevant witnesses, including but not limited to those relevant witnesses identified by Complainant and witnesses who have previously been interviewed;
- e) Engage in any other such investigative actions to ensure that the record is fully developed in accordance with 29 C.F.R. § 1614.108(b), including responding to Complainant's discovery requests as elaborated in her motion to compel;
- f) Following the timely completion of the supplemental investigation, the Agency shall immediately transmit the new Supplemental Report of Investigation to Complainant and to the appropriate EEOC Hearings Unit of the appropriate EEOC field office for a hearing. Thereafter, an AJ shall conduct a hearing and issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110; and
- g) In accordance with Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § IX.E (Aug. 5, 2015), the Agency shall give priority to this remanded case to comply with the time-frames contained in this Order. The Office of Federal Operations will issue sanctions against agencies when it determines that agencies are not making reasonable efforts to comply with a Commission order to investigate a complaint.

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 evidence that the corrective action has been implemented.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

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 in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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 (M0617)

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. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. 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 agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal

(FedSEP). See 29 C.F.R. § 1614.403(g). 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).

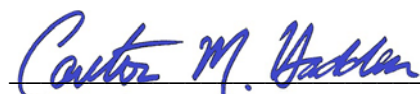
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

#### RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director  
Office of Federal Operations

February 28, 2018

Date